

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2020 CA 0479

ARTHUR BIAS, JR.

VERSUS

LOUISIANA DEPARTMENT OF
PUBLIC SAFETY & CORRECTIONS

Judgment Rendered: DEC 30 2020

Appealed from the 19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Suit No. C690645

The Honorable Donald R. Johnson, Judge Presiding

Arthur Bias, Jr.
Angie, Louisiana

In Proper Person
Plaintiff/Appellant

Debra A. Rutledge
Baton Rouge, Louisiana

Counsel for Defendant/Appellee
Louisiana Department of Public
Safety & Corrections

BEFORE: GUIDRY, McCLENDON, AND LANIER, JJ.

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LANIER, J.

Petitioner, Arthur Bias, Jr., an inmate in the custody of the Louisiana Department of Public Safety and Corrections ("DPSC"), appeals the district court's judgment, affirming DPSC's final agency decision rendered under Administrative Remedy Procedure ("ARP") No. RCC-2019-474 and dismissing, with prejudice, the claims alleged in Bias's petition for judicial review for failure to state a cause of action. For the reasons that follow, we affirm.

DISCUSSION

According to the record, Bias was convicted of simple robbery, attempted armed robbery, and possession of a firearm by a convicted felon and later sentenced, as a habitual offender, to thirty years at hard labor without the benefit of probation, parole, or suspension of sentence. Bias initiated an ARP at the prison where he was incarcerated, claiming that he was being "unlawfully and unconstitutionally held in custody ... on a non-existent crime." Arguing that attempted armed robbery was neither defined nor codified by the Louisiana State Legislature, Bias claimed he was subjected to false imprisonment and requested that he be immediately released from the unlawful and unconstitutional custody of DPSC.

Bias's request was reviewed and denied at the first and second steps of the ARP. Having exhausted his administrative remedies, Bias filed a petition for judicial review in the Nineteenth Judicial District Court. The matter was then referred to a commissioner¹ for review pursuant to La. R.S. 15:1188, who recommended to the district court judge that DPSC's decision be affirmed and

¹ The offices of commissioner of the Nineteenth Judicial District Court were created by La. R.S. 13:711 to hear and recommend disposition of criminal and civil proceedings arising out of the incarceration of state prisoners. La. R.S. 13:713(A). The district judge "may accept, reject, or modify in whole or in part the findings or recommendations made by the commissioner and also may receive further evidence or recommit the matter to the commissioner with instructions." La. R.S. 13:713(C)(5).

Bias's petition be dismissed, with prejudice. Bias timely filed a traversal of that recommendation, reiterating his arguments to the court, while also asserting his belief that the commissioner had misinterpreted the claims in his petition. Bias noted that he was not contesting his conviction for attempted armed robbery, but rather challenging his custody with DPSC, which he considered to be "illegal" and "false imprisonment," as it was based on a non-existent crime. On February 20, 2020, the district court signed a judgment, dismissing Bias's petition, with prejudice, for failure to state a cause of action.

This appeal by Bias followed. On appeal, Bias argues that because attempted armed robbery is not a crime as defined by the Louisiana legislature, DPSC does not have the legal right to hold him in custody. Bias asserts that he should be immediately released and discharged from the illegal custody of DPSC.

It is clear from a review of the Commissioner's report that in reviewing Bias's petition, the commissioner was fully aware of Bias's claims that he had been subjected to unlawful custody as a result of his conviction for what he claimed was a non-existent crime. In recommending that DPSC's decision be affirmed, the commissioner offered the following findings:

The burden of proof in any civil administrative appeal is with the Petitioner. Here, Petitioner has failed to provide any evidence or proof in support of his claim that the Department's decision in ARP No. RCC-2019-474 is arbitrary, capricious, or manifestly erroneous or that it was in violation of the Petitioner's constitutional or statutory rights. Thus, any criminal commitment issued by the sentencing court to the Department and relating to Petitioner's attempted armed robbery conviction is deemed to be valid and the Department is required to enforce said sentence unless and until that sentence is vacated or amended by the said sentencing court.

As previously indicated, Bias was charged in 2010 with simple robbery, attempted armed robbery, and possession of a firearm by a convicted felon. At that time, the charge of attempted armed robbery was provided for as set forth in La.

R.S. 14:27 and 14:64.² Moreover, the record reflects that Bias was originally sentenced for his attempted armed robbery conviction pursuant to these statutes, before later being resentenced as a habitual offender.³ After a thorough review of the record, in consideration of Bias's arguments on appeal, and applying the relevant law and jurisprudence, we find no error of law or abuse of discretion by the district court in adopting, as its own, the commissioner's report.

DECREE

For the above and foregoing reasons, we affirm the February 20, 2020, judgment of the district court and find that the district court's reasons for judgment, as set forth in the commissioner's recommendation, adequately explain the decision. We assess all costs associated with this appeal against petitioner, Arthur Bias, Jr.

AFFIRMED.

² In 2010, La. R.S. 14:27(A) provided as follows:

Any person who, having a specific intent to commit a crime, does or omits an act for the purpose of and tending directly toward the accomplishing of his object is guilty of an attempt to commit the offense intended; and it shall be immaterial whether, under the circumstances, he would have actually accomplished his purpose.

Furthermore, La. R.S. 14:64(A) provided, "Armed robbery is the taking of anything of value belonging to another from the person of another or that is in the immediate control of another, by use of force or intimidation, while armed with a dangerous weapon."

³ According to the record, Bias was sentenced on April 9, 2010, for attempted armed robbery pursuant to the sentencing provisions set forth in La. R.S. 14:27 and 14:64. Thereafter, on June 23, 2010, his original sentence was vacated, and Bias was resentenced as a habitual offender under La. R.S. 15:529.1.