

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2020 CA 0484

WILLIE DILLON

VERSUS

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS

MT
TMH

Judgment Rendered: **DEC 30 2020**

Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case No. C691727

The Honorable Richard "Chip" Moore, Judge Presiding

Willie Dillon
Homer, Louisiana

Plaintiff/Appellant
Pro Se

Elizabeth B. Desselle
Baton Rouge, Louisiana

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

BEFORE: HIGGINBOTHAM, THERIOT, AND WOLFE, JJ.

Wolfe, J. Consens

THERIOT, J.

Willie Dillon, pro se, appeals the judgment of the Nineteenth Judicial District Court dismissing with prejudice his petition for judicial review for lack of subject matter jurisdiction based on a failure to exhaust administrative remedies in accordance with La. R.S. 15:1172. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

Willie Dillon is an inmate at the David Wade Correctional Center (“DWCC”). On December 4, 2017, certain items were confiscated from Dillon by officers at DWCC. According to a confiscation and disposition of contraband form, the items were not allowed per prison policy. These items were disposed of on March 27, 2018.

Dillon alleges that he did not learn that his property had been disposed of until June 19, 2019. On June 20, 2019, he initiated the first step of an administrative remedy procedure (“ARP”). This ARP was assigned the case number DWCC-2019-0506. On July 22, 2019, Dillon received a letter signed by Nikki McCoy, legal liaison at DWCC, which stated that Dillon’s complaint should be addressed via a lost property claim, not through the ARP process. Accordingly, DWCC-2019-0506 was rejected.

On July 23, 2019, Dillon filed a lost property claim, which was later numbered DWCC-2019-0852. This claim was sent to Ms. McCoy. On August 26, 2019, Dillon sent a follow up letter to Ms. McCoy to check the status of his lost property claim, but he did not receive a response. On September 5, 2019, Dillon sent another letter, this time to Ms. McCoy and to Deputy Warden Angie Huff, again attempting to determine the status of his lost property claim.

On September 6, 2019, Ms. McCoy responded to Dillon’s lost property claim. Ms. McCoy informed Dillon that she does not handle lost property claims, but that she had been forwarding the letters to the appropriate personnel. Ms.

McCoy also referred to a previous lost property claim, DWCC-2018-21, and stated that that lost property claim was being answered at the second step.

On September 11, 2019, Dillon received a response from Deputy Warden Huff. Deputy Warden Huff's response also referenced DWCC-2018-21, which Deputy Warden Huff identified as a previous lost property claim that had had been reviewed and denied on February 6, 2018. According to Deputy Warden Huff, Dillon had sought judicial review of that denial, and the matter was remanded by the Nineteenth Judicial District Court ("19th JDC") for a review and response at the headquarters level. Deputy Warden Huff stated that the matter was currently pending a decision, and that Dillon would receive a response soon.¹ Deputy Warden Huff further stated that the resubmittal of another lost property claim was not required in this matter.

On November 5, 2019, Tommy Garrett at DWCC's Legal Programs department informed Dillon that his lost property claim had been forwarded to Colonel Scott Cottrell. It appears that this was in response to an October 16, 2019 letter written from Dillon to Mr. Garrett checking on the status of his lost property claim.

On November 21, 2019, Dillon received a response from DWCC regarding DWCC-2019-0852. The response informed him that DWCC had rejected this claim. The rejection letter, which listed May 30, 2019 as the date of incident, stated as its reason for rejection that it had been more than ten days since the discovery of the loss of property. The rejection letter further stated that Dillon had been notified in the rejection of DWCC-2019-0506 that he needed to file a lost property claim.

¹ According to the record, DWCC-2018-21 relates back to the same December 4, 2017 confiscation of Dillon's property. Regarding DWCC-2018-21, Dillon took a first step of the ARP on January 10, 2018, and was denied on February 6, 2018. Dillon proceeded to the second step of the ARP for DWCC-2018-21 on August 8, 2019, and as of Deputy Warden Huff's September 11, 2019 letter, disposition as to the second step was still pending.

On December 12, 2019, Dillon filed a petition for judicial review with the 19th JDC. The petition was in reference to DWCC-2019-0852. In his petition, Dillon asserted that he had taken the first step of the administrative remedy procedure (“ARP”) on November 4, 2019, and that his first step request had been rejected on November 21, 2019. The petition named as defendants James M. LeBlanc, secretary of the Department of Corrections, and DWCC, et al.

On February 3, 2020, the Commissioner of the 19th JDC² recommended that Dillon’s December 12, 2019 petition for judicial review be dismissed for lack of subject matter jurisdiction. The Commissioner pointed out that Dillon had previously filed DWCC-2019-0506 as an ARP, which was rejected because Dillon did not use the proper administrative procedure to address his grievance. Dillon was then advised that his complaint should be addressed through a lost property claim, not through the ARP process. The Commissioner further stated that Dillon’s lost property claim was rejected due to his failure to file the claim within ten days of the loss or discovery thereof. The Commissioner stated that ARPs that have been rejected are not considered exhausted and thus, Dillon’s suit, by virtue of La. R.S. 15:1172, must be dismissed for failure to exhaust resulting in a lack of subject matter jurisdiction.

On February 18, 2020, the 19th JDC signed a judgment adopting the written recommendation of the Commissioner and dismissing with prejudice Dillon’s petition for judicial review of property claim no. DWCC-2019-0852, in accordance with La. R.S. 15:1172. This appeal followed.

ASSIGNMENT OF ERROR

Although Dillon does not set forth any assignments of error, he argues that any failure to exhaust his administrative remedies was the fault of the Louisiana

² The office of the Commissioner of the 19th JDC was 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. The Commissioner’s written findings and recommendations are submitted to a district judge, who may accept, reject, or modify them. *Hakim-El-Mumit v. Stalder*, 2003-2549 (La. App. 1 Cir. 10/29/04); 897 So.2d 112, 113 n. 1.

Department of Public Safety and Corrections (“LDSPC”). Dillon requests that this court remand the matter back to the 19th JDC and that LDSPC be ordered to provide Dillon with all of the responses and documents related to his lost property claim, DWCC-2019-0852.

STANDARD OF REVIEW

On appellate review of a district court’s judgment in a suit for judicial review under La. R.S. 15:1177, no deference is owed by the court of appeal to the factual findings or legal conclusions of the district court, just as no deference is owed by the Louisiana Supreme Court to factual findings or legal conclusions of the court of appeal. As such, the *de novo* standard of review shall be applied. *Greenhouse v. Louisiana Department of Public Safety and Corrections*, 2017-0316 (La. App. 1 Cir. 11/1/17); 2017 WL 4946864, at *2 (unpublished), *writ denied*, 2017-2122 (La. 1/8/19); 259 So.3d 1021.

DISCUSSION

Judicial review of inmate lost property claims is governed by La. R.S. 15:1177 of the Corrections Administrative Remedy Procedure. *Curry v. Cain*, 2005-2251 (La. App. 1 Cir. 10/6/06); 944 So.2d 635, 638. Accordingly, a reviewing court may reverse or modify an administrative decision only if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) arbitrary or capricious or characterized by an abuse of discretion; or (f) manifestly erroneous in view of the reliable, probative and substantial evidence of the whole record. *Lewis v. Louisiana Department of Public Safety and Corrections*, 2019-1693 (La. App. 1 Cir. 8/5/20); ___ So.3d ___, 2020 WL 4498170, at *2, citing La. R.S. 15:1177(A)(9).

Section 325 of Title 22, Part I, of the Louisiana Administrative Code (LAC) outlines the rules and procedures to be followed in formally addressing inmate complaints under the general ARP process. However, the general ARP procedure does not apply to lost property claims. See LAC 22:I:325(L); *Boudreaux v. Louisiana Department of Public Safety and Corrections*, 2016-0995 (La. App. 1 Cir. 6/2/17); 222 So.3d 63, 66.

Louisiana Administrative Code 22:I:325(L) provides in pertinent part:

L. Lost Property Claims

1. The purpose of this section is to establish a uniform procedure for handling lost property claims filed by offenders in the custody of the Department of Public Safety and Corrections. Each warden is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this procedure and for advising offenders and affected employees of its contents.

a. When an offender suffers a loss of personal property, he may submit a lost personal property claim (form B-05-005-A) to the warden or designee. The claim shall include the date the loss occurred, a full statement of the circumstances which resulted in the loss of property, a list of the items which are missing, the value of each lost item and any proof of ownership or value of the property available to the offender. All claims for lost personal property must be submitted to the warden or designee within 10 days of discovery of the loss. (Emphasis added.)

Like the general rules applicable to other inmate complaints, the specialized rules governing lost property claims also require compliance with a second-step review process before an inmate can proceed with filing a suit. Specifically, the specialized lost property rules provide that an inmate who is not satisfied with a lost property claim resolution should indicate such “by checking the appropriate box on the lost personal property claim response” and then submit this to the screening officer within five days. The screening officer is then obligated to forward the claim to the chief of operations/office of adult services for review. See LAC 22:I.325(L)(1)(d); *Boudreaux*, 222 So.3d at 66.

According to his petition, Dillon learned that his confiscated property had been disposed of on June 19, 2019. He initiated the first step of an ARP on June 20, 2019, which was assigned the number DWCC-2019-0506. Dillon was informed on July 22, 2019, that his issue “should be addressed through a Lost Property Claim, not through the ARP process.” Thus, DWCC-2019-0506 was rejected on July 22, 2019.

Dillon asserts that he filed a lost property claim, DWCC-2019-0852 the following day, July 23, 2019. On November 21, 2019, Dillon’s lost property claim was rejected, pursuant to LAC 22:I:325(L), because it was filed more than ten days after discovery of the loss. If an inmate fails to exhaust available administrative remedies, the district court and the appellate court lack subject matter jurisdiction to review the claim. *Collins v. Vanny*, 2014-0675 (La. App. 1 Cir. 1/15/15); 169 So.3d 405, 407; *Hull v. Stalder*, 2000-2730 (La. App. 1 Cir. 2/15/02); 808 So.2d 829, 831. Because we lack subject matter jurisdiction to review Dillon’s claim, his arguments lack merit.

DECREE

For the above and foregoing reasons, the judgment of the Nineteenth Judicial District Court dismissing with prejudice Willie Dillon’s petition for judicial review for lack of subject matter jurisdiction based on a failure to exhaust administrative remedies in accordance with La. R.S. 15:1172 is affirmed. Costs of this appeal are assessed to Willie Dillon.

AFFIRMED.