

STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT

03-662

LOUIS STEMLEY

VERSUS

WAYNE DESCANT, ET AL.

APPEAL FROM THE
TWELFTH JUDICIAL DISTRICT COURT
PARISH OF AVOYELLES, NO. 2000-0985 A
HONORABLE MARK A. JEANSONNE, DISTRICT JUDGE

GLENN B. GREMILLION
JUDGE

Court composed of Ulysses Gene Thibodeaux, Glenn B. Gremillion, and Elizabeth A. Pickett, Judge.

JUDGMENT VACATED; REMANDED.

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Louis Stemley
P.C.C. - ND, 2D
P. O. Box 1056
DeQuincy, LA 70633
In Proper Person:
Louis Stemley

GREMILLION, Judge.

This matter is before us for review of the trial court's judgment granting an *ex parte* order in favor of the State of Louisiana,¹ granting its Peremptory Exception of Failure to Timely Seek Judicial Review. In so holding, the trial court dismissed the suit filed by the plaintiff, Louis Stemley. Stemley is an inmate with the Department of Public Safety and Corrections (DPSC), who was housed at the Avoyelles Correctional Center at the time he initiated his complaint through the Administrative Remedy Procedure.

Pursuant to the Louisiana Administrative Code Part I, § 325(G)(4), an inmate, unsatisfied with the third step review of his complaint by the Secretary of the DPSC, may seek judicial review of that decision within thirty days after receipt and signing of the secretary's decision. *See* La.R.S. 15:1177. The State's peremptory exception was based on the fact that Stemley failed to seek judicial review of a ruling by the Disciplinary Board of the DPSC denying his appeal, Number HDQ-9942, AVC-99-0465. The State argued that Stemley received notice of this denial on June 13, 2000, as evidenced by the Avoyelles Correctional Center mail callout sheet. However, the record does not contain evidence of the Disciplinary Board's ruling or date of signing of such ruling. Thus, we find that the trial court erred in granting the State's peremptory exception since it is not apparent from the face of the record that Stemley failed to seek timely review of his complaint. This matter is remanded to the trial court for further proceedings. The costs of this appeal are assessed against the

¹ The State is representing the named defendants in this matter: Wayne Descant, Jason Paul, Tom Perkins, Dr. Quyen Tran, Connie Lemoine, Major Anthony Corner, Major Billy Tigner, Major Donald Ducote, Cindy Soileau, Aaron Gaspard, Michael Coco, Lillie Littleton, Capt. Blaine Villmarette, Kristie Grayson, J. Firmin.

State of Louisiana, Department of Public Safety and Corrections, in the amount of \$400.

Stemley has also filed a motion on appeal to supplement the record. Based on our finding, this motion has been rendered moot and will not be considered.

JUDGMENT VACATED; REMANDED.