

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 CA 0908

CHARLES N. SIMON, JR.

VERSUS

**RICHARD L. STALDER, SECRETARY
LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS**

On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, Louisiana
Docket No. 554,343, Division "I (24)"
Honorable R. Michael Caldwell, Judge Presiding

Charles N. Simon, Jr.
Kinder, LA

Plaintiff-Appellant
In Proper Person

Jonathan R. Vining
Baton Rouge, LA

Attorney for Defendant-Appellee
Richard L. Stalder, Secretary
Louisiana Department of Public
Safety and Corrections

BEFORE: PARRO, McCLENDON, AND WELCH, JJ.

Judgment rendered October 31, 2008

PARRO, J.

Charles N. Simon, Jr., an inmate in the custody of the Louisiana Department of Public Safety and Corrections (DPSC) at Allen Correctional Institute, appeals a judgment dismissing his petition for judicial review of the final agency decision in a disciplinary matter. We affirm the judgment and render this opinion in accordance with Rule 2-16.2(5), (6), and (8) of the Uniform Rules of Louisiana Courts of Appeal.

The record shows that Simon was charged with "General Prohibited Behaviors," a violation of Rule 30(C) of the institution's disciplinary rules, for entering into an unauthorized area. At the disciplinary hearing, he pled guilty to the charge and was sanctioned by the loss of 60 days of good time and a suspended custody change to a working cellblock. His appeal of that penalty within the institution was denied, and after exhausting his administrative remedies, he filed a petition for judicial review with the district court. Simon alleged he entered the guilty plea based on incorrect legal advice from inmate counsel, because the charges against him did not include facts falling within Rule 30(C); rather, he should have been charged under Rule 24, "Unauthorized Area," which would have resulted in a less severe penalty. Simon further asserted that the forfeiture of 60 days of good time was unauthorized and constituted the application of an unconstitutional *ex post facto* law. After a thorough review of the record, the commissioner recommended to the district court judge that the final agency decision be affirmed and that Simon's petition be dismissed with prejudice. That recommendation was accepted, and a judgment to that effect was rendered and signed on March 5, 2008.

We have reviewed the record and the commissioner's recommendation, a copy of which is attached. The record of the disciplinary hearing shows that Simon had the opportunity to challenge the allegations of the charge against him and chose instead to accept the advice of his inmate counsel and voluntarily enter a plea of guilty to that charge, although he knew the possible penalties and no promises had been made to him concerning the penalties that might be imposed. Nor did Simon show that the forfeiture of 60 days of good time was unauthorized. We find no manifest error or legal error in the commissioner's recommendation, which was adopted by the court as its reasons, and the findings of fact and conclusions of law expressed therein adequately

explain the judgment of the court. Therefore, we affirm the judgment and assess all costs of this appeal to Charles N. Simon, Jr.

AFFIRMED.

CHARLES SIMON

* NO. 554-343 SECTION: 24

* 19TH JUDICIAL DISTRICT COURT

vs.

* PARISH OF EAST BATON ROUGE

* STATE OF LOUISIANA

LOUISIANA DEPARTMENT OF PUBLIC
SAFETY AND CORRECTIONS**POSTED**

MAR -7 2008

COMMISSIONER'S RECOMMENDATION

The petitioner filed this request for relief pursuant to R.S. 15:1177 seeking judicial review of the final agency decision rendered under Disciplinary Board Appeal No. ALC- 2006-186. The petitioner in this matter entered a guilty plea to the charge of General Prohibited Behaviors – Rule #30C. The disciplinary board imposed sanctions of loss of 60 days good time and a suspended custody change to a working cellblock. The petitioner contends his inmate counsel gave him bad advice when entering his plea and now contends that he was only guilty of an unauthorized area rule violation which carries a lesser penalty of loss of up to one month good time. The petitioner also submitted a pleading dated December 5, 2007, which this Commissioner has considered as a brief or memo, in which he contends the Department lacked authority to take 60 days of good time in this matter.

The defendants filed a motion to dismiss based on allegation the petitioner did not timely seek judicial review in this Court. The motion to dismiss was subsequently withdrawn by the defendants in open Court on October 18, 2007. This matter proceed to oral argument on the petitioner's request for judicial review.

This Commissioner notes that the petitioner entered a guilty plea in this matter and the audio record of the petitioner's disciplinary hearing has been included in the administrative record filed in this matter. A review of the audio recording indicates the petitioner's inmate counsel initially advised the

disciplinary board that the petitioner would enter a guilty plea in this matter. A board member asked the petitioner if he did in fact wish to enter a plea as indicated by inmate counsel. The petitioner responded that he would enter a plea to avoid a sanction to a cellblock. The petitioner was advised by a member of the disciplinary board that no sanctions had been discussed and that it would be premature at this stage of the proceedings to speculate on any possible penalty in this matter. The petitioner was asked a second time if he wished to enter his plea and the petitioner responded that he would enter his guilty plea to the disciplinary charge at that time. The audio record does not indicate that there was any prior agreement regarding the petitioner's possible penalties and the audio record indicates the petitioner was advised by the disciplinary board prior to entering his plea that there was no agreement regarding his penalties. The petitioner fails to show his plea in this matter was not a knowing and voluntary plea. It should be noted that because the petitioner entered a guilty plea in this matter, no evidence was submitted or considered by the disciplinary board. The petitioner had an opportunity to raise the issue that his conduct did not constitute the rule violation reflected on the face of the incident report or that he should have been charged with a rule violation that carried a lesser penalty. The petitioner did not take advantage of the opportunity to challenge the disciplinary report and entered a plea. Inmate counsel is available to assist inmates during disciplinary hearings and is not held to the standard of an attorney regarding the assistance provided. The petitioner fails to show his plea should be deemed involuntary based on the failure of his inmate counsel to challenge his rule violation on the basis the petitioner was guilty of a lesser offense.

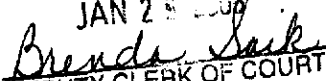
Additionally, this Commissioner notes the petitioner fails to show the disciplinary board lacked authority to take 60 days as a disciplinary penalty. The rules and regulations of the Department, along with the express provisions of R.S. 15:571.4, allow for the forfeiture of good time in an amount up to 180 days good

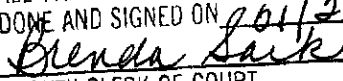
time credit in a disciplinary matter such as the petitioner's. The petitioner fails to show the forfeiture of good time in this matter violated ex post facto provisions or was not authorized.

It is the recommendation of this Commissioner that the final agency decision rendered in this matter be affirmed and the petitioner's request for judicial review be dismissed with prejudice at the petitioner's cost.

Respectfully recommended this 29th day of Jan.
2008.


JOHN M. SMART, JR.
COMMISSIONER, SECTION B
19TH JUDICIAL DISTRICT COURT

FILED
JAN 29 2008

DEPUTY CLERK OF COURT

I HEREBY CERTIFY THAT ON THIS DAY A COPY OF
THE WRITTEN REASONS / JUDGMENT /
ORDER / COMMISSIONER'S RECOMMENDATION / WAS
MAILED BY ME WITH SUFFICIENT POSTAGE AFFIXED TO:
ALL PARTIES NOTIFIED
DONE AND SIGNED ON 201/29/08

DEPUTY CLERK OF COURT