

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 0650

EDDIE GENE EVANS

VERSUS

**LOUISIANA BOARD OF PAROLE,
WISCONSIN DIVISION OF PAROLE,
LOUISIANA ATTORNEY GENERAL, JAMES CALDWELL, AND
WISCONSIN ATTORNEY GENERAL, J. B. VAN HOLLEN**

**On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, Louisiana
Docket No. 593,908, Section 23
Honorable William A. Morvant, Judge Presiding**

**Eddie Gene Evans
Portage, WI**

**Plaintiff-Appellant
In Proper Person**

**James D. "Buddy" Caldwell
Attorney General
Patricia H. Wilton
Assistant Attorney General
Baton Rouge, LA**

**Attorneys for
Defendant-Appellee
Louisiana Board of Parole**

BEFORE: CARTER, C.J., PARRO, AND HIGGINBOTHAM, JJ.

Judgment rendered December 21, 2011

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PARRO, J.

Eddie Gene Evans, an inmate on parole from the Louisiana Department of Public Safety and Corrections and presently in the custody of the Wisconsin Department of Corrections, appeals a judgment dismissing his petition for a writ of habeas corpus on the grounds that he had failed to state a cause of action or cognizable claim for which relief could be granted.

The judgment was signed December 13, 2010, and Evans' "Notice of Appeal" of that judgment was filed on March 9, 2011. On its own motion, this court issued a rule to show cause, giving the parties until May 24, 2011, to show cause whether the appeal should or should not be dismissed as untimely. On July 18, 2011, a panel of this court ruled that the appeal should be maintained.

This case commenced with Evans' filing of a petition for a writ of habeas corpus in the Nineteenth Judicial District Court (19th JDC), seeking to "quash" a detainer issued by the Louisiana Parole Board (LPB) for an alleged parole violation while he was in Wisconsin. Evans outlined a sequence of events involving several detainers issued by the LPB, all of which were ultimately dismissed or recalled. On May 27, 2004, Evans entered a "no-contest" plea in a Wisconsin court to one count of armed robbery by threat of force and was sentenced to twenty years, with seven years to be spent in confinement and thirteen years on extended supervision. Apparently having received credit for time spent in custody before trial, Evans was released from physical custody on January 21, 2010, and was placed on supervised parole in Wisconsin. On February 15, 2010, the LPB issued a detainer for his parole violation on the basis of his 2004 Wisconsin armed robbery conviction. Evans claims the LPB should have sought an out-of-time due process preliminary probable cause determination in Wisconsin on the basis of that conviction, without which he is being unconstitutionally physically detained in Wisconsin and should be released back to parole supervision.

A commissioner in the 19th JDC reviewed Evans' petition and recommended to the district court judge that his petition be dismissed for failure to state a cause of

action, because the district court had no authority to intervene in the actions taken by the LPB, pursuant to LSA-R.S. 15:574.9 and 574.11. According to those provisions, if the petition did not state that a final revocation hearing had already been held in Louisiana or that a revocation hearing had been denied, the petition failed to set forth a right or cause of action for any relief from the court. The court's review of LPB decisions is limited to appellate review of the revocation record for due process violations. Since the petition in this case did not state facts from which the court could determine that a final revocation hearing had been held or denied, the petition failed to state a cause of action. On this basis, the commissioner recommended that the district court dismiss Evans' petition. After reviewing the petition, the attached exhibits, and the applicable law, the district court adopted the commissioner's recommendation and dismissed Evans' petition.

This court has reviewed the record and finds no error in the district court's judgment. Pursuant to LSA-R.S. 15:574.11, the district court had no authority to review the LPB's decision to issue a detainer, and Evans' petition was properly dismissed.

After filing this appeal, Evans moved to supplement the record with a number of attached exhibits, because he did not know whether these had been included in the record at the 19th JDC. Those exhibits are in the record. Therefore, Evans' motion to supplement is denied.

The judgment of December 13, 2010, dismissing Evans' petition for failure to state a cause of action or cognizable claim for which relief could be granted, is affirmed. The motion to supplement the appellate court record is denied. This judgment is entered in accordance with Uniform Rules of Louisiana Courts of Appeal, Rules 2-16(A)(2), (5), and (6). All costs of this appeal are assessed to Evans.

AFFIRMED; MOTION DENIED.