

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CA 0059

GERALD A. WORACHEK

VERSUS

**RICHARD STALDER, JAMES LeBLANC, DALTON HARRELL, UNKNOWN
CHIEF PROBATION & PAROLE OFFICER, UNKNOWN DIRECTOR OF
PROBATION & PAROLE, LOUISIANA DEPARTMENT OF PUBLIC SAFETY**

Judgment Rendered: JUN 11 2010

*** * * * ***

On Appeal from the Twenty-Third Judicial District Court
In and for the Ascension
State of Louisiana
Docket No. 93169

Honorable Jane Triche Milazzo, Judge Presiding

*** * * * ***

Gerald Worachek
Homer, Louisiana

Defendant/Appellant
In Proper Person

James D. "Buddy" Caldwell
Attorney General

Counsel for Defendants/Appellees
James M. LeBlanc and Genie Powers

Patricia Wilton
Assistant Attorney General
Baton Rouge, Louisiana

*** * * * ***

BEFORE: DOWNING, GAIDRY AND McCLENDON, JJ.

McCLENDON, J.

The appellant seeks review of the district court's grant of an exception of prematurity. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

On July 13, 2009, Gerald A. Worachek, an inmate incarcerated at David Wade Correctional Center in Homer, Louisiana, filed the instant petition in the 23rd Judicial District Court for the Parish of Ascension. Plaintiff alleges that he was unlawfully incarcerated from August 20, 2000, to January 8, 2001, and prayed that he be awarded damages arising therefrom.

On September 3, 2009, defendants, James M. LeBlanc, Secretary of the Louisiana Department of Corrections, and Genie Powers, Director of Adult Probation and Parole, filed a declinatory exception of lack of subject matter jurisdiction, asserting that plaintiff had not exhausted his administrative remedies under the Corrections Administrative Remedy Procedure Act (CARP), LSA-R.S. 15:1171, *et seq.*, prior to filing suit in district court.

On October 26, 2009, the trial court converted defendants' exception to one of prematurity, and granted the exception. Plaintiff has appealed, contending that he is not required to follow the CARP procedure.

DISCUSSION

Louisiana Revised Statutes 15:1171(B) requires an offender within the custody of the Department of Public Safety and Corrections (the Department) to exhaust administrative remedies before filing suit on any cause of action, including, but not limited to, "any and all claims seeking monetary...relief..." Such administrative procedures provide the exclusive remedy available to offenders for the purpose of preserving any cause of action claimed against the Department. LSA-R.S. 15:1171(B); LSA-R.S. 15:1172(A); **Robinson v. Parole and Probation Div., Dep't. of Pub. Safety and Corrections**, 00-1574, p.3 (La.App. 1 Cir. 9/28/01), 819 So.2d 1031, 1033. No state court shall entertain an offender's grievance or complaint which falls under the purview of the administrative remedy procedure unless and until the offender shall have

exhausted the remedies as provided in said procedure. LSA-R.S. 15:1172(B). If the offender has failed to timely pursue administrative remedies through this procedure, any petition he files shall be dismissed. LSA-R.S. 15:1172(B); **Robinson**, 00-1574 at pp. 3-4, 819 So.2d at 1033.

Plaintiff asserts that he was not required to seek review under CARP because he was not an "offender" insofar as he was unlawfully detained by the Department. Plaintiff contends that on August 17, 2000, "an erroneous arrest warrant [was issued] for a supposed probation violation" and he was unlawfully detained in the East Baton Rouge Parish Prison from August 20, 2000, through January 2001. However, plaintiff notes that on October 15, 2008, the 19th Judicial District Court for the Parish of East Baton Rouge rendered a judgment ordering the Department to amend its internal document to reflect that plaintiff's "full term release date on the three year sentence...became final on July 14 or 15 2000 by virtue of his full service of 2 ½ years in custody and 6 months on probation." Plaintiff concludes that at the time he was taken into custody for the alleged parole violation, he had been illegally detained and was not an "offender" subject to the provisions of CARP.

We note, however, that the status of "offender" is determined at the time the basis for a complaint or grievance arises. Subsequent events, including post-trial judicial action or release from custody, shall not affect the status as an "offender" for purposes of CARP. LSA-R.S. 15:1171(D); LSA-R.S. 15:1174(2). Plaintiff was within the Department's custody since his arrest in August 2000, through January 8, 2001, when the basis for his damage claim arose for the alleged unlawful detention. Moreover, plaintiff has remained in the Department's custody since his arrest until the present.¹ Accordingly, the subsequent judicial action by the district court on October 15, 2008, had no effect on his status as an "offender" for purposes of CARP. Thus, plaintiff is required to exhaust his administrative remedies prior to seeking review in the district court.

¹ The record reflects that plaintiff, pursuant to LSA-R.S. 14:98, received a twenty-eight year sentence for a fourth offense of driving while intoxicated following his arrest in August 2000, but the sentence is immaterial to our determination herein.

DECREE

For the foregoing reasons, we affirm the judgment of the district court.

Costs of this appeal are assessed to plaintiff, Gerald A. Worachek.

AFFIRMED.