

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2010 CA 1482**

**KELVIN RUSHING**

**VERSUS**

**JERRY GOODWIN, WARDEN, DAVID WADE  
CORRECTIONAL CENTER, JAMES LEBLANC, SECRETARY,  
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS,  
COLONEL BRAD ROGERS, AND COLONEL JAMES ARNOLD**

—  
**On Appeal from the 19th Judicial District Court  
Parish of East Baton Rouge, Louisiana  
Docket No. 587,660, Division E, Section 23  
Honorable William A. Morvant, Judge Presiding**  
—

**Kelvin Rushing  
Homer, LA**

**Plaintiff-Appellant  
In Proper Person**

**William Kline  
Baton Rouge, LA**

**Attorney for  
Defendant-Appellee  
Louisiana Department of Public Safety  
and Corrections<sup>1</sup>**

**BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.**

**Judgment rendered February 11, 2011**

<sup>1</sup> Although the petition names defendants as shown in the suit caption above, the only proper party defendant is the Louisiana Department of Public Safety and Corrections. See LSA-R.S. 15:1177(A)(1)(b).

**PARRO, J.**

Kelvin Rushing, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (DPSC), appeals a judgment dismissing his petition for judicial review of a disciplinary decision on the grounds that he failed to state a cause of action. We affirm the judgment.

**ANALYSIS OF FACTS AND LAW**

According to Rushing's account of the underlying facts, on October 1, 2009, he was given a disciplinary report for drug trafficking, a violation of Rule 30-E, "General Prohibited Behavior." At a hearing convened the next day, Rushing filed several motions, including a motion for a continuance due to lack of 24-hours notice<sup>1</sup> and a motion to have the accusing employee present to testify. The hearing was continued as a result of his motion for a continuance. The disciplinary board also granted his motion to have the accusing employee present to testify. At the reconvened hearing, the statements of five confidential informants were read, and Rushing had the opportunity to speak on his own behalf and to cross-examine the accusing employee. His motions for an independent investigation by another prison employee and for copies of any statements or reports that were not considered confidential were denied. He was found guilty of violating Rule 30-E, "General Prohibited Behavior," and was sentenced to twelve weeks of loss of yard and recreation privileges and a change of custody status from medium to maximum — extended lockdown. Rushing initiated an administrative remedy procedure (ARP), appealing the disciplinary board's decision, which was denied at both steps of the process.

Rushing then filed a petition for judicial review pursuant to LSA-R.S. 15:1177, alleging that the prison administration failed to provide him with due process, the "write-up" of his offense was not adequate, the disciplinary board abused its discretion in denying his motion for discovery, the evidence relied upon was insufficient, and the disciplinary board failed to provide him with a written summary of the evidence after the hearing. He requested dismissal of the disciplinary charges, removal of the charges from his prison record, reversal of the disciplinary action, and

monetary damages.

A commissioner of the Nineteenth Judicial District Court<sup>2</sup> reviewed the record and recommended to the district court judge that the petition be dismissed for failure to state a cause of action. On June 3, 2010, the judge signed a judgment in accordance with the commissioner's recommendation, dismissing the petition and assessing a "strike" pursuant to LSA-R.S. 15:1187 for Rushing's failure to state a cause of action for judicial review. This appeal followed.

We have reviewed the record, which consists of Rushing's petition for judicial review and memoranda, along with a copy of the final decision, signed by James M. LeBlanc, Secretary of DPSC, regarding the appeal of the disciplinary board's action. That decision states that the disciplinary report was clear and concise, and the hearing provided convincing evidence of the violation as charged. The evidence consisted of the complaining officer's report and five confidential informant reports, two of whom named Rushing in connection with the charges. According to LeBlanc, those reports were properly documented, and the informants had provided reliable information in the past. LeBlanc's decision further states that all of Rushing's other claims on appeal were addressed by the prison warden at the first step in the appeal, and Rushing provided no additional evidence to refute the charges. He found that Rushing was provided a full hearing and was afforded due process in both the hearing and sentencing phases.

Based on our review of the record on appeal, we find no error in the judgment of the district court. As noted by the commissioner, Rushing's penalty does not involve a deprivation of a substantial right, as required by LSA-R.S. 15:1177(A)(9). Therefore, the district court could not reverse or modify the final disciplinary decision. Further, where the punishment affects only a custody classification and not eventual release, due process merely requires that the offender be allowed to

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<sup>2</sup> This case was assigned to a commissioner to conduct all proceedings and make a recommendation to the district court judge. This is a procedure followed in the Nineteenth Judicial District Court to handle the large volume of lawsuits filed by inmates under LSA-R.S. 15:1177(A). See LSA-R.S. 13:713; Bordelon v. Louisiana Dep't of Corr., 398 So.2d 1103 (La. 1981). Pursuant to LSA-R.S. 15:1178, a court is required to conduct an initial screening review of the petition to determine if it states a cognizable claim or if the petition, on its face, is frivolous or malicious, or fails to state a cause of action.

present his version of the incident, which was done in this case. See Giles v. Cain, 99-1201 (La. App. 1st Cir. 6/23/00), 762 So.2d 734, 739. Accordingly, the district court did not err in recognizing on its own motion Rushing's failure to state a cause of action, dismissing the petition at his costs, and assessing a strike against him.

### **CONCLUSION**

We affirm the judgment of the district court and enter judgment in compliance with URCA Rule 2-16.1. All costs of this appeal are assessed against Kelvin Rushing.

**AFFIRMED.**