

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 CA 0626

MAURICE GIBBS
VERSUS

STATE OF LOUISIANA, DEPARTMENT OF CORRECTION,
THROUGH LOUISIANA STATE PENITENTIARY & RICHARD
STALDER, SECRETARY, BURL CAIN, WARDEN, & DORA
RABALAIS, DIRECTOR, LSP LEGAL PROGRAMS

AND

NUMBER 2007 CW 1066R

MAURICE GIBBS
VERSUS

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONS

Judgment Rendered: December 21, 2011

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 533,362
Honorable Kay Bates, Judge

Maurice Gibbs
Angola, LA

In Proper Person
Plaintiff – Appellant

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BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

JPL
Pettigrew, J. means

WELCH, J.

Maurice Gibbs, a prisoner in the custody of the Louisiana Department of Safety and Corrections (DPSC), appeals a judgment dismissing his petition for judicial review. We affirm.

On June 15, 2005, Gibbs filed this petition for judicial review of DPSC's denial of his request for an administrative remedy, alleging that he had been denied access to legal materials by DPSC. The record reflects that on December 4, 2003, Gibbs instituted a request for an administrative remedy with DPSC, claiming he had been denied access to legal materials. In a letter to DPSC dated that same day, Gibbs claimed that he received only one law book since October 2003, and he made a written request for over 20 cases. The record contains law library request forms showing that from November 18, 2003 through March 2004, Gibbs received a law book and copies of requested case law, often two to three cases at a time, from the law library on at least 18 occasions. DPSC undertook an investigation of Gibbs' claims and denied Gibbs' request for a remedy on the basis that Gibbs lacked evidence to support his assertion that he had been denied access to legal materials.

In his petition challenging DPSC's denial of his request for an administrative remedy, Gibbs made the following allegations: (1) before and after November 24, 2003, and currently, he was not allowed to receive law books needed to determine how to present viable claims in his application for post-conviction relief he had to file by February 2004; (2) from October 13, 2003, to the present, DPSC failed to provide him with a proficient law book system and prohibited him from receiving law books while housed in administrative segregation contrary to its own policies; (3) before June 7, 2001, Gibbs and other prisoners were falsely accused of damaging law books or were not given law books after complaining about not receiving the books;

(4) he was denied law books in retaliation for complaining about not receiving law materials; and (5) the lack of evidence as to the specific dates Gibbs received adequate access to legal reference materials renders DPSC's decision manifestly erroneous.

After reviewing the administrative record, a commissioner assigned to the district court recommended that DPSC's decision be affirmed and the request for judicial review be dismissed. The commissioner concluded that Gibbs failed to meet his burden of proof to demonstrate that he was denied requested legal materials as alleged in his initial request for administrative relief. The commissioner noted that the record did not support Gibbs' claim that he was denied materials in the months of October and November of 2003 and further showed that Gibbs did in fact receive legal materials on numerous dates following his request for relief. The court affirmed DPSC's decision and dismissed Gibbs' lawsuit, adopting the commissioner's report as reasons for the dismissal.

On October 16, 2006, Gibbs filed a notice of intent to apply for supervisory writs. On December 14, 2006, the court ordered that Gibbs be allowed to file his writ application in accordance with law. Gibbs filed a request for an extension of time to file the writ application on November 17, 2006, and did so again on February 13, 2007. The district court denied the latter motion as untimely, and on June 4, 2007, Gibbs filed a writ application with this court. On August 6, 2007, this court denied Gibbs' writ application. Gibbs sought supervisory review from the supreme court, which, on January 30, 2009, granted the writ and ordered this court to reach the merits of Gibbs' writ application.

On February 3, 2011, this court ordered the clerk of court to file copies of the record and the respondents to file briefs with this court. On March 1,

2011, Gibbs filed a "Motion for Appeal" of the September 26, 2006 judgment, and an appeal was granted by the court. An extension for filing the record was granted by this court, with a return date set for April 6, 2011. On April 5, 2011, the appeal was lodged in this court under docket number 2011CA0626. This court issued an interim order, assigning Gibbs' writ application to the same panel that was assigned the appeal.¹

Gibbs asserts that the district court erred in: (1) relying on alternative grounds for denying his administrative procedure request; (2) failing to evaluate the competency of the hearsay evidence relied upon by DPSC in arriving at its decision against him on his administrative remedy procedure; (3) failing to consider competent evidence in the record material to a proper determination of the claims raised by Gibbs in the administrative remedy process or his petition for judicial review; (4) failing to expand the record and allowing Gibbs to present additional evidence at the trial court level; (5) not finding that DPSC's actions in failing to preserve all responses and pertinent documentation relative to his administrative request makes adequate review impossible; and (6) failing to find DPSC abused its discretion in denying his administrative remedy request on the basis of unreliable or untrustworthy information which deprived Gibbs of his substantial rights or due process and that DPSC failed to abide by its own rules in conducting the underlying hearing. Essentially, Gibbs contends that the prison officials denied him access to legal materials, that DPSC relied on hearsay evidence in denying his request for relief, and that the administrative record is so poor and incomplete that no accurate ruling could be made.

We have reviewed the record and find no error in the decision of the

¹ In his writ application and appellate brief, Gibbs asserts the identical assignments of error with respect to the September 26, 2006 judgment. Because we have found that Gibbs' appeal has been timely perfected and the appeal and the writ application raise the same issues, we exercise our appellate jurisdiction to review the judgment.

judgment of the district court. We affirm the judgment and issue this memorandum opinion in accordance with Uniform Rules, Courts of Appeal Rule 2-16.1.B. All costs of this appeal are assessed to Maurice Gibbs.

AFFIRMED; WRIT DENIED.