

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2010 CA 2277**

**RONALD JENKINS**

**VERSUS**

**JAMES LeBLANC, SECRETARY DEPARTMENT OF LOUISIANA  
CORRECTIONS, JERRY GOODWIN, WARDEN WADE CORRECTIONAL  
CENTER, BRENDA ACKLIN, RECORDS OFFICE, WADE CORRECTIONAL  
CENTER**

**Judgment Rendered: JUN 10 2011**

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On Appeal from the Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
Docket No. 578,218

Honorable William A. Morvant, Judge Presiding

**\* \* \* \* \***

Ronald Jenkins  
David Wade Correctional Center  
Homer, Louisiana

Plaintiff/Appellee  
In Proper Person

Susan Wall Griffin  
Baton Rouge, Louisiana

Counsel for Defendant/Appellant  
James M. LeBlanc

**\* \* \* \* \***

**BEFORE: WHIPPLE, McDONALD, AND McCLENDON, JJ.**

**McCLENDON, J.**

In this appeal, the Louisiana Department of Public Safety and Corrections (the Department) challenges a judgment of the district court in favor of the plaintiff, Ronald Jenkins, an inmate in the custody of the Department housed at David Wade Correctional Center. The district court reversed the final agency decision, which forfeited all of plaintiff's good time following his parole revocation, and ordered that plaintiff's sentence be recalculated. We affirm.

On February 12, 2009, plaintiff filed an Administrative Remedy Procedure (ARP) seeking restoration of "good time," which he contended had been forfeited improperly after his parole was revoked. Specifically, plaintiff argued that he had not been afforded a hearing before all of his good time was forfeited. On February 16, 2009, the Department denied plaintiff's request for relief in its First Step Response, noting that "an offender who has been granted regular parole on or after August 15, 1997, should his parole be revoked for any reason, good time earned prior to parole and good time that would have been earned if parole had not been granted will be forfeited." The Department further indicated that a hearing was not required and forfeiture was automatic. Lastly, the Department noted that plaintiff was advised about the forfeiture of good time upon his signing of his parole release certificate and that "[I]t was indicated on the bottom of the front page of your certificate." In denying his Second Step Request on April 14, 2009, the Department noted that the First Step Response explained the law governing parole after August 15, 1997.

On May 11, 2009, plaintiff filed his petition for judicial review of the ARP in district court, contending that in December 1999 he was released on parole supervision by a decision of the parole board. Plaintiff further alleged that in February 2003 he was arrested and his parole subsequently revoked. Plaintiff asserted that upon his return to custody, he learned that because he violated his conditions of parole all of the good time he earned prior to his release was forfeited without a hearing. Thereafter, the Department filed an answer to plaintiff's petition and included the ARP at issue herein, which contained a copy

of the Certificate of Parole. Plaintiff responded to the answer filed by the Department, referring to the Statement of General Conditions that he was required to sign as a contract with the state prior to his release on parole. Specifically, plaintiff noted condition number 17, which provided, "I understand that should my parole be revoked for any reason, I will lose up to but not exceeding six months earned prior to parole as required by Act 200 of 1974." Plaintiff argued that the Department violated this agreement by taking twenty years and ten months of good time from plaintiff.

The commissioner issued a recommendation on September 29, 2010, initially agreeing with the Department that, based on the law in effect at the time of the plaintiff's release on parole, there was no requirement that plaintiff be afforded a forfeiture hearing. However, the commissioner noted the conflicting provisions in the plaintiff's Certificate of Parole, stating that the Department added the language providing for the loss of all good time earned prior to parole revocation, but did not delete Condition No. 17, which capped the loss of good time for plaintiff following a parole revocation at six months. The commissioner determined that the certificate was vague and confusing regarding the loss of good time and therefore concluded that the Department did not give plaintiff the notice required by statute. Accordingly, the commissioner recommended that the Department's decision be reversed as an abuse of discretion and manifestly erroneous.<sup>1</sup> On October 25, 2010, the district court rendered judgment,

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<sup>1</sup> Louisiana Revised Statute 15:1177A(9), regarding judicial review of administrative acts, provides, in pertinent part:

(9) The court may reverse or modify the decision only if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(a) In violation of constitutional or statutory provisions.

(b) In excess of the statutory authority of the agency.

(c) Made upon unlawful procedure.

(d) Affected by other error of law.

(e) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

adopting as reasons the commissioner's report and reversing the administrative decision. The district court further ordered that plaintiff's sentence be recalculated based on the commissioner's reasons and that the Department was to pay all court costs. The Department suspensively appealed.

Louisiana Revised Statute 15:571.4B(2) was amended by Acts 1997, No. 820, § 1, to provide for the forfeiture of all good time earned on the portion of the sentence served prior to the granting of parole.<sup>2</sup> Act 820 of 1997 also amended LSA-R.S. 15:574.4I(2) to provide that at the time a parolee is given his written conditions of parole, he shall be notified that if his parole is revoked for any reason, all good time earned prior to parole will be forfeited as provided in LSA-R.S. 15:571.4.<sup>3</sup>

At the time of plaintiff's release, LSA-R.S. 15:574.4 provided, in pertinent part:

F. All paroles shall issue upon order of the board and each order of parole shall recite the conditions thereof; provided, however, that before any prisoner is released on parole he shall be provided with a certificate of parole that enumerates the conditions of parole. These conditions shall be explained to the prisoner and the prisoner shall agree in writing to such conditions.

\* \* \*

I. At the time these written conditions are given, the board shall notify the parolee that:

. . .

(2) Should his parole be revoked for any reason, good time earned prior to parole and good time that would have been earned if parole had not been granted will be forfeited, as required by R.S. 15:571.4.

Thus, the legislature clearly required notice to the prisoner of the conditions of parole.

The Department contends that it complied with the required notice when it typed on the front of the Certificate of Parole: "Should parole be revoked for any

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(f) Manifestly erroneous in view of the reliable, probative and substantial evidence on the whole record.

<sup>2</sup> Acts 1997, No. 820, in paragraph B(2), deleted ", up to a maximum of one hundred eighty days" from the end of the sentence.

<sup>3</sup> By Acts 2010, No. 241, § 1, LSA-R.S. 15:574.4I(2) was amended and renumbered and is now found in LSA-R.S. 15:574.4.1C.

reason, good time earned prior to parole and good time that would have been earned if parole had not been granted will be forfeited, as required by R.S. 15:571.4.” Plaintiff argues, however, that Condition No. 17 on the back of the certificate provides that plaintiff would lose only a maximum of six months good time if his parole was revoked.

The administrative record in this matter shows that after the effective date of the 1997 amendment, the Department had over a thousand copies of the older Certificate of Parole form and, instead of throwing them away, typed the provision on the front of the two-page form regarding the loss of all previously earned good time upon the revocation of parole. However, in the plaintiff’s case, the Department did not delete Condition No. 17 from the back of the certificate. Further, plaintiff’s signature agreeing to the “Statement of General Conditions Under Which This Parole Is Granted” was directly beneath Condition No. 17 on the second page of the Certificate of Parole, whereas the forfeiture-of-all-good-time language was on the first page of the certificate.

After a thorough review of the record, we agree with the district court that the notice was confusing and conflicting and that the Department did not give the plaintiff the notice required by statute.<sup>4</sup> Therefore, we find no error of law or abuse of discretion by the district court. Furthermore, we find that the district court’s reasons for judgment, as set forth in the commissioner’s recommendation, adequately explain the decision. Accordingly, we affirm the district court judgment in accordance with Uniform Rules – Louisiana Courts of Appeal, Rule 2-16.1B. The costs of this appeal in the amount of \$785.50 are assessed against the Department.

**AFFIRMED.**

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<sup>4</sup> While the Department alleged in its brief that all of the conditions of parole were expressly explained to plaintiff, which may have clarified the ambiguity of the notice, the record is void of such evidence.