

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 CA 1523

WILLIE POGUE #199791

VERSUS

RECORD ANALYST, MS. MENSER, MS. STRICKLAND, MS. TRISH
FOSTER, DEPT. OF CORRECTION, WARDEN BURL CAIN, ET AL.

Judgment Rendered: March 25, 2011

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Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 573,400

Honorable R. Michael Caldwell, Judge

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Willie Pogue
Angola, LA

Terri L. Cannon
Angola, LA

In Proper Person
Plaintiff – Appellant

Attorney for
Defendants – Appellees
Louisiana Department
of Public Safety and
Corrections, et al.

* * * * *

BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

WELCH, J.

Willie Pogue, an inmate in the custody of the Louisiana Department of Public Safety and Corrections ("the Department") confined to the Louisiana State Penitentiary in Angola, Louisiana, appeals a judgment of the district court that dismissed his petition for judicial review, without prejudice, for failure to exhaust his administrative remedies and that denied his request to amend his petition to raise a claim for monetary damages. We affirm.

Willie Pogue was convicted of a crime and sentenced to twenty-five years in the custody of the Department. He was, thereafter, adjudicated a habitual offender and sentenced to sixty years in the custody of the Department. The minutes of the sentencing court reflect that Willie Pogue's original sentence was vacated when the habitual offender sentence was imposed. As a habitual offender, Willie Pogue is not eligible to earn "good time."

Willie Pogue contends, however, that in the sentencing transcript,¹ his original sentence was not vacated; therefore, his original sentence is in effect. See State v. Fisher, 628 So.2d 1136, 1138 n.1 (La. App. 1st Cir. 1993), writs denied, 94-0226, 94-0321 (La. 5/20/94), 637 So.2d 474 and 476 (holding that when there is a conflict between the minutes and the sentencing transcript, on an issue relative to sentencing, the transcript controls) and State v. Jackson, 95-423, p. 6 (La. App. 5th Cir. 11/15/95), 665 So.2d 467, 469 (holding that if a sentencing court fails to vacate the original sentence at the time of the sentencing of a defendant as a habitual offender, the original sentence remains in effect and the subsequent sentence as a habitual offender is null and void). Therefore, Willie Pogue sought to have the Department recognize his eligibility for "good time" under his original sentence.

¹ A complete sentencing transcript is not contained in the record before us. There is, however, one unidentified page of what appears to be part of the sentencing transcript, but appears to be only the end of the sentencing court's statements.

The “records office” refused to correct his master prison record and allow him to earn good time. Willie Pogue then filed, on December 12, 2008, this petition for judicial review of an unidentified request for administrative remedy (“ARP”). However, at the time Willie Pogue filed the petition for judicial review, he had not filed an ARP with the Department with regard to this issue. Rather, it appears that he filed the ARP on January 25, 2010, almost a year and a half later, while this proceeding was pending.

On May 25, 2010, the commissioner assigned to the matter issued a recommendation that the petition be dismissed without prejudice. The commissioner noted that the petition raised a time computation issue concerning “good time” credits, which must first be raised through the corrections administrative remedy procedure (“CARP”), La. R.S. 15:1171, *et seq.*, and that claims by inmates who have not exhausted the available administrative remedies on claims falling within the scope of CARP must be dismissed without prejudice. Since Willie Pogue had failed to exhaust his administrative remedies with regard to this claim prior to filing suit, the commissioner recommended that the suit be dismissed, without prejudice.

Additionally, the commissioner noted that Willie Pogue requested that he be allowed to amend his petition to raise a claim for monetary damages. The commissioner noted that allowing the amendment would create a jurisdictional conflict, as a request for judicial review is heard on the appellate jurisdiction of the district court while a claim for damages is heard on its original jurisdiction. Noting that La. R.S. 15:1177(C) does not allow actions for damages to be raised in a request for judicial review, but rather must be filed separately as a civil action in the parish where the prisoner was housed when the cause of action arose, La. R.S. 15:1184(F), the commissioner recommended that the request to amend the petition be denied.

After considering the entire record of the proceedings, on June 16, 2010, the district court adopted the commissioner's recommendation and rendered judgment denying Willie Pogue's request to amend his petition for judicial review to raise a claim for monetary damages and dismissing the petition, without prejudice for failing to exhaust administrative remedies. After a thorough review of the record of these proceedings, we find no error in the judgment of the district court and affirm the district court's judgment in compliance with Uniform Rules—Courts of Appeal, Rule 2-16.2(A)(2), (4), and (5).

All costs of this appeal are assessed to the plaintiff/appellant, Willie Pogue.

AFFIRMED.