

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 0771

CHARLES CHANEY

VERSUS

JAMES LEBLANC, SECRETARY OF THE DEPARTMENT OF
PUBLIC SAFETY AND CORRECTIONS, CONNIE KENNEDY,
STEVE RADAR, AND JONATHAN VINING

CEK
JK
WKM
DATE OF JUDGMENT: NOV - 9 2011

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
NUMBER 595,008, SEC. 22, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE TIMOTHY KELLEY, JUDGE

Charles Chaney
Jackson, Louisiana

Pro Se

William Kline
Baton Rouge, Louisiana

Counsel for Defendant-Appellee
Department of Public Safety and
Corrections

BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

Disposition: AFFIRMED.

KUHN, J.

Petitioner-appellant, Charles Chaney, an inmate in the custody of the Louisiana State Department of Public Safety and Corrections (DPSC), appeals the district court's judgment, dismissing his claim at his cost for failure to exhaust administrative remedies. We affirm.

Mr. Chaney filed a request for relief under Administrative Remedy Procedure (ARP). In his request, Mr. Chaney sought the restoration of good time that was forfeited between September 28, 2005 and January 6, 2009, averring that the forfeiture was improper because, during that time, his original sentence was vacated. On April 12, 2010, Mr. Chaney was denied relief in the first step response. On April 23, 2010, Mr. Chaney appealed to the second step.

Before he received a second step response, Mr. Chaney filed a petition in the Nineteenth Judicial District Court seeking judicial review of the administrative decision denying his relief. The commissioner issued a screening report, recommending that Mr. Chaney's appeal be dismissed, noting that on the face of the petition, Mr. Chaney admitted that he had not received a second step response and, thus, had failed to exhaust his administrative remedies. Prior to rendition of the district court's judgment, Mr. Chaney filed a traversal to the commissioner's screening report on October 24, 2010, to which he attached a copy of the second step response form, dated October 10, 2010, denying relief. Despite the attachment, the district court judge issued a judgment on November 29, 2010, in accordance with the commissioner's recommendation, dismissing the petition.

On appeal, Mr. Chaney complains that the district court judge erred in failing to consider the response to his second step request and requests that we

review the merits of his claim. After a thorough review of the record, we find no error of fact or law in the reasoning and findings of the commissioner. See *Lewis v. Rogers*, 05-1138, pp. 2-3 (La. App. 1st Cir. 6/9/06), 938 So.2d 1025, 1026 (if at the time a petition is filed for judicial review, the administrative remedy process is ongoing but not completed, under La. R.S. 15:1172(C) the district court does not err in dismissing the suit). We expressly note that under the applicable law, the dismissal is without prejudice. See La. R.S. 15:1172(C).

Accordingly, we issue this summary opinion in accordance with URCA Rule 2-16.2A(4-8), affirming the judgment of the district court and dismissing his appeal without prejudice. Appeal costs are assessed against petitioner-appellant, Charles Chaney.

AFFIRMED.