

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2008 CA 2438

GEORGE E. DAVIS

VERSUS

LOUISIANA PAROLE BOARD, ET AL



Judgment Rendered: September 11, 2009

**Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge,
State of Louisiana
Case No. 560,219**

The Honorable Donald R. Johnson, Judge Presiding

**George E. Davis
Clinton, Louisiana**

**Plaintiff/Appellee
In Proper Person**

**James D. "Buddy" Caldwell
Attorney General
Wendell C. Woods
Assistant Attorney General
Baton Rouge, Louisiana**

**Counsel for Defendants/Appellants
Louisiana Parole Board, et al**

BEFORE: DOWNING, GAIDRY, AND McCLENDON, JJ.

Downing, J. concurs

GAIDRY, J.

In this case involving a petition for judicial review of a parole revocation decision, the district court remanded the matter to the parole board and ordered that a new revocation hearing be conducted and that the parole board pay all costs. The parole board appealed this judgment, arguing that the district court erred in overturning the parole board's decision when the parolee was afforded due process at the revocation hearing. We reverse.

DISCUSSION

Prisoner George Davis filed a petition for judicial review of a decision of the Louisiana Parole Board revoking his parole. Davis was accused of engaging in criminal conduct while on parole (he was arrested for illegal possession of stolen things and pled guilty to this misdemeanor) and absconding supervision by giving a false address to his parole supervisor. Although he pled guilty to the criminal charge, Davis pled not guilty to the charge of engaging in criminal conduct at his parole revocation hearing and attempted to argue that he was actually not guilty of the crime and would not have pled guilty to the misdemeanor if he thought it would affect his parole. Davis also pled not guilty to the absconding charge at his revocation hearing, claiming that he was homeless and had to leave the area to find a place to live.

In his petition for judicial review, Davis alleges that he was not allowed to present witnesses at the preliminary hearing and that the parole board "refused to listen or take into consideration [sic] the true fact of the circumstances surrounding the case" in making the final revocation decision. He claims that he could have produced evidence at the hearing to prove that he did not know the items in his possession were stolen and that his parole

officer told him that a guilty plea to the crime would not result in the revocation of his parole.

When a parolee has been returned to the physical custody of the Department of Public Safety and Corrections, the parole board shall hold a hearing to determine whether his parole should be revoked, unless the parolee expressly waives the hearing in writing. At the hearing, the parolee may admit, deny, or explain the violation charged, and he may present proof, including affidavits and other evidence, in support of his contentions. La. R.S. 15:574.9(A).

The revocation of parole rests in the discretion of the Board of Parole; no prisoner or parolee shall have a right of appeal from a decision of the board regarding the revocation or reconsideration of revocation of parole, except for the denial of a revocation hearing under R.S. 15:574.9. La. R.S. 15:574.11(A). The district court shall have appellate jurisdiction over pleadings alleging a violation of R.S. 15:574.9. The review shall be conducted by the court without a jury and shall be confined to the revocation record. The review shall be limited to the issues presented in the petition for review. The court may affirm the revocation decision of the Board of Parole or reverse and remand the case for further revocation proceedings. An aggrieved party may appeal a final judgment of the district court to the appropriate court of appeal. La. R.S. 15:574.11(C).

A review of the recording of the parole revocation hearing reveals that Davis was not deprived of the hearing required by La. R.S. 15:574.9. At that hearing, Davis was given ample opportunity to explain his side of the charges against him. He did not attempt to call witnesses. Although Davis claims that he was prevented from calling witnesses at his preliminary hearing because the hearing started early, the preliminary hearing is simply

an informal hearing to determine whether probable cause exists to believe the parolee violated his parole and should be held over for a final revocation hearing. Even if Davis's mother had been present to testify that he had been told that a guilty plea to the criminal charge would not result in a parole revocation, his guilty plea to the criminal charge was sufficient evidence to provide probable cause that Davis violated the conditions of his parole and to hold him over for a final revocation hearing. He did not attempt to call her or any other witnesses to testify at his final revocation hearing. Davis's due process rights were satisfied by the final revocation hearing. As such, he has no right of appeal from the board's decision. The district court erred in remanding the matter for a new revocation hearing and ordering the parole board to pay all costs.

DECREE

The judgment of the district court is reversed. Costs of this appeal are to be borne by appellee, George Davis.

REVERSED.