

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2007 CA 2565

TIMOTHY WASHINGTON

VERSUS

RICHARD STALDER, SECRETARY, DEPARTMENT OF CORRECTIONS;
TIM WILKINSON, WARDEN, AND LIBBY TIGNER,
WINN CORRECTIONAL CENTER; LINDA RAMSAY AND DEIDRA SCOTT

Judgment Rendered: May 2, 2008

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Suit Number 553,968

Honorable Curtis A. Calloway, Judge

Timothy Washington
Winnfield, LA

In Proper Person

Melinda L. Long
Baton Rouge, LA

Counsel for Defendant/Appellee
Richard L. Stalder

BEFORE: WHIPPLE, GUIDRY, AND HUGHES, JJ.

GUIDRY, J.

Timothy Washington, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (the Department) and confined to Winn Correctional Center, appeals the judgment of the district court affirming the Department's decision to apply jail time credits to his parole revocation sentence but not to his sentence for manslaughter and dismissing his petition for judicial review. For the reasons that follow, we affirm the judgment in accordance with Uniform Court of Appeal Rules 2-16.2(A)(2), (4), and (5).

According to the record, Washington was on good time parole for a conviction under EBR docket number 3-94-2003 when he was arrested on April 8, 1999 for murder, later reduced to the current charge of manslaughter under EBR docket number 5-99-559. Washington remained incarcerated on the 1999 charge, as well as on the detainer from the Department of Parole for the parole violation. Washington admitted a violation of his parole, and his admission prior to conviction on the new charge resulted in his parole being revoked in October 2001. At the time of his parole revocation, Washington admitted that he owed 2 ½ years on the parole sentence, and that the sentence began to run from the date of his arrest on the new charge, based on his admission of the parole violation and his waiver of a parole revocation hearing.

According to the Department's records, Washington was given credit on the parole revocation sentence from the date of his arrest for the new charge on April 8, 1999 until he finished the parole revocation sentence on October 10, 2001. Washington was subsequently sentenced on the new conviction for manslaughter on October 15, 2003, and was awarded 735 days of jail credit time on the new sentence of 8 years, i.e. from October 10, 2001 until December 15, 2003. However, Washington asserts that the Department should have also credited the time served from April 8, 1999, until October 10, 2001, to the new sentence

imposed on October 15, 2003 for the manslaughter conviction. Washington filed a request for administrative remedy, seeking to have the Department apply the credit for time served from April 8, 1999 to October 10, 2001, to his current sentence for manslaughter and immediately send him to a work-release program, which was denied.

Washington thereafter filed a petition for judicial review in the district court. A commissioner for the district court issued her recommendation on September 4, 2007, that the Department's decision be affirmed. The commissioner noted that the sentencing court was silent as to how the new eight-year sentence would run and therefore, in accordance with La. C.Cr.P. art. 883, the unrelated parole revocation sentence and manslaughter sentence ran consecutively. The commissioner also stated that according to La. C.Cr.P. art. 880, when sentences are consecutive, the prisoner may receive day-for-day jail credit only on one of the consecutive sentences, unless the court expressly states otherwise. The commissioner also cited this court's opinion in State v. Barnes, 590 So. 2d 1298, 1302 (La. App. 1st Cir. 1991), which held that when two completely separate offenses are committed in the same jurisdiction and the defendant's incarceration periods for these offenses overlap, he may not be entitled to credit for time served on both convictions as regarding this overlapping jail time. Thus, the commissioner noted that absent an express direction from the court to counter the prohibition/restriction in La. C.Cr.P. art. 880, the Department's award of credit to only one of the two sentences being served from 1999 until 2001 was in accord with the law and facts.

Upon its review of the record, the district court adopted the commissioner's recommendation and rendered judgment affirming the Department's decision and dismissing Washington's appeal. After a thorough review of the entire record in this matter, we find no error in the judgment of the district court and affirm the

district court's judgment in accordance with the Uniform Court of Appeal Rules 2-16.2(A)(2), (4), and (5).

All costs of this appeal are assessed against Timothy Washington.

AFFIRMED.