

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 0871

ZZEUNDRE JACOBS

VERSUS

JAMES M. LEBLANC & N. BURL CAIN
(THROUGH THE DEPT. OF PUBLIC SAFETY & CORR.)

DATE OF JUDGMENT: DEC 21 2011

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
NUMBER 595,261, SEC. 27, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE TODD W. HERNANDEZ, JUDGE

Zzeundre Jacobs
Angola, Louisiana

Pro Se

William Kline
Baton Rouge, Louisiana

Counsel for Louisiana
Department of Public
Safety and Corrections

BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

Disposition: AFFIRMED.

Guidry, J. concurs.

KUHN, J.

Petitioner-appellant, Zzeundre Jacobs, appeals the district court's judgment, dismissing his pleading entitled, "Writ of Mandamus Requesting Declaratory and Injunctive Relief," seeking an order against the Department of Public Safety and Corrections (DPSC) that it prohibit "smoking in any state, local, or private correctional facility, including all buildings and grounds of such facilities." We affirm.

Petitioner, an inmate incarcerated at the Louisiana State Penitentiary, filed a pleading in which he requested that a writ of mandamus issue to enforce the Louisiana Smokefree Air Act (the Act).¹ He avers, "In general [DPSC] clearly only bans smoking inside inmate housing areas, on all walkways and when going to or returning from any call out." He complains, however, that because smoking products (including cigarettes, smoking tobacco, rolling papers, and butane lighters) are permitted to be sold in the inmate canteens, the "[l]egislative intent" of the Act is circumvented under the present prison policy. He requests that a writ of mandamus issue prohibiting smoking "as originally intended" by the Act.

Pursuant to La. C.C.P. art. 3862, a writ of mandamus may be issued in all cases where the law provides no relief by ordinary means or where the delay involved in obtaining ordinary relief may cause injustice. *Gibson & Associates, Inc. v. State, Dep't of Transp. & Dev.*, 2010-1696 (La. App. 1st Cir. 5/18/11), 68 So.3d 1128, 1140. Nonetheless, a writ of mandamus may only issue to compel the performance of a ministerial duty required by law. A ministerial duty is one in

¹ See generally La. R.S. 40:1300.251-1300.263.

which nothing is left to discretion. If a public official is vested with any element of discretion, mandamus will not lie. *Id.*

Under the Act, La. R.S. 40:1300.256 states in relevant part:

A. Except as permitted by Subsection B of this Section, no person shall:

(1) Smoke in any public building.

(2) Smoke in any school.

(3) Smoke in any public place and in any enclosed area within a place of employment.

(4) As an employer, knowingly permit smoking in any enclosed area within a place of employment.

B. Nothing in this Part shall prohibit smoking in any of the following places: ...

(6) The outdoor area of places of employment; except that the owner or manager of such business may post signs prohibiting smoking in any such outdoor area, which shall have the effect of making that outdoor area an area in which smoking is prohibited under the provisions of this Part. ...

(14) Any state, local, or private correctional facility prior to August 15, 2009. After August 15, 2009, smoking shall be prohibited in any state, local, or private correctional facility.

Based on the provisions of La. R.S. 40:1300.256, it is evident that the statute gives the officials at a "state, local, or private correctional facility" some discretion in its enforcement of the Act insofar as the prohibition of smoking in "[t]he outdoor area" of the prison particularly as a place of employment as stated in subsection B(6). And nothing in the Act requires that DPSC prohibit the sale of smoking products in the prison canteens. Thus, petitioner, who seeks the overly broad directive ordering that DPSC prohibit "smoking in any state, local or private correctional facility, including all building[s] and grounds of such facilities," has failed to allege facts sufficient to

support the issuance of a writ of mandamus. Accordingly, the district court correctly dismissed his petition based on a finding that he failed to state a cause of action for mandamus relief. See La. C.C.P. art. 927(B).²

DECREE

For these reasons, we affirm the district court's judgment, dismissing without prejudice, the pleading filed by petitioner. Appeal costs are assessed against petitioner-appellant, Zzeundre Jacobs.

AFFIRMED.

² Although the district court dismissed the suit pursuant to La. R.S. 15:1178(D), we find that the dismissal based on a no cause of action could have been recognized by the district court pursuant to La. C.C.P. art. 927(B).