

APPENDIX

LOWER COURT OPINION (RULE 13.5)

The Supreme Court of the State of Louisiana

CLIFFORD ABSHIRE

NO. 2018-CI-0048

VS.

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONS

IN RE: Clifford Abshire; - Plaintiff; Applying For Writ of
Certiorari and/or Review, Parish of E. Baton Rouge, 19th Judicial
District Court Div. I, No. C649114; to the Court of Appeal, First
Circuit, No. 2017 CA 0005;

January 8, 2019

Denied.

MRC

BJJ

JLW

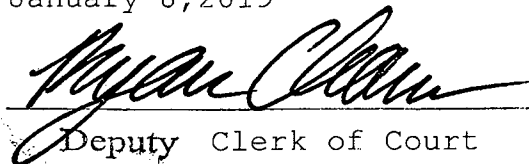
GGG

SJC

JTG

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LIMITATIONS

Supreme Court of Louisiana
January 8, 2019


Deputy Clerk of Court
For the Court

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2017 CA 0005

CLIFFORD ABSHIRE

VERSUS

LOUISIANA DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONS

Judgment Rendered: SEP 15 2017

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On Appeal from
The 19th Judicial District Court,
Parish of East Baton Rouge, State of Louisiana
Trial Court No. C649114
The Honorable R. Michael Caldwell, Judge Presiding

* * * * *

Clifford C. Abshire III
Cottonport, Louisiana

Plaintiff/Appellant,
In Proper Person

William L. Kline
Baton Rouge, Louisiana

Attorney for Defendant/Appellee,
Louisiana Department of Public
Safety and Corrections

* * * * *

BEFORE: GUIDRY, PETTIGREW, AND CRAIN, JJ.

CRAIN, J.

Clifford Abshire, an inmate in the custody of the Louisiana Department of Public Safety and Corrections, appeals the dismissal, without prejudice, of his petition for judicial review of Disciplinary Board Appeal number WNC-2015-430. In that disciplinary proceeding, Abshire was found guilty of violating Rule 10 (fighting) and received a sentence of custody change to restricted housing and a suspended sentence of ten days of disciplinary detention/isolation. Abshire was also ordered to pay restitution of \$5.00 for the cost of a medical exam. Abshire's appeal of the decision was denied by the Department upon finding the disciplinary report was clear, concise, and provided convincing evidence of the violation as charged. The Department also found the sanctions were appropriate.

Abshire's petition for judicial review was referred to a Commissioner of the district court for screening pursuant to Louisiana Revised Statutes 15:1178 and 1188. The Commissioner issued a screening report recommending that Abshire's suit be dismissed for failure to state a cause of action under Louisiana Revised Statute 15:1177A(9), because no substantial rights were involved in the matter. Following *de novo* review of the record, the district court adopted the Commissioner's report as its reasons for judgment and dismissed Abshire's suit.

Courts may intervene and reverse or modify the Department's decisions in disciplinary cases only where the petitioner's substantial rights have been prejudiced. *See* La. R.S. 15:1177A(9); *see also* La. R.S. 15:1178B and 1188A. Here, the disciplinary proceeding resulted in a change in Abshire's custody status and the imposition of restitution in the amount of \$5.00. It is well settled that a change of custody status, such as the one at issue here, is not atypical or a significant hardship in relation to the ordinary incidents of prison life, and does not prejudice an inmate's substantial rights. *See Sandin v. Conner*, 515 U.S. 472, 484-

86, 115 S.Ct. 2293, 2300-01, 132 L.Ed.2d 418 (1995); *Robinson v. Rader*, 14-0333 (La. App. 1 Cir. 11/20/14), 167 So. 3d 780, 781; *Boudreaux v. Leblanc*, 14-0214 2014WL4668358 (La. App. 1 Cir. 9/19/14).

Abshire, however, argues the order of restitution affects a substantial right, citing *Anderson v. LeBlanc*, 11-1800, 2012WL1550529 (La. App. 1 Cir. 5/2/12), wherein this court held that an inmate's substantial rights were affected by the imposition of restitution in the amount of \$1,217.50. Subsequent to *Anderson*, this court has repeatedly recognized that significantly smaller awards of restitution do not impose an unusual and significant hardship on an inmate in relation to the ordinary incidents of prison life and, therefore, do not prejudice his substantial rights. See *Drake v. Louisiana Department of Public Safety and Correction*, 16-1356 (La. App. 1 Cir. 6/2/17), ___ So. 3d ___, ___ (2017WL2399479 at *2) (restitution of \$39.75); *Black v. Louisiana Department of Public Safety and Corrections*, 15-1908, 2016WL3132157 at *3 (La. App. 1 Cir. 6/3/16) (restitution of \$8.00); *Boatner v. Louisiana Department of Public Safety and Corrections*, 12-0973, 2013WL593989 at *1 (La. App. 1 Cir. 2/15/13) (restitution of \$13.00). Consistent with this jurisprudence, we find the \$5.00 award of restitution does not affect a substantial right of Abshire; therefore, the district did not err in dismissing his claim for failing to state a cause of action. See La. R.S. 15:1177A(9), 1178B, and 1188A.¹

¹ Abshire also argues on appeal that he was denied parole because of the disciplinary violation and, therefore, the proceeding affects a substantial right. Abshire made no allegations in that regard in his petition for judicial review, nor did he submit any evidence to support such a claim with his petition. Although he attached a document to his appellate brief that appears to reflect the denial of his parole for several reasons, including *four* disciplinary reports in 2015, the matter cannot be raised for the first time on appeal. See La. R.S. 15:1177A(5); *Black*, 2016WL3132157 at *3. We further note the Supreme Court, in considering whether a substantial right might be implicated by the possible adverse effect a disciplinary proceeding may have on an inmate's prospects for parole, stated:

The district court's judgment is affirmed.² This memorandum opinion is issued in accordance with Uniform Rules – Courts of Appeal, Rule 2-16.1B. Costs of this appeal are assessed to Clifford Abshire.

AFFIRMED; MOTION DENIED.

The decision to release a prisoner rests on a myriad of considerations. And, the prisoner is afforded procedural protection at his parole hearing in order to explain the circumstances behind his misconduct record. The chance that a finding of misconduct will alter the balance is simply too attenuated to invoke the procedural guarantees of the Due Process Clause.

Sandin, 515 U.S. at 487, 115 S. Ct. at 2302 (citations omitted).

² Abshire filed a motion with this court requesting that all briefs and memoranda filed by the Department be struck from the record, because the Department failed to file a brief on appeal. This sanction is not authorized by Uniform Rules – Courts of Appeal, Rule 2-12.12. We further note the Department did not file any documents in this proceeding, so there is nothing to strike from the record. For these reasons, the motion is denied.