

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3616
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

versus

MICHAEL BUCKLES,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CR-92-553-D-5
- - - - -
(March 23, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:*

Michael Buckles appeals his conviction under the assimilative crimes statute of the Louisiana offense of attempted simple escape.

Because the New Orleans Naval Air Station (NAS) is a federal military installation, a state-law offense committed there is also a federal offense. 18 U.S.C. § 13. Louisiana law provides that a person who attempts to commit a crime with the specific intent to commit the crime is guilty of attempt. La. Rev. Stat.

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Ann. 14:27 (West 1986). Simple escape in Louisiana is, *inter alia*,

[t]he intentional departure . . . of a person imprisoned, committed, or detained from a place where such person is legally confined, from a designated area of a place where such person is legally confined, or from the lawful custody of any law enforcement officer or officer of the Department of Public Safety and Corrections.

La. Rev. Stat. Ann. 14:110(A)(1)(West 1986). The Louisiana Department of Public Safety and Corrections "may enter into contractual agreements for the use of inmate labor by any department, board, commission, or agency of this state responsible for the conservation of natural resources or the construction and maintenance of public works[.]" La. Rev. Stat. Ann. 15:832(C)(West 1992). When an agency uses prisoner labor, that agency takes physical custody of the prisoners. La. Rev. Stat. Ann. 15:832(D)(1)(West 1992). The Louisiana Air National Guard is a unit of the state military. La. Rev. Stat. Ann. 29:4 (West 1989); see 32 U.S.C. § 101(6).

The one court to have considered the question in a published opinion holds that Louisiana prisoners in the physical custody of the National Guard remain in the "lawful custody" of the Department of Public Safety and Corrections. State v. Forest, 477 So. 2d 866, 867 (La. Ct. App. 1985). Flight of a prisoner from a National Guard facility therefore constitutes escape under Louisiana law. Id.

AFFIRMED.