

Matter of Vanwaldick v New York State Dept. of Corr. & Community Supervision
2017 NY Slip Op 31991(U)
September 6, 2017
Supreme Court, Clinton County
Docket Number: 17-0098
Judge: S. Peter Feldstein
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**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF CLINTON

In the Matter of the Application of
MICHAEL VANWALDICK, #05-A-4233,
Petitioner,

for Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

DECISION AND JUDGMENT
RJI #09-1-2017-0040.02
INDEX #17-0098

-against-

**NEW YORK STATE DEPARTMENT OF
CORRECTIONS AND COMMUNITY
SUPERVISION,**

Respondent.

This proceeding was originated by the Petition filed by Michael Vanwaldick (hereinafter referred to as “Petitioner”), sworn to on January 5, 2017 and filed in the Clinton County Clerk’s Office on January 20, 2017. Petitioner, who is an inmate at the Clinton Correctional Facility, is challenging the denial of Limited Credit Time Allowance.

This Court issued an Order to Show Cause on February 6, 2017.¹ The Court has received and reviewed the Answer and Return together with a Letter-Memorandum by Christopher J. Fleury, Esq., Assistant Attorney General, dated April 28, 2017. In response thereto, the Court has reviewed the Reply sworn on May 9, 2017 and received on May 19, 2017.

Petitioner is serving an aggregate indeterminate term of incarceration of a minimum of 12 years 10 months 8 days to a maximum of 15 years for convictions resulting in Jefferson County for the crimes of Attempted Murder in the Second Degree (B felony), Kidnapping

¹ On March 6, 2017, the Court received a letter from the petitioner dated March 2, 2017 together with a copy of a letter dated February 8, 2017 from Assemblyman David I. Weprin to Acting Commissioner Anthony Annucci, as well as a copy of a letter dated December 19, 2016 from Acting Commissioner Anthony Annucci to Assemblyman Daniel O’Donnell. It was unclear whether the foregoing were to be included as further supporting documents to the petitioner but were nonetheless considered.

in the Second Degree (B felony), and Grand Larceny of an Automobile in the Fourth Degree (E felony). Petitioner was initially received into the custody of the New York State Department of Corrections and Community Supervision (hereinafter referred to as “DOCCS”) on August 19, 2005. As of the time the petition was filed, the petitioner’s conditional release date was October 13, 2017 and his maximum expiration date was December 5, 2019.

Petitioner wished to receive Limited Credit Time Allowance (hereinafter referred to as “LCTA”), for potential release six months earlier, pursuant to Correction Law §803-b. Insofar as the petitioner alleges there were no other options pursuant to Directive 4792(II)(D) at the Clinton Correctional Facility, the petitioner opted to enroll in college to qualify for LCTA pursuant to Directive 4792(II)(D)(1). Petitioner alleges that he contacted P. Frederick, Supervising Offender Rehabilitation Counselor (hereinafter referred to as “SORC”) in May of 2013 to inquire about the LCTA program. Petitioner then met with B. Frechette, College Correspondence Instructor in February of 2014 and obtained a list of Accredited Colleges. In May of 2014, the petitioner enrolled in Ashworth College seeking to fulfill the two years of college credit qualification for LCTA.

Petitioner alleges that in November of 2015, he became aware of another inmate who completed a Bachelor’s Degree from Ashworth College being denied LCTA. Petitioner reviewed the revised Directive 4792 and noted that there were changes, particularly the semester credit hour definition. The petitioner sought clarification of whether he would also be denied LCTA for the same reason. Petitioner alleges that despite writing for clarification from his Offender Rehabilitation Counselor, the SORC, and Linda Hollmen, the DOCCS Director of Correctional Education Programs, he received no clarification.

On February 18, 2016, petitioner alleges he submitted a FOIL request to DOCCS requesting: “A list of the Names of Colleges, including number of credit hours or degrees, used by inmates to qualify for Limited Credit Time Allowance (2 years successful participation in College Programming).” Pet, Ex. R. The petition alleges that the FOIL request went unanswered.

On March 10, 2016, the petitioner filed an Inmate Grievance (CL-69130-6) citing the lack of communication regarding clarification of changes to Directive 4792. Specifically, the grievance requested “a response as to exactly how the SUNY semester credit hour criteria is being interpreted and how that interpretation relates to Ashworth College, the college I enrolled in at the direction of Clinon (*sic*) C.F. Staff.” Pet. Ex. S. In response, the Inmate Grievance Resolution Committee (hereinafter referred to as the “IGRC”) responded:

“The facility investigation has revealed that; all grievances must be filed in an individual capacity so therefore; the grievant can-not grieve for another Inmate who was denied LCTA credit. In accordance with directive #4792, IV, The Department’s Central Office computer identifies those Inmates at each facility who presently are eligible and review able for a possible LCTA approval. An otherwise eligible inmate may be considered for LCTA approval when he or she is within seven months of his or her LCTA conditional release date. The grievant at this time is not eligible as he is not within seven months of his possible LCTA conditional release date. The grievant is advised that any LCTA application that is denied at the facility level may be appealed by the inmate to the Commissioner’s office.” Pet. Ex. T.

Thereafter, the petitioner appealed the IGRC response to the Superintendent of the Clinton Correctional Facility. On April 8, 2016, Superintendent Michael Kirkpatrick issued a response to the appeal as follows in relevant part:

“Per directive #4792 the program criteria to be considered for LCTA is an inmate must be successfully pursuing his or her most recent

recommended earned Eligibility Plan/Program Plan and must complete one of the nine significant program accomplishments. One of the program accomplishments is a minimum of two years successful participation in college programming and the directive gives the criteria that is to be accomplished in order for the college programming to be accepted.” Pet. Ex. W.

On April 13, 2016, the petitioner appealed the Superintendent’s decision to the Central Office Review Committee (hereinafter referred to as “CORC”). Following a hearing on August 10, 2016, the CORC rendered the following determination:

“Upon full hearing of the facts and circumstances in the instant case, the action requested herein is hereby denied. CORC upholds the determination of the Superintendent for the reasons stated.

CORC notes that Ashworth College is accredited as a distance education program, however, the courses and semester credit hours do not meet the requirements of Directive #4792, II. D. 1. a. The State University of New York defines a semester credit hours as an academic unit earned for 15 50-minute sessions of classroom instruction with a normal expectation of two hours of outside study for each class session. Typically, a three credit hour semester meets for three 50-minute sessions per week for 15 weeks, for a total of 45 sessions.

CORC notes that the grievant is not eligible for LCTA review because he is not within seven months of his possible LCTA release date. Further, CORC asserts that the Director of Correctional Education Programs will be the reviewing authority and render a determination regarding college degrees and semester credit hours to satisfy the LCTA college program criteria. CORC asserts that it is the responsibility of the grievant to select the courses and institutions as outlined in Directive #4804, VII. A. 2.

With respect to the grievant’s appeal, CORC finds no malfeasance by staff.” Pet. Ex. II.

On September 16, 2016, petitioner submitted his LCTA application. On October 14, 2016, the LCTA application was denied based upon the determination that the LCTA

criteria had not been satisfied. Res. Ex. E. The Guidance Information Management System screenshot indicates the further explanation: “Although completed 30 credit hrs. from Ashworth College, said college official transcript does not meet semester credit hours requirement.” Res. Ex.E. On November 8, 2016, the petitioner filed an appeal of the LCTA denial. On December 2, 2016, Deputy Commissioner Jeff McKoy affirmed the denial of LCTA.

The petition seeks the Court to vacate and set aside the respondent’s October 14, 2016 denial of petitioner’s LCTA application, as well as to direct respondent to immediately approve the application based upon the petitioner’s successful satisfaction of the necessary requirements pursuant to Directive #4792. In addition, the petitioner seeks reimbursement for all costs and fees related to the administrative appeal and petition.

Respondent argues that the petitioner is not entitled to specific relief inasmuch as approval of LCTA is discretionary. Furthermore, while the petitioner is not entitled to early release, he is entitled to procedural due process which has been provided as evidenced by the petitioner’s extensive administrative appeal process. Respondent refutes that the petitioner was eligible for LCTA in light of the Ashworth College’s failure to adhere to the requirements as established by the State University of New York (hereinafter referred to as “SUNY”) standards for credit hours. *See*, Directive #4792(II)(D)(1). Respondent also argues that while Ashworth College was accredited, insofar as the practices of Ashworth College do not meet the requirements established by SUNY for classroom hours, the college credits obtained by the petitioner do not render him eligible for LCTA.

Directive #4792 reads in relevant part:

“D. Program Criteria: An inmate must be successfully pursuing his or her most recent recommended Earned Eligibility Plan (EEP)/Program Plan and must complete at least one of the nine significant program accomplishments listed below during the current term of incarceration. Programming standards for LCTA are consistent with those applied to Earned Eligibility, Merit Time, and Presumptive Release reviews, whereas, if an inmate is removed from a recommended program due to unsatisfactory program efforts or due to discipline, he or she must return to that program and establish a period of successful program effort in order to be considered for LCTA.

1. A minimum of two years successful participation in college programming.

College participation is defined as two years cumulative participation in an institution of higher education that is accredited, provides official transcripts, and offers credit-bearing courses that can lead to a degree or certificate and are transferrable to other institutions of higher learning. Two years cumulative participation is based upon the institution’s academic calendar. The LCTA College criteria will be satisfied if at least one of the following two criteria is accomplished:

a. Two years cumulative participation in an accredited college program during the current term of incarceration; having earned a minimum of 24 credits and having participated in college for a minimum of four semesters. A semester credit hour will be defined using the State University of New York standard:

A semester credit hour is an academic unit earned for 15 50-minute sessions of classroom instruction with a normal expectation of two hours of outside study for each class session. Typically, a three credit hour semester meets for three 50-minute sessions per week for 15 weeks, for a total of 45 sessions.

b. Successful completion of an Associates or Bachelors Degree from an accredited college while serving the current term of incarceration. In order to satisfy the LCTA requirement of a “significant program accomplishment,” college degrees must also meet the semester standard defined above in subsection a.

Note: The Director of Correctional Education Programs will be the review authority, rendering a determination regarding college degrees and

semester credit hours satisfying the LCTA college programming criteria.”
Directive #4792(II)(D)(1).

Correction Law §803-b(3) reads, in relevant part:

“No person shall have the right to demand or require the credit authorized by this section. The commissioner may revoke at any time such credit for any disciplinary infraction committed by the inmate or for any failure to continued to participate successfully in any assigned work and treatment program after the certificate of earned eligibility has been awarded. Any action by the commissioner pursuant to this section shall be deemed a judicial function and shall not be reviewable if done in accordance with law.”

When the petitioner initially met with B. Frechette, College Correspondence Instructor, in February of 2014, the petitioner was provided with a list of accredited colleges and Ashworth College was on the list. The petitioner enrolled approximately three (3) months later in May 2014. However, Directive #4792 was modified in November 17, 2014 to include more stringent guidelines, to wit: that semester credit hours conformed with the SUNY criteria. As of the date of the amendment, the petitioner had commenced four (4) classes and only completed two (2). The petitioner alleges that he only learned of the change in the Directive in November of 2015 when another inmate who had received a Bachelor’s Degree (120 credits) was denied LCTA because the college transcript did not comply with the SUNY semester hour criteria. At that time, the petitioner began a campaign of inquiries seeking a determination on how to calculate credit hours while simultaneously failing to review the standards as outlined in Directive #4792 as amended on November 17, 2014. Inasmuch as the petitioner admits that Directive #4792 was on file in the facility library, and therefore accessible by him, petitioner’s argument that he was denied procedural due process as a result of the change is untenable.

Notwithstanding that the petitioner has an obligation and responsibility to keep updated on directives, the petitioner attempts to divest such responsibility onto the respondent for failing to notify him of the changes in the requirements of a program that he was seeking to complete. Upon review of the petitioner's transcript (Resp. Ex. E.), it is clear that the semesters did not conform to a traditional 15-week class setting. Indeed, the petitioner was able to complete "JO4 Policing" in a period of February 9, 2015 to February 23, 2015. Resp. Ex. E. Based upon the guidelines, the petitioner theoretically completed approximately 37.5 hours of classroom lessons (50 minutes x 45 classes) and approximately 90 hours of homework (2 hours x 45 classes) during the 14 day period of the class. Although 127.5 hours of book work may not be onerous over the course of two weeks as an inmate, when coupled with such requirements for a second class during the same period of time, to wit: "CO5 Business Communication", the time necessary to comport to the SUNY criteria seems unrealistic. Resp. Ex. E.

Clearly, Directive #4792 specifically delineates that the Director of Correctional Education Programs will be the sole arbiter of the appropriateness of any college programming that an inmate seeks to satisfy the requirements for LCTA. Inasmuch as the transcript yields information that challenges the typical 15-week curriculum as established by SUNY criteria, the denial of the Ashworth College's semester credit hour requirements by the Director of Correctional Education Programs is not arbitrary or capricious. In addition, as the respondent asserts, Ashworth College's practices and integrity as an accredited institution was reasonably called into question in 2015. *See*, Resp. Ex. H. The Director of Correctional Education Programs would certainly be aware of same and be

mindful of dubious coursework, as evidenced by the petitioner for the period of February 9 to February 23, 2015.

Notwithstanding the foregoing, the petitioner's belief that being granted LCTA would automatically warrant his release from custody six months earlier is misplaced. "Even where the inmate has already earned the LTCA (*sic*) through Section 805, as permitted by Correction Law §803-b(2)(a), Respondent may still decline to apply such credit to an inmate's sentence." *Waters v. CORC, et al*, 50 Misc.3d 1224(A), 142 AD3d 1204 [dismissed as moot due to release]; *see also, Mentor v. NYS Div. of Parole*, 87 AD3d 1245, 1246 ["receipt of (LCTA) certificate, however, does not entitle him to release, as parole is not to be granted as a reward for good conduct."]

The remainder of the petitioner's arguments are unavailing.

Based upon all of the above, it is, therefore, the decision of the Court and it is hereby **ADJUDGED**, that the petition is dismissed.

Dated: September 6, 2017 at
Indian Lake, New York.

S. Peter Feldstein
Acting Supreme Court Justice