

**Finley v Brann**

2024 NY Slip Op 31275(U)

April 11, 2024

Supreme Court, New York County

Docket Number: Index No. 155598/2020

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARLENE P. BLUTH PART 14**

*Justice*

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KAVON FINLEY,

Petitioner,

- v -

CYNTHIA BRANN, Correction Commissioner  
of the New York City Department of Correction;  
THE NEW YORK CITY DEPARTMENT OF  
CORRECTION; and THE CITY OF NEW YORK  
Respondent.

INDEX NO. 155598/2020

MOTION DATE 04/10/2024<sup>1</sup>

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 7, 8, 10, 11, 12, 13

were read on this motion to/for ARTICLE 78.

The petition to annul petitioner’s termination and for petitioner to be reinstated is denied.

**Background**

Petitioner alleges that he was hired by respondent the New York City Department of Correction (“DOC”) on January 8, 2018 for a two-year probationary period. In this proceeding, he challenges his December 16, 2019 termination on the ground that it was made in bad faith.

Petitioner acknowledges that he was involved in two use of force incidents, both of which occurred while he was working on Riker’s Island as a correction officer. On March 20, 2019, petitioner claims he was struck with an unknown liquid by an inmate and petitioner responded by spraying a chemical agent on the inmate to protect himself. He observes that he received counseling after this incident and was docked a vacation day.

<sup>1</sup> Although this proceeding was only reassigned to the undersigned this week, the Court is well aware that this proceeding has been pending for far too long. The Court apologizes, on behalf of the Court system, for the inexplicable delay in the resolution of this proceeding.

Petitioner also details an August 8, 2019 use of force incident in which he was inspecting an inmate who recently returned from a court appearance. He argues that the inmate refused to cooperate with the search and that petitioner thought he saw “a dangerous instrument.”

Petitioner contends that the inmate began to get aggressive and threatened him so he “secure[d] the inmate to the floor.” He insists a sharp object was recovered at the scene.

Petitioner insists he should not have been fired because he acted reasonably at all times and used force in compliance with respondents’ regulations.

In opposition, respondents point out that there were other incidents that led to petitioner’s termination. They cite a December 13, 2018 incident in which an inmate alleged that petitioner had tossed a pipe that hit the inmate in the head and required the inmate to receive three staples. Respondents contend that petitioner failed to report this incident and ultimately admitted to throwing the pipe.

With respect to the March 20, 2019 incident, respondent claims that an inmate threw a food tray at petitioner from his “holding” cell. They observe that although this inmate was secured in this holding area, petitioner walked up to the inmate and sprayed a chemical agent at the inmate through the food slot. Respondents emphasize that during the incident, a DOC captain was nearby directing petitioner to stop, a directive which petitioner ignored. They also point out that in his report about the incident, petitioner claimed he had “spontaneously deployed his chemical agent,” a description which respondents claim is wholly inaccurate.

Respondents also observe that in another incident in August 2019, petitioner saw an inmate retrieve an item from the inside of another inmate’s pants and that petitioner ignored this incident. They claim a weapon was later recovered from this inmate.

Respondents insist that these incidents all justify their decision to terminate petitioner. They argue that he violated DOC guidelines and regulations and firing petitioner was rational under these circumstances.

Petitioner did not file a reply.

### **Discussion**

“A probationary employee may be discharged without a hearing and without a statement of reasons in the absence of any demonstration that the dismissal was for a constitutionally impermissible purpose or in violation of statutory or decisional law” (*Thomas v City of New York*, 169 AD2d 496, 497-98, 169 AD2d 496 [1st Dept 1991] [sustaining the termination of a probationary corrections officer]).

The Court’s analysis begins with the personnel determination review (“PDR”) drafted for petitioner (NYSCEF Doc. No. 15). In this document, respondents detailed the pipe incident in which an inmate was hit in the head by a pipe thrown by petitioner and how petitioner admitted failing to report this issue (*id.* at 1-2). Respondents concluded that “we find that Officer Finley was inefficient in his performance of duties by tossing the tour pipe into the air and failing to report that the tour pipe struck the inmate in the head. We further find that Officer Finley provided misleading testimony in his interview” (*id.* at 2).


The PDR also concluded that petitioner used “unnecessary force” regarding the chemical agent incident in March 2019 and that he “failed to provide an accurate account of the incident” (*id.*). Respondents observed that petitioner did not “spontaneously deploy his chemical agent” as he had claimed and that video footage showed that he “advanced toward [the] inmate” and “placed his hand in the food slot to deploy his chemical agents even though the inmate no longer

posed an immediate threat” (*id.*). Respondents also faulted petitioner for not reporting the exchange of an unknown item between two inmates, which turned out to be a weapon (*id.*).

The PDR constitutes a reasonable justification for petitioner’s termination. The fact is that respondents investigated three separate incidents involving petitioner and determined that he should no longer work for respondents. Petitioner wholly failed to raise sufficient allegations that his termination was in bad faith. Simply because petitioner disagrees with respondents’ view of these incidents is not a basis to conclude his firing was impermissible. Moreover, petitioner’s insistence that he was in compliance with various DOC guidelines is not a ground upon which this Court can grant the petition. In this Court’s view, respondents rationally considered multiple instances of petitioner’s misconduct, including an incident where petitioner sprayed a chemical agent through the food slot of an inmate’s holding area, and concluded petitioner should be fired. That is completely rational.

Accordingly, it is hereby

ADJUDGED that the petition is denied and this proceeding is dismissed without costs or disbursements.

<u>4/11/2024</u> <b>DATE</b>			 <hr/> <b>ARLENE P. BLUTH, J.S.C.</b>
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE