

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

770

CA 24-00420

PRESENT: WHALEN, P.J., LINDLEY, MONTOUR, NOWAK, AND KEANE, JJ.

IN THE MATTER OF JOSEPH ROESCH,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

OFFICE OF THE EXECUTIVE DIRECTOR, ACTING
EXECUTIVE DIRECTOR OF STARC-OAKVIEW, NEW YORK
STATE OFFICE OF MENTAL HEALTH AND OFFICE OF
COMMISSIONER FOR OFFICE OF MENTAL HEALTH,
RESPONDENTS-RESPONDENTS.

JOSEPH ROESCH, PETITIONER-APPELLANT PRO SE.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (JONATHAN D. HITSOUS OF
COUNSEL), FOR RESPONDENTS-RESPONDENTS.

Appeal from a judgment (denominated order) of the Supreme Court, Oneida County (James P. McClusky, J.), entered October 25, 2023, in a proceeding pursuant to CPLR article 78. The judgment dismissed the petition.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed without costs.

Memorandum: Petitioner, who is civilly confined at a facility operated by respondent New York State Office of Mental Health (OMH) pursuant to article 10 of the Mental Hygiene Law, commenced this CPLR article 78 proceeding seeking to annul a determination that denied his objections to restrictions placed on his ability to correspond with certain individuals, including incarcerated individuals and registered sex offenders, as well as to a requirement that his nonlegal outgoing mail be left unsealed so that his treatment team could ensure that he was not corresponding with individuals on the restricted list. Supreme Court properly dismissed the petition.

We reject petitioner's contention that the restrictions violate Mental Hygiene Law § 33.02 (b). We further reject petitioner's contention that the determination is arbitrary and capricious (see generally *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 230-231 [1974]). "In the context of civilly confined individuals, administrative decisions . . . will not be considered arbitrary or capricious when they have 'a sound basis in reason and [are] supported by legitimate concerns regarding the security of the

institution and the welfare of the residents therein' " (*Matter of Pratt v New York State Off. of Mental Health*, 153 AD3d 1065, 1066 [3d Dept 2017]; see *Matter of Brown v Sawyer*, 85 AD3d 1614, 1615-1616 [4th Dept 2011]). Here, petitioner's medical records provide a rational basis to support OMH's conclusion that the restrictions were imposed for legitimate treatment reasons to support petitioner's welfare.

We have reviewed petitioner's remaining contentions and conclude that none requires reversal or modification of the judgment.