

Matter of Carson v Williams

2007 NY Slip Op 30047(U)

March 5, 2007

Supreme Court, Seneca County

Docket Number: 0038905

Judge: Dennis F. Bender

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STATE OF NEW YORK
SUPREME COURT COUNTY OF SENECA

In the Matter of the application of
MICHAEL CARSON,
DIN #: 04-R-3724,

Petitioner

DECISION AND ORDER

-against-

Index No. 38905

MELVIN WILLIAMS, SUPERINTENDENT OF
WILLARD DRUG TREATMENT CAMPUS, and
the NYS DIVISION OF PAROLE,
Respondents

The Petitioner herein filed this proceeding challenging the extension of his proposed release date from the Willard Drug Treatment Campus program from January 9, 2007 to April 3, 2007. He alleges the Willard personnel were biased, and that his due process rights were violated by the recommended extension. He also alleges the recommended extension was not based upon substantial evidence.

The Petitioner argues any extension of his placement is a breach of contract. He believes the Willard staff acts arbitrarily and capriciously in choosing who they release from the program, but did not provide specific allegations in support of such claim. He complains there is no record of the ERC meeting, so it is hard to preserve an appellate record. He also complains of the Willard staff's treatment of the parolees in general is degrading and cruel.

As to the Petitioner's claims that the Willard personnel were biased, that his due process rights were violated by the recommended extension of his placement and that the recommended extension was not based upon substantial evidence, the same are not supported by the allegations in his petition and/or properly before this Court. As far as the basis for the recommendation that his placement be extended, he will have a full opportunity to challenge the factual basis for that recommendation at the time of his final parole revocation hearing. If he is unsuccessful in his arguments at that time, he must first exhaust his administrative remedies by appealing the final parole revocation determination and he could thereafter file an Article 78 proceeding with this

Court. The Petitioner has failed to provide any specific factual data to support his claim of Willard personnel bias.

The argument that any extension of the Petitioner's placement at Willard is a breach of contract also lacks merit. Clearly, the Petitioner was aware that his placement at Willard was subject to his successful completion of the program. Weekly evaluations submitted by the Respondent in this matter show the Petitioner had had poor progress in the program and that there was indeed a rational basis for offering him an extension of the program in order to avoid being revoked on the terms of his parole and risk incarceration.

The Court does note, however, that it would be preferable that Respondents put in the parolee handbook (Exhibit 2 to the Verified Answer) and the Memo of Agreement that Willard enrollees sign, information about the ERC and that an extension of placement at Willard is possible.

As far as there being no recording of the ERC meeting, it does not appear necessary to have one. As noted, the Petitioner will have full opportunity to present his arguments attacking the basis for the ERC's conclusion that his placement at Willard should be extended and that proceeding must be recorded. Executive Law § 259-i(6).

Lastly, the Petitioner's allegations that the Willard staff treat the parolees, in general, in a degrading and cruel and inhuman treatment manner has not been sufficiently plead. The Petitioner does not allege in any manner how he was specifically mistreated. Nor does he specifically allege mistreatment of any other parolees during his stay at Willard.

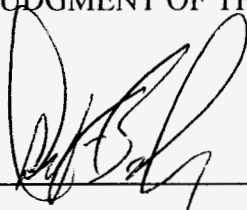
This Court has previously ruled that the manner in which DOCS and the Division of Parole run Willard is in fact a decision and, thus, subject to judicial review. (People ex rel. Reginald Martin v. Superintendent Williams, Index 36507; 2/1/06) The Respondent is required to respect the parolee's constitution right to be free of cruel and inhuman treatment. The Eighth Amendment "...embodies broad and idealistic concepts of dignity; civilized standards, humanity

and decency...". People v. Notey, 72 NY 2d 279, 283 quoting from Jackson v. Bishop, 404 F.2d 571, 579 (8th Cir., 1968). Here, however, as noted, the Petitioner simply fails to make any specific allegations of how he was affected by any purported cruel and inhuman treatment by Willard personnel and therefore, his claim fails.

The petition is in all respects denied and dismissed without additional costs.

THIS CONSTITUTES THE DECISION AND JUDGMENT OF THE COURT.

DATED: March 5, 2007



HON. DENNIS F. BENDER
Acting J.S.C.