

Matter of Rodriguez v Goord

2007 NY Slip Op 30220(U)

March 16, 2007

Supreme Court, Albany County

Docket Number: 0066482

Judge: Joseph C. Teresi

Republished from New York State Unified Court
System's E-Courts Service.

Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In the Matter of the Application of
NELSON RODRIGUEZ, 87A1807,

Petitioner,

-against-

DECISION and ORDER
INDEX No. 6648-06
RJI NO.: 01-06-ST7176

GLENN S. GOORD, Commissioner, New York State
Department of Correctional Services; JOHN NUTALL,
Deputy Commissioner of Program, DOCS; DEBORAH
CATLIN, ASAT Counselor, DOCS; LORRAINE COHEN,
ASAT/CASAT Counselor, DOCS; WILLIAM D. BROWN,
Superintendent of Eastern Correctional Facility; K. LAPOLT,
Deputy Superintendent of Program at Eastern Correctional
Facility; A. SIANO, Eastern Corrections Senior Facility and
ASAT Counselor; Easter Correctional Facility ASAT
COUNSELOR(S) KYLE TOMLIN, ROBERT CASERTA,
MR. LOCKWOOD, MR. TINGLE,

Respondents.

Supreme Court Albany County, Special Term, February 16, 2007.
Assigned to Justice Joseph C. Teresi

APPEARANCES:

Nelson Rodriguez
87-A-1807
Petitioner Pro Se
Eastern NY Correctional Facility
Box 338
Napanoch, NY 12458-0338

David L. Cochran, Esq.
Assistant Attorney General
Attorney for Respondent
The Capital
Albany, New York 12224-0341

TERESI, J.:

Petitioner, Nelson Rodriguez, commenced this Article 78 proceeding challenging the final determination of the Inmate Grievance Program, Central Office Review Committee, which denied Petitioner's claim that he did not need to participate in Alcohol and Substance Abuse Treatment ("ASAT"). Respondent opposes the motion with an answer.

Petitioner filed the instant appeal after the Central Office Review Committee's final determination of July 5, 2006 upheld the Superintendent's decision denying Petitioner's grievance. In his grievance, Petitioner requested that (1) ASAT counselors explain to him the method of evaluating who needs to participate in ASAT and (2) any refusals to take ASAT be removed from his record. ASAT Counselors Robert Caserta and A. Siano responded to Petitioner's grievance, asserting that Petitioner needed ASAT and stating: "Upon admission into D.O.C.S. [Petitioner] admitted to using marijuana and Angel Dust. In addition, Rodriguez's Pre sentence report indicates that he admits to drinking alcohol in excess and using heroin in 1977 and 1978."

Petitioner contends that because he has not used drugs in the twenty years in which he has been incarcerated and because he completed the W.A.R. on Drugs program in 1994, he should not be required to participate in ASAT. Petitioner claims that inmates who have abstained from drug use for after ten years or more should be exempt from a policy requiring inmates who have a history of drug or alcohol use to participate in ASAT. Petitioner also claims that the requirement that he participate in ASAT is not medically justified. He claims that the standard employed at Eastern New York Correctional Facility for deciding whether an inmate should participate in ASAT is a statutory and regulatory violation, and is arbitrary and capricious. Finally, Petitioner

claims that the standard of review this court should use is a determination of whether an agency decision is arbitrary and capricious.

In July 2004, the Department of Correctional Services adopted a policy under which all inmates assessed with a need for substance abuse treatment are required to complete a Department-approved substance abuse treatment program, regardless of a period of abstinence. This policy is different from the former policy, which exempted inmates whose records showed they had abstained from alcohol or drug use for a period of ten years or more. The new policy was adopted in response to the Diagnostic and Statistical Manual of Mental Disorders-IV (“DSM-IV”), which indicates that substance abuse is generally a chronic condition and people who suffer from substance dependence may, during period of abstinence, deceive themselves into believing that they will not have future substance abuse problems.

This court is limited in its review of a final administrative determination. “It is not the function of judicial review in an article 78 proceeding to weigh the facts and merits de novo and substitute its judgment for that of the body reviewed, but only to determine if the action sought to be reviewed can be supported on any reasonable basis.” Matter of Clancy-Cullen Storage Co. V. Board of Elections of the City of New York, 98 A.D.2d 635, 636 (1st Dept. 1983) (quoting Matter of Kayfield Constr. Corp. v. Morris, 15 A.D.2d 373, 378 (1st Dept. 1962)). The administrative determination will not be disturbed unless the petitioner shows that it is “wholly arbitrary or without any rational basis.” Cove v. Sise, 71 N.Y.2d 910, 912 (1988). To overcome the presumption of regularity that accompanies an administrative determination, petitioner has the burden over submitting “factual allegations of an evidentiary nature or other competent evidence tending to establish his or her entitlement to the requested relief.” Matter of Rodriguez v. Goord,

260 A.D.2d 736, 736-37 (3d Dept. 1999); see also Matter of Barnes v. La Vallee, 39 N.Y.2d 721, 722 (1976).

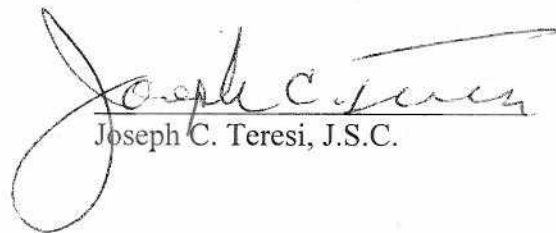
After a full review of this record, this Court finds that Petitioner has failed to demonstrate any statutory or regulatory violation on the part of Respondent, and that the determination of the Central Office Review Committee denying Petitioner's grievance was based on Petitioner's record and the Department of Correctional Services' policy, which constitutes a clear and rational basis, and was neither arbitrary or capricious. Therefore, the determination will be upheld and the petition is dismissed.

All papers, including this Decision and Order are being returned to the attorneys for the Respondent. The signing of this Decision and Order shall not constitute entry or filing under CPLR 2220. Counsel are not relieved from the applicable provisions of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: March 16, 2007

Albany, New York


Joseph C. Teresi, J.S.C.

Papers Considered:

1. Order to Show Cause dated October 24, 2006.
2. Verified Petition of Nelson Rodriguez dated September 21, 2006 with Attached Exhibits A-I.
3. Answer dated February 9, 2007 and Affirmation of David L. Cochran, Esq. with Attached Exhibits A- I.
4. Affidavit of Dwight Bradford dated January 24, 2007 with Attachments.
5. Reply of Nelson Rodriguez dated March 3, 2007.