

Matter of Gonzalez v LeClair
2007 NY Slip Op 30527(U)
March 30, 2007
Supreme Court, Albany County
Docket Number: 0755106/2007
Judge: George B. Ceresia
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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In The Matter of GONZALO GONZALEZ,

Petitioner,

-against-

LUCIEN J. LECLAIR, Commissioner,
Department of Correctional Services,

Respondents,

For A Judgment Pursuant to Article 78
of the Civil Practice Law and Rules.

Supreme Court Albany County Article 78 Term
Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding
RJI # 01-06-ST7270 Index No. 7551-06

Appearances: Gonzalo Gonzalez
Inmate No. 02-B-2571
Petitioner, Pro Se
Cayuga Correctional Facility
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State of New York
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The Capitol
Albany, New York 12224
(Bridget E. Holohan,
Assistant Attorney General
of Counsel)

DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

The petitioner, an inmate at Cayuga Correctional Facility, has commenced the instant CPLR Article 78 proceeding to review a determination dated September 1, 2006 in which he was denied nine months and twelve days of good time allowance by reason of his alleged refusal to participate in a sex offender program. The petitioner was convicted of JO- Rape 1st degree and JO-Sodomy 1st degree, to be served consecutively. The petitioner was released on parole in August 2001 but parole was revoked in September 2005, after he pleaded guilty to a charge of soliciting a prostitute.

The petitioner maintains that he has already completed a sex offender program, and did not refuse to take a sex offender program as respondent contends. He indicates that on April 24, 2006 Corrections Counselors Pundt and Oberg requested that he sign a form which recited that he refused to participate in a sex offender program by failing to take responsibility for his crimes. He indicates that he declined to sign the form since he never denied responsibility for his crimes. He asserts that he has accepted responsibility for his crimes, and that he has applied to participate in sex offender programming.

Respondent, in his opposition to the petition, has submitted the affidavit of Corrections Counselor George Pundt. Mr. Pundt indicates that his duties include screening and interviewing potential candidates for the sex offender program. According to Mr. Pundt, the petitioner had not taken a sex offender program while in the custody of the New York State Department of Correctional Services. He indicates that one of the prerequisites for the sex offender program is that the inmate take responsibility for his or her crimes and, most

importantly, for sex offenses. If an inmate refuses to take responsibility either during the screening process or after admission to the program, such refusal is deemed a refusal to accept programming. Mr. Pundt indicates that a review of his files reveals that he interviewed the petitioner on April 24, 2006 regarding his readiness to participate in the Sex offender program. While he has no independent recollection of the interview, Mr. Pundt indicates that the record reveals that the petitioner refused to accept responsibility for his prior crimes (rape 1st degree and sodomy 1st degree), or responsibility for the parole violation charge (soliciting a prostitute).

In the Court's view, the requirement that an inmate acknowledge responsibility for his or her crimes before entering the sex offender program has a rational basis. This is a first step on the part of the inmate to demonstrate that he or she would be receptive to therapy and/or counseling. It would serve no useful purpose, and would certainly not benefit the inmate, to permit the inmate to participate in a such a program where he or she denies culpability. The Court finds that the respondent adequately documented petitioner's refusal to participate in the sex offender program.

The Court is mindful that determinations with regard to good time allowances are not subject to review so long as they are made in accordance with the law (see, Correction Law § 803 [4]; see also, Matter of Staples v Goord, 263 AD2d 943, lv denied 94 NY2d 755). "TAC's function is to suggest the amount of good time allowance to be awarded based not upon the application of 'any automatic rule', but upon the inmate's entire institutional

experience” (Matter of Staples v Goord, 263 AD2d 943, 944 lv denied 94 NY2d 755, quoting Matter of Amato v Ward, 41 NY2d 469, 473-474, quoting 7 NYCRR 261.3 [e]). It is well settled that good time may be withheld by reason of an inmate’s refusal to participate in counseling (see Matter of Staples v Goord, *supra*; Matter of Jones v Coombe, 269 AD2d 632, lv denied 95 NY2d 755[3rd Dept., 2000]; Matter of Benjamin v New York State Department of Correctional Services, 19 AD3d 832, 833 [3rd Dept., 2005]; People v Jones, 35 AD3d 951, 952 [3rd Dept., 2006]).

The Court concludes that the determination to deny good time credit had a rational basis, and was made in accordance with the law. The Court has reviewed and considered petitioner’s remaining arguments and contentions and finds them to be without merit.

The Court finds that the determination was not made in violation of lawful procedure, is not affected by an error of law, and is not irrational, arbitrary and capricious, or an abuse of discretion. The Court concludes that the petition must be dismissed.

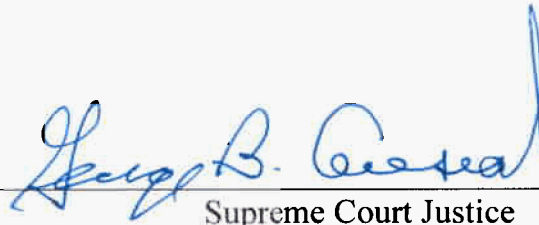
Accordingly it is

ORDERED and ADJUDGED, that the petition be and hereby is dismissed.

This shall constitute the decision, order and judgment of the Court. All papers are returned to the attorney for the Respondent who is directed to enter this Decision/Order/Judgment without notice and to serve petitioner with a copy of this Decision/Order with notice of entry.

ENTER

Dated: March 30, 2007
Troy, New York

A handwritten signature in blue ink, reading "George B. Ceresia, Jr.", is written over a horizontal line.

Supreme Court Justice
George B. Ceresia, Jr.

Papers Considered:

1. Order To Show Cause dated November 20, 2006, Petition, Supporting Papers and Exhibits
2. Answer dated January 11, 2007
3. Affirmation of Bridget E. Holohan, Esq., dated January 11, 2007
4. Petitioner's Rebuttal To Motion For Dismissal dated January 29, 2007