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| Matter of Bailey v Nuttall |
| 2007 NY Slip Op 30568(U) |
| March 30, 2007 |
| Supreme Court, Albany County |
| Docket Number: 0754906/2007 |
| Judge: George B. Ceresia |
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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In The Matter of ADRIAN BAILEY,

Petitioner,

-against-

JOHN NUTTALL, Deputy Commissioner,
Dept. of Correctional Services; L. Jubert,
Deputy Supt. Security, Bare Hill C.F.;
L. Stearns, Deputy Supt. Programs, Bare
Hill C.F.; John Donelli, Superintendent,
Bare Hill C.F.,

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-ST7283 Index No. 75-49-06

Appearances: Adrian Bailey
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DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

The petitioner, an inmate at Bare Hill Correctional Facility, has commenced the instant CPLR Article 78 proceeding to review determinations which denied grievances he had filed in connection with a requirement that he complete the Alcohol and Substance Abuse Training (“ASAT”) program. On December 6, 2005 the petitioner requested transfer to Arthurkill Correctional Facility to participate in a human services program conducted at that facility. By memorandum dated December 22, 2005, Corrections Counselor S. Flanagan denied the request on grounds that the petitioner was not eligible for an area-of-preference transfer by reason of his refusal to take the ASAT program. On May 24, 2006 the petitioner filed a grievance (Grievance # BRL-8426-06) stating that he had completed a substance abuse program during his previous incarceration. Upon denial of the grievance by the Inmate Grievance Review Committee, the petitioner appealed the determination to the Superintendent of Bare Hill Correctional Facility. On June 12, 2006 the Superintendent issued the following determination:

“This grievance was previously addressed and denied by the Central Office Review Committee under the grievance number MO-7967-03, dated 6/6/03.

“The grievant’s ASAT need was established due to the grievant’s admission during his prior incarceration to a history of drug abuse, specifically, alcohol, cocaine and crack. He has not successfully completed a department approved substance abuse treatment program (ASAT) and therefore retains the need

from his past incarceration, even if substance abuse was not documented as part of his current instant offense. Contrary to what grievant asserts, he did not successfully complete a department recognized substance abuse treatment program during his last incarceration. Department policy is that ASAT is the only program that satisfies an inmate's need for substance abuse treatment.

“The grievant's requested action is denied.”

The petitioner appealed the Superintendent's decision to the Central Office on June 16, 2006.

On July 5, 2006 CORC affirmed the Superintendent's decision in a determination which recited as follows:

“Upon full hearing of the facts and circumstances in the instant case, the action requested herein is hereby denied. CORC upholds the determination of the Superintendent for the reasons stated.

“CORC cites the prior CORC decision, MO-7967-03, dated 7/9/03, which states, in part, i.e.:

‘CORC asserts that ASAT is the Department program that satisfies the substance abuse needs for inmates. CORC also notes that the other programs taken by the grievant are recognized by the Department and do make a valuable contribution in helping inmates better understand and deal with substance abuse. These programs are not, however, substitute programs for participation in ASAT.’

“CORC has determined that an existing mechanism, with a well defined appeal procedure, responds to challenges to the accuracy of information, and is set forth in NYCRR, Title 7, Sections 5.50-5.52. Accordingly, the grievant may direct his request for expunction to the custodian of the records at the facility, if dissatisfied with the determination, the grievant may appeal the

results of that coordinator's decision to the Inspector General.

“CORC notes that Directive #4040, section VI. B states that no reprisals of any kind be taken against an inmate or employee for good faith utilization of the grievance procedure. An inmate may pursue a complaint that a reprisal occurred through the grievance mechanism.”

Among the many arguments set forth in the petition, the petitioner maintains that the Department of Correctional Services (hereinafter “DOCS”) has departed from its own operational procedures, in that he was classified as not requiring substance abuse treatment when he re-entered the state correctional system in 1996. He indicates that this classification continued for seven years thereafter, until “one disingenuous D.O.C.S. employee responsible for meeting a quota, altered the record”. He points out that, while incarcerated, he obtained an Associates Degree in Applied Science from Sullivan County Community College, which included course credit for courses in drug use and abuse, alcoholism, counseling and social problems. He indicates that he has been drug free for almost two decades, and points out that he has received an earned eligibility certificate. He maintains that the substance abuse program which he completed during his prior incarceration should be sufficient to satisfy any current requirement for ASAT.

Notably, and as pointed out by the respondent, this is petitioner's second grievance for the same relief. It is well settled that DOCS “has considerable discretion in determining the programming needs of inmates” (Matter of Gomez v Goord, 34 AD3d 963, 964 [3rd Dept., 2006]). In this instance, DOCS has identified such a need. The determination is based

upon facts underlying and attendant to petitioner's prior incarceration, coupled with the fact that the petitioner, although having participated in other drug treatment programs, has not participated in ASAT¹. Moreover, even if employees of DOCS had, on prior occasions, informed the petitioner that he did not need to participate in ASAT, this does not estop or prevent DOCS, in the exercise of its sound discretion, from subsequently determining that ASAT is required (see Advanced Refractory Technologies v Power Auth. of State of NY, 81 NY2d 670, 677, quoting D'Angelo v Triborough Bridge & Tunnel Auth., 65 NY2d 714, 715-716).

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.

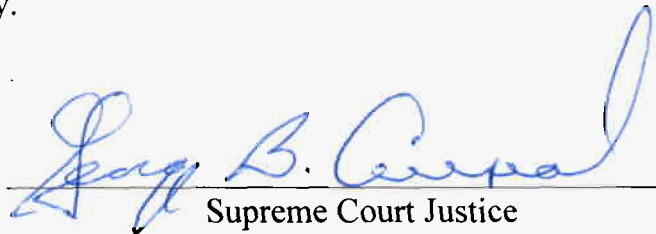
This shall constitute the decision, order and judgment of the Court. All papers are returned to the attorney for the Respondent who is directed to enter this Decision/Order/Judgment without notice and to serve petitioner with a copy of this

¹In addition, respondent has submitted documentary evidence which establishes that the petitioner did not complete the prior ASAT program.

Decision/Order with notice of entry.

ENTER

Dated: March 30, 2007
Troy, New York



Supreme Court Justice
George B. Ceresia, Jr.

Papers Considered:

1. Order To Show Cause dated November 20, 2006, Petition, Supporting Papers and Exhibits
2. Respondents' Answer dated January 11, 2007