STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In The Matter of SHAWN GREEN,

Petitioner,

-against-

Donald Selsky, Director, Inmate Disciplinary Program; Thomas G. Eagen, Director, Inmate Grievance Program,

Respondent,

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-ST6938 Index No. 4047-06

Appearances: Shawn Green
Inmate No. 97-A-0801
Petitioner, Pro Se
Southport Correctional Facility
P.O. Box 2000
Pine City, New York 14871

Andrew M. Cuomo
Attorney General
State of New York
Attorney For Respondent
The Capitol
Albany, New York 12224
(Steven J. Schwartz,
Principal Attorney
of Counsel)

DECISION/ORDER

George B. Ceresia, Jr., Justice

The petitioner, an inmate currently at Southport Correctional Facility, commenced the instant CPLR Article 78 proceeding to review two separate inmate grievance determinations, and an inmate disciplinary determination. The petition with respect to one of the grievances and the disciplinary determination has been dismissed.

The remaining grievance issue challenges a determination which prohibited petitioner from wearing his hair in braids. The Superintendent's decision stated "By previous CORC direction in an earlier grievance, only Rastafarians are permitted to wear dreadlocks. CORC decisions have the effect of directives." The determination was affirmed by the Central Office Review Committee, stating the additional ground that petitioner's hair style is limited to that allowed by Directive 4914, Section III, B-2, as petitioner's designated religion did not require any other hair style. Directive 4914, Section III, B-2, as revised April 25, 2005, specifically prohibits braids other than corn rows, which must be woven close to the scalp and may not extend below the hairline.

The standard of judicial review in an article 78 proceeding challenging a determination of a grievance is limited to "whether the record as a whole provides a rational basis for the underlying determination, which will not be disturbed absent a showing that it is 'wholly arbitrary or without any rational basis' (Cove v Sise, 71 NY2d 910, 912; see, Matter of Curtiss v Angello, 269 AD2d 675)." (Woodward v Governor's Office of Employee Relations, 279 AD2d 725, 726-727 [3d Dept 2001]). Moreover, administrative determinations carry a presumption of regularity (see Altamore v Barrios-Paoli, 90 NY2d

378, 386 [1997]; Nehorayoff v Mills, 282 AD2d 932 [3d Dept 2001]). The petitioner must overcome such presumption by submission of "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 AD2d 736, 736-737 [3d Dept 1999]; see also Matter of Barnes v La Vallee, 39 NY2d 721 [1976]; Matter of Tebout v Goord, 290 AD2d 833 [3d Dept 2002]; Matter of Vandermark-Crayne v New York State Dept. of Civ. Serv., 225 AD2d 979 [3d Dept 1996]; Matter of Reynoso v Le Fevre, 199 AD2d 886 [3d Dept 1993]; Matter of Bogle v Coughlin, 173 AD2d 992 [3d Dept 1991]); Matter of Malik v Berlinland, 158 AD2d 836 [3d Dept 1990]). Conclusory assertions do not meet that burden and fail to overcome the presumption of regularity.

The petition itself does not state any factual or legal basis for the challenge. Petitioner's memorandum of law contends that there is a difference between dreadlocks and braids. However, while the Superintendent's determination was limited to dreadlocks, the Central Office Review Committee determination addressed braids by reference to Directive 4914. Since such directive specifically prohibits braids, other than short corn rows, and there are no stated exceptions, it is irrelevant that there is a difference between braids and dreadlocks. Moreover, the petitioner does not allege that wearing braids is an essential part of the practice of his religion (cf. Correctional Law § 610 (1); (Matter of Cancel v Goord, 278 AD2d 321, 323 [2d Dept 2000]; Matter of Malik v Coughlin, 158 AD2d 833, 834 [3d Dept 1990]) nor has petitioner offered anything other than entirely conclusory assertions in

his memorandum of law that the directive is not reasonably related to legitimate security concerns. As such, petitioner has failed to show that the determination is wholly arbitrary and without any rational basis.

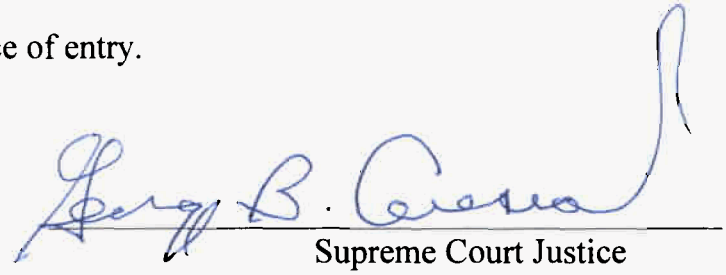
Accordingly it is

ORDERED and ADJUDGED, that the petition is hereby 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: June 25, 2007
Troy, New York



Supreme Court Justice
George B. Ceresia, Jr.

Papers considered:

Order to Show Cause dated June 30, 2006;
Petition verified June 2, 2006; Memorandum of Law dated June 2, 2006; Exhibit;

Answer verified November 16, 2006; Affirmation of Steven H. Schwartz, Esq. dated November 16, 2006 with Exhibits A-F annexed;

Reply sworn to November 22, 2006;

Letter from Steven H. Schwartz, Esq. dated April 12, 2007 with Exhibit annexed.