

**Matter of Abdullah v Donelli**

2007 NY Slip Op 33790(U)

November 19, 2007

Supreme Court, Franklin County

Docket Number: 0000723/2007

Judge: S. Peter Feldstein

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**STATE OF NEW YORK  
SUPREME COURT**

**COUNTY OF FRANKLIN**

**X**

In the Matter of the Application of  
**JARQUAY AZZAM ABDULLAH, #92-A-0515,**  
Petitioner,

For a Judgment Pursuant to Article 78  
Of the Civil Practice Laws and Rules

**DECISION AND JUDGMENT  
RJI #16-1-2007-0299.072  
INDEX # 2007-0723  
ORI #NY016015J**

-against-

**JOHN J. DONELLI**, Superintendent,  
Bare Hill Correctional Facility,  
**LAWRENCE STEARNS**, Deputy Superintendent,  
of Programs, Bare Hill Correctional Facility, and  
**BRIAN FISHER**, Commissioner, New York  
State Department of Correctional Services,  
Respondents.

**X**

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the unverified petition of Jarquay Azzam Abdullah, stamped as filed in the Franklin County Clerk's office on May 30, 2007. By Decision and Order dated June 11, 2007, the Court denied petitioner's request for the issuance of an Order to Show Cause but granted leave for the petitioner to re-request such issuance upon the filing of a proper verification on or before July 30, 2007. Rather than simply filing a verification of his existing petition, the petitioner filed an Amended Petition, verified on July 7, 2007, in the Franklin County Clerk's office on July 11, 2007. Petitioner, who is an inmate at the Bare Hill Correctional Facility, is challenging the January 29, 2007, decision of the commissioner's designee affirming the recommendation of the Time Allowance Committee (TAC) at the Bare Hill Correctional Facility to withhold all of his potentially available good time. The Court issued an Order to Show Cause on July 13, 2007, and has

received and reviewed respondents' Answer and Return, verified on August 24, 2007, as well as respondents' Letter Memorandum of August 24, 2007. The Court has also received and reviewed petitioner's Reply thereto, filed in the Franklin County Clerk's office on September 18, 2007.

On January 9, 1992, the petitioner was sentenced in Supreme Court, Bronx County, to an indeterminate sentence of imprisonment of 8 $\frac{1}{3}$  to 25 years upon his conviction of the crime of Manslaughter 1<sup>o</sup>. After applying eight years and four months of potentially available good time, the petitioner's conditional release date was originally established as May 17, 2007. The petitioner had six months of good time recommended lost as the result of a Tier III Superintendent's Hearing concluded in February of 1999. Approximately four months before petitioner's originally established conditional release date the TAC met to consider the petitioner's file and decided upon a recommendation as to the amount of good behavior allowance to be granted. 7 NYCRR §261.3. On January 9, 2007, the petitioner was notified that the TAC had determined that there may be sufficient reason not to recommend the granting of all of his potentially available good time and that a TAC hearing had been scheduled for January 18, 2007. 7 NYCRR §261.4. The stated reason for such hearing was the petitioner's alleged refusal of ASAT (Alcohol and Substance Abuse Treatment) and ART (Aggression Replacement Therapy) programming. Following the hearing, on January 22, 2007, the TAC recommended to withhold all of petitioner's potentially available good time. The stated reasons for the recommendation were as follows: "Formal Hearing - all good time is taken due to inmate's refusals for ASAT and ART. Upon successful completion of these, he can request reconsideration." The TAC recommendation was confirmed by the

Superintendent of the Bare Hill Correctional Facility on that same date and ultimately affirmed by the Commissioner's designee on January 29, 2007. The proceeding ensued.

Good time allowances “. . . may be granted for good behavior and efficient and willing performance of duties assigned or progress and achievement in an assigned treatment program, and may be withheld, forfeited or canceled in whole or in part for bad behavior, violation of institutional rules or failure to perform properly in the duties or program assigned.” Correction Law §803(1)(a). Inmates do not have the right to demand or require the good time allowances authorized under Correction Law §803 and “[t]he decision of the commissioner of correctional services as to the granting, withholding, forfeiture, cancellation or restoration of such allowances shall be final and shall not be reviewable if made in accordance with law.” Correction Law §803(4). *See Edwards v. Goord*, 26 AD3d 659 and *Thomas v. Time Allowance Committee*, 4 AD3d 637. Case law suggests that a determination to withhold good time may be overturned if such determination is found to be irrational. *See Burke v. Goord*, 273 AD2d 575, *app. dis, lv den* 95 NY2d 898 and *Jones v. Coombe*, 269 AD2d 632, *lv den* 95 NY2d 755. “The committee shall not recommend the granting of the total allowance authorized by law or the withholding of any part of the allowance in accordance with any automatic rule, but shall appraise the entire institutional experience of the inmate and make its own determination.” 7 NYCRR §261.3(c). *See Amato v. Ward*, 41 NY2d 469.

The petitioner purports to challenge the alleged lack of medical/therapeutic underpinnings supporting the recommendation that he complete the ASAT program. In this regard the petitioner alleges as follows: “At no time did a institutional physician or a licensed or certified health practitioner diagnose any illness or ailment, or prescribe any

treatment for petitioner, nor is petitioner classified as a narcotic addict or one who is in imminent danger of becoming dependant upon such drugs or one who is dependant upon a drug is defined by Mental Hygiene Law; nor does NYSDOCS have the authority to Identify a Need for ASAt absent a proper evaluation by a trained professional at the time of reception or absent a 'dirty urine' or absent it being mandated by a sentencing judge . . ." The Court, however, rejects any suggestion that it was the proper roll of the TAC to determine whether or not the long-standing recommendations that petitioner participate in the ASAT (and ART) programs had sufficient medical/therapeutic underpinnings. The inmate grievance program set forth in 7 NYCRR Part 701 creates a procedure to review complaints within the prison system. It appears to this Court that the subject matter of petitioner's concerns regarding the alleged improper ASAT recommendation could have been an appropriate subject for an inmate's proceeding. The petitioner, for his part, alleges that he did attempt to initiate an inmate grievance proceeding but that officials at the Bare Hill Correctional Facility refused to process his grievance complaint.

The Court first observes that petitioner's September 9, 2005, grievance complaint merely asserts a challenge to the raising of his security classification and August, 2005, transfer to the Bare Hill Correctional Facility as the result of his long-standing refusal to participate in the ASAT program at the Camp Gabriels Correctional Facility. Nothing in petitioner's grievance complaint directly, or indirectly, suggests a challenge to the medical/therapeutic underpinnings associated with the recommendation that he participate in the ASAT program. In any event, the petitioner's grievance proceeding was dismissed by the Inmate Grievance Resolution Committee pursuant to the provisions of 7 NYCRR §701.5(b)(4)(i)(a) and such dismissal was upheld by the facility Inmate

Grievance Program supervisor acting pursuant to 7 NYCRR §701.5(b)(4)(iii). There is nothing in the record, moreover, to suggest that the petitioner challenged the action of the Inmate Grievance Program supervisor by filing a separate grievance also pursuant to 7 NYCRR §701.5(b)(4)(iii).

Based upon all of the above, it is, therefore, the decision of the Court and it is hereby

**ADJUDGED**, that the petition is dismissed.

**Dated:** November 19 , 2007, at  
Indian Lake, New York.

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S. Peter Feldstein  
Acting Supreme Court Justice