

**Matter of Abdullah v Donelli**

2009 NY Slip Op 30588(U)

March 17, 2009

Supreme Court, Franklin County

Docket Number: 2007-0930

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 #16-1-2007-0376.092  
INDEX # 2007-0930  
ORI #NY016015J**

-against-

**JOHN J. DONELLI**, Superintendent,  
Bare Hill Correctional Facility, and  
**BRIAN FISHER**, Commissioner, NYS  
Department of Correctional Services,

Respondents.

**X**

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the petition of Jarquay Azzam Abdullah, originally filed in the Franklin County Clerk's office on July 11, 2007. By Decision and Order dated July 23, 2007, the Court denied petitioner's request for the issuance of an order to show cause but granted leave for petitioner to re-request such issuance upon the filing of a proper verification. On August 29, 2007, the petitioner apparently filed a second petition in the Franklin County Clerk's office. The second petition was identical to the original petition except for the fact that it was verified on July 7, 2007. Petitioner, who is an inmate at the Bare Hill Correctional Facility, is challenging the results of three inmate grievance proceedings (BRL-8926-07, BRL-9015-07 and BRL-9140-07), as set forth in final determinations of the Inmate Grievance Program Central Office Review Committee (CORC) dated March 7, 2007, April 11, 2007, and June 20, 2007, respectively. The Court issued an Order to Show Cause on May 19, 2008, and has received and reviewed respondents' Answer and Return, verified on June 27, 2008, as well as respondents' Letter Memorandum of June 27, 2008.

The Court has received no Reply thereto from the petitioner. By a Letter Order dated February 24, 2009, the Court directed respondents to cite/disclose the source of a quote contained in the June 20, 2007, final CORC decision with respect to grievance BRL-9015-07. In response thereto the Court has received and reviewed counsel's March 6, 2009, letter, with an exhibit.

**BRL-8926-07**

By grievance dated January 7, 2007, petitioner, who is apparently the Muslim Inmate Facilitator at the Bare Hill Correctional Facility, challenged the cancellation of Islamic studies classes on December 24, 2006, and January 7, 2007. According to petitioner, "[w]hen Iman Ahmad is not present, even with a callout submitted and an approved facilitator present, class gets cancelled . . ." On January 8, 2007, Lawrence Stearns, Dep. Supt./Programs, Bare Hill Correctional Facility, issued a memorandum announcing the following:

"Iman Ahmed is currently on an extended vacation. While he is away Muslim inmate facilitated worship or study groups will be allowed once per week (see Directive 4202, Section f.2.a.(3)(iv)(b)). This means that the Sunday (formerly Tuesday) and Thursday evening Muslim study groups will not meet. Inmate Facilitated Friday Jum'a worship will be allowed.

As usual, Wednesday afternoon Shi'ite study is allowed under the direct supervision of a facility Chaplin. These meetings are not inmate facilitated."

DOCS Directive 4202, relating to "Religious Programs and Practices," provides in relevant part that "[i]nmate facilitated meetings or congregate worship may not be held more than once per week without the approval of the Superintendent after consultation with the Director at of Ministerial and Family Services."

Petitioner responded to the January 8, 2007, memo by filing an additional grievance, dated January 25, 2007. The additional grievance was subsequently consolidated with the January 7, 2007, grievance and the similar grievance of a different inmate into BRL-8926-07. In his January 25, 2007, grievance complaint petitioner asserted that although Muslim study groups have been cancelled by Deputy Superintendent Stearns while Iman Ahmed is on vacation, the Deputy Superintendent “. . . allowed Shi’ite study groups. This constitutes discrimination and may also be a violation of the Establishment Clause of the 1<sup>st</sup> Amendment.”

An investigative report prepared in connection with Grievance BRL-8926-07 reported that under the circumstances the Ministerial Program Coordinator had concluded “. . . that the facility was well within its jurisdiction to limit one [inmate-] facilitated meeting or - congregation worship per week.” In addition, the investigative report concluded that there was no indication Muslim study group was cancelled on December 24, 2006, but that the study group was, in fact, cancelled on January 7, 2007, due to facility staffing concerns. The Inmate Grievance Resolution Committee (IGRC) agreed with the findings of the investigative report and determined that discrimination concerns should be addressed to the facility superintendent for further clarification.

By decision dated February 2, 2007, the facility superintendent agreed with the IGRC and found no grounds to support the discrimination claim. According to the superintendent, “Shi’ite meetings are under the direct supervision of a facility chaplain. They are not inmate facilitated meetings.” Upon further administrative appeal the CORC found in its final determination of March 7, 2007, “. . . that there is no indication that the Muslim study class was cancelled on 12/24/06, however, the 1/7/07 class was cancelled

due to facility staffing issues. The CORC noted that in the absence of the Iman, the cancellation of classes and/or holding the classes with an inmate facilitator in place of the Iman, is at the discretion of the Superintendent.”

The Court finds that the CORC has rationally and reasonably interpreted the relevant provisions of DOCS Directive 4202. *See Vidal v. Goord*, 48 AD3d 860. In addition, the Court finds the one-per-week limitation on inmate-facilitated religious meetings or congregate worship, as set forth in DOCS Directive 4202, to be clearly and reasonably related to legitimate penological interests and therefore not in violation of the Free Exercise Clause. *See O’Lone v. Estate of Shabazz*, 482 US 342. Finally, the Court concludes that there is nothing irrational or arbitrary and capricious in cancelling a religious study group, in a prison setting, due to inadequate facility staffing.

**BRL-9015-07 and BRL-9140-07**

By Memorandum dated February 14, 2007, John J. Donelli, Superintendent, Bare Hill Correctional Facility, “reminded” all inmates and staff that as of February 19, 2007, “. . . only footwear and two (2) departmentally approved property storage bags per inmate will be permitted under the bunks . . . If you do not wish to purchase a storage bag(s) you must store your personal property in the lockers provided. Failure to comply will result in disciplinary action.” Petitioner responded by filing a grievance complaint dated March 3, 2007. Petitioner’s grievance was consolidated with a similar grievance filed by another inmate into BRL-9015-07. An additional grievance (BRL-9140-07) dated March 14, 2007, and related to the same general subject, was subsequently filed by petitioner.

In his first grievance petitioner asserted that the storage bags in question cost \$6.25 each and “. . . are also see through and have no closing mechanism to secure your visible property in any way.” Petitioner also alluded to the fact that the bags in question are manufactured by Corcraft, using inmate labor, and he questioned “[s]ince when have corcraft been able to make money off of prisoners?” Petitioner’s initial grievance sought to halt the sale of the storage bags in question and to allow inmates to either purchase storage containers from outside catalogs or obtain through the commissary storage bags “. . . which can be secured in some fashion while not being so visible (for security reasons).” In the consolidated grievance filed by the other inmate, the sale of the Corcraft-manufactured storage bags to inmates for \$6.25 each was challenged.

By decision dated March 16, 2007, the facility superintendent denied consolidated grievance BRL-9015-07. According to the superintendent, the issue raised in the grievance had already been addressed by the CORC. The petitioner’s administrative appeal from the superintendent’s determination stated as follows: “The current storage bags are the only departmentally approved & authorized storage bags which just happen to made by Corcraft and sold to the commissary to be sold to us. The bags are too expensive & there was no bid to find a cheaper bag/container. The State has cornered the market.”

By final decision dated April 11, 2007, the CORC upheld the determination of the facility superintendent for the reasons stated by the superintendent. According to the final CORC decision in consolidated grievance BRL-9015-07:

“CORC cites its prior disposition BRL-8910-07, dated 3/7/07, which states, in part, i.e.;

CORC asserts that the under bunk storage bags have a product cost of \$5.50/bag. The facility is buying them from Corcraft for \$6.25 and selling them to the inmates at the same price.

CORC notes that items may only be sold for a profit by Corcraft to the ‘state itself or political subdivision thereof . . .’ Since the under bunk storage bags are not sold directly to the inmates by Corcraft, but rather to the Commissaries which are part of the State of New York, it is legal to sell them to the facility for \$6.25 and it [is] legal for them to be sold in the Commissary.”

Correction Law §177 provides, in relevant part, as follows:

“1. The labor of inmates in the state correctional facilities, after the necessary labor for and maintenance of all needed supplies for said institutions, shall be primarily devoted to the state, the public buildings and institutions thereof, and the manufacture of supplies for the state, and public institutions thereof, and secondly to the political subdivisions of the state, and public institutions thereof . . .

4. No product manufactured in whole or in part by inmates in any correctional facility of the state . . . shall be sold, or otherwise disposed of for profit . . . except to the state itself or to . . . [an] administrative body of the state . . . In no case shall said products be purchased for the purpose of resale or for the disposition for profit in a manner not herein provided for in the first instance.”

Pursuant to the above-quoted provisions of Correction Law §177(4), it is clear that Corcraft, a profit making corporation owned and operated by the New York State Department of Correctional Services (*see Baker v. Scully*, 157 AD2d 719), would be statutorily barred from selling the storage bags in question directly to DOCS inmates. The Court finds, moreover, that the statutory ban on the resale of inmate-manufactured products in a matter not provided for in the first instance in Correction Law §177 prohibits DOCS from reselling the storage bags it acquired from Corcraft to inmates in its custody. Although not, strictly speaking, dispositive, the Court finds it disturbing that the circumvention of the provisions of Correction Law §177 in the case at bar is coupled with the requirement that inmates either purchase the Corcraft storage bags from the Bare Hill

Correctional Facility commissary or be limited in the amount of personal property they may lawfully possess to that which can be accommodated by existing storage lockers.

In view of the above, the Court finds that to the extent the CORC determined on April 11, 2007, that it was legal for the Bare Hill Correctional Facility commissary to resell the Corcraft-produced storage bags to inmates at that facility, such decision was irrational and/or arbitrary and capricious. The Court also finds that any consideration of issues raised in connection with petitioner's inmate grievance BRL-9140-07 has been rendered moot by the Court findings with respect to inmate consolidated grievance BRL-9015-07.

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

**ADJUDGED**, that the petition is granted, without costs or disbursements, but only to the extent that the final CORC determination in BRL-9015-07, dated April 11, 2007, is vacated and the matter remanded to the CORC for reconsideration not inconsistent with this Decision and Judgment.

**Dated:** March 17 , 2009, at  
Indian Lake, New York.

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S. Peter Feldstein  
Acting Supreme Court Justice