

**Matter of Rodriguez v Director of Special Hous. &
Inmate Disciplinary Programs for New York State Dept. of
Correctional Servs.**

2009 NY Slip Op 31352(U)

May 28, 2009

Supreme Court, New York County

Docket Number: 5534-08

Judge: George B. Ceresia

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disciplinary determination. Specifically, the petitioner was found guilty of violating Rule 1.00, which prohibits an inmate from violating any offense under the New York State Penal Law (see 7 NYCRR 270.2, ¶ A). The Penal Law offense which underlies the rules violation was the crime of murder in the second degree, a class A-I felony (see Penal Law § 125.25), in which the petitioner was alleged to have stabbed another inmate, causing his death. The petitioner was found guilty of the charge after a trial by jury in Westchester County Court. As a result of being found guilty of the rules violation, the hearing officer imposed a nine year term of confinement in special housing, along with a recommended loss of three years of good time. The petitioner appealed his murder conviction to the Appellate Division, Second Department, and on October 10, 2006 the Appellate Division modified the judgment by reducing the conviction from murder in the second degree to the lesser-included offense of manslaughter in the second degree, a class C felony (see People v Rodriguez, 33 AD3d 730, 732 [2d Dept.], lv denied 9 NY3d 850 [2007]; and Penal Law § 125.15). On January 12, 2008 the petitioner requested reconsideration of that portion of the disciplinary determination which imposed three years of loss of good time. By letter dated January 22, 2008 Albert Prack, Acting Director, Special Housing, Inmate Disciplinary Programs denied the request. Thereafter, on March 6, 2008, the petitioner filed a grievance (Grievance SHG-24118-08), again arguing that because of the modification of his conviction by the Appellate Division, there should be a concomitant modification of the recommended loss of good time. While the Inmate Grievance Resolution Committee upheld the grievance, it was denied by the Superintendent of Shawangunk Correctional Facility on April 4, 2008. The Central Office Review Committee upheld the Superintendent's determination denying the grievance

on May 14, 2008.

The respondent made a motion to dismiss pursuant to CPLR 3211 (a) (5) on grounds that the proceeding was untimely commenced, and barred by the applicable statute of limitations. In a decision-order dated December 17, 2008 the Court found that the proceeding was untimely and must be dismissed with respect to the petitioner's challenge to the determination dated January 22, 2008 in which Albert Prack denied his request for reconsideration with respect to the imposition of loss of good time. The Court found, however, that the petition was timely with respect to petitioner's challenge to the grievance determination. As a part of its decision, the Court directed the respondent to serve and file an answer to the petition, which the respondent has done.

Turning now to petitioner's challenge to the denial of his grievance, the determination of the Superintendent of Shawangunk Correctional Facility recited as follows:

“Grievant complains of loss of good time and requests a policy which reduces loss of good time if there is a modification in conviction. Grievant's lost good time will be considered by the facility TAC in accordance with Department guidelines. Grievance is denied. Grievant has not provided a substantial reason to modify the current procedure.”

The determination of the Central Office recited as follows:

“Upon full hearing of the facts and circumstances in the instant case, and upon recommendation of Department's Counsel, the action requested herein is hereby denied. CORC upholds the determination of the Superintendent for the reasons stated. CORC notes that the grievant has completed the SHU disciplinary sanction, and that his good time allowance can be considered by the Time Allowance Committee in accordance with established procedures. Contrary to the grievant's assertions, CORC has not been provided with sufficient evidence to substantiate the revision of existing policy at this

time.”

“Judicial review of administrative decisions denying inmate grievances is limited to a determination of whether the challenged determination is irrational, arbitrary or capricious” (Matter of Harty v Goord, 3 AD2d 701, 702 [3rd Dept., 2004] quoting Matter of Cliff v Brady, 290 AD2d 895 [2002], lv denied, lv dismissed 98 NY2d 642 [2002]; Matter of Cliff v Eagen, 272 AD2d 687 [2000]; see also Matter of Clark v Fischer, 58 AD3d 932 [3rd Dept., 2009]). In this instance, the Court finds that the petitioner has not demonstrated that the fact that his murder conviction was reduced to manslaughter in the second degree would necessarily entitle him to any adjustment in the administrative penalty imposed in the Tier III disciplinary hearing. The fact remains that he was still convicted of a homicide, manslaughter in the second degree - a very serious offense. The recommended three year loss of good time could still be reasonably viewed as within the range of appropriate penalties to be imposed for his crime. In the Court’s view, the petitioner has not carried his burden of presenting evidence to demonstrate that the grievance determination is irrational, arbitrary and capricious.

Moreover, and apart from the foregoing, “[a] disposition involving loss of a specified period of good behavior allowance made in a superintendent's hearing under Part 254 of this Title shall be deemed to be tentative until such time as it actually affects consideration for parole or for conditional or other release, and shall then either be confirmed or be modified by the commissioner or his designee” (7 NYCRR 260.4 [b]). Thus, the Time Allowance Committee makes the ultimate decision with regard to whether good time should be granted

or withheld (see 7 NYCRR Parts 260, 261 and 262). In this respect, no final determination with regard to petitioner's good time has yet been made.

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.

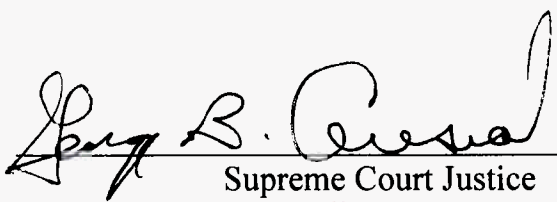
Accordingly it is

ORDERED and ADJUDGED,

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: May 28, 2009
Troy, New York



Supreme Court Justice
George B. Ceresia, Jr.

Papers Considered:

1. Order To Show Cause dated July 8, 2008, Petition, Supporting Papers and Exhibits
2. Respondent's Answer dated January 29, 2009, Supporting Papers and Exhibits
3. Petitioner's Reply To Respondent's Answer dated February 10, 2009