

Matter of Green v Fischer

2009 NY Slip Op 32728(U)

November 10, 2009

Supreme Court, Albany County

Docket Number: 4592-09

Judge: George B. Ceresia

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STATE OF NEW YORK
 SUPREME COURT COUNTY OF ALBANY

In The Matter of SHAWN GREEN,

Petitioner,

-against-

BRIAN FISCHER, COMMISSIONER,
 DEPARTMENT OF CORRECTIONAL
 SERVICES,

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
 RJ1 # 01-09-ST0558 Index No. 4592-09

Appearances: Shawn Green
 Inmate No. 97-A-0801
 Petitioner, Pro Se
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DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

The petitioner, an inmate at Elmira Correctional Facility, has commenced the instant CPLR Article 78 proceeding to review two unrelated administrative decisions. The first is

a grievance determination with respect to a recent revision to a Department of Correctional Services (“DOCS”) Directive. The second is an inmate disciplinary determination in which the petitioner was found guilty of violating prison rules.

The grievance determination arises out of a revision to DOCS Directive 4913, dated October 23, 2008, which implements certain restrictions on the quantity of personal property an inmate may possess within the institution during his or her incarceration. Specifically, the Directive limit such property (including legal materials) to that which can be contained in four standard fabric storage bags (referred to as “draft” bags). For inmates who were received into custody prior to January 1, 2009 the Directive provides for a phased implementation of the Directive until July 1, 2010, when it will be fully applicable to all inmates. Excess property must be either be shipped out of the facility, donated to charity or destroyed. The petitioner filed his grievance in December 2008. The Inmate Grievance Review Committee deadlocked on a decision. On appeal, the Superintendent denied the grievance in a determination dated February 6, 2009 which recites as follows:

“Grievants allege departmental revision of Directive #4913 violates their constitutional rights and request the current phase out process be repealed and prior status quo be reinstated.

“Investigation reveals the provisions set forth in Directive #4913, Inmate Property, are very clear and must be adhered to. The facility does not have the authority to revise or deviate from the provisions outlined in #4913.

“Grievance is denied, the direction stated in Directive #4913, will be complied with.”

Upon further appeal, the central office review committee (“CORC”), on March 25, 2009, issued the following decision:

“GRIEVANT’S REQUEST UNANIMOUSLY DENIED

“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 asserts that property, including legal work, is limited in accordance with Directive #4913.

“CORC asserts that no compelling reason has been presented to revise Directive #4913, nor to rescind Phase II of this directive.”

It is petitioner’s burden demonstrate that CORC's determination was either irrational or arbitrary and capricious (see Matter of Clark v Fischer, 58 AD3d 932 [3rd Dept., 2009], citing Matter of Winkler v New York State Dept. of Correctional Servs., 34 AD3d 993, 994 [2006]; Matter of Tucker v Nuttall, 31 AD3d 1078 [2006]). The Court observes that a memorandum which accompanies Directive 4913 cites a number of cogent reasons for the revisions to Directive 4913, including various administrative issues with respect to such property, space limitations, associated costs of handling and storing such property, safety hazards, sanitation issues, and risk of loss and theft. The Court finds that the petitioner has not satisfied his burden of proof of demonstrating that CORC’s determination is irrational, arbitrary or capricious. To the contrary the Directive appears to be founded on sound penological, fiscal, and administrative principles. The Court further finds that the petitioner has not satisfied his burden of demonstrating a violation of his constitutional rights.

The Court has reviewed and considered petitioner’s remaining arguments and contentions and finds them to be without merit. The Court finds that the grievance 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.

Turning to the disciplinary determination, the Court finds that the supplemental petition, which seeks review of actions taken by the hearing officer at the hearing, raises issues of substantial evidence which requires transfer to the Appellate Division pursuant to CPLR §7804 (g) (see, Matter of Thibodeau v Northeastern Clinton Central School Board of Education, 39 AD3d 940, 941 [3rd Dept., 2007]; Matter of Somma v Jackson, 268 AD2d 763, 763-764 [3d Dept., 2000]; Matter of Bevacqua v Sobol, 176 AD2d 1, 3 [3d Dept., 1992]; Matter of Department of Env'tl. Protection v Department of Env'tl. Conservation, 120 AD2d 166, 169 [3d Dept., 1986] lv denied, 69 NY2d 921). Thus, the supplemental petition must be transferred to the Appellate Division.

Accordingly it is

ORDERED and ADJUDGED, that the petition, as it relates to petitioner's grievance be and hereby is dismissed; and it is further

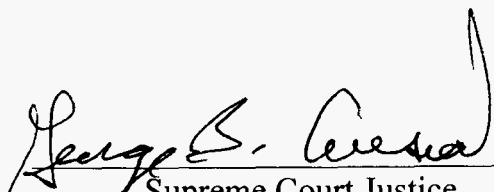
ORDERED, that the supplemental petition, related to petitioner's April 24, 2009 disciplinary determination, be and hereby is transferred to the Appellate Division pursuant to CPLR § 7804 (g).

This shall constitute the decision, order and judgment of the Court. The original decision/order/judgment is returned to the attorney for the respondents. All other papers are being delivered by the Court to the County Clerk for filing. The signing of this decision/order/judgment does not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry and notice

of entry.

ENTER

Dated: November 10, 2009
Troy, New York



Supreme Court Justice
George B. Ceresia, Jr.

Papers Considered:

1. Order To Show Cause dated July 24, 2009, Petition, Supporting Papers and Exhibits
2. Answer dated September 21, 2009, Supporting Papers and Exhibits
3. Petitioner's Reply sworn to September 29, 2009