

**Matter of Madison v New York State Dept. of
Correctional Servs,**

2009 NY Slip Op 33220(U)

December 29, 2009

Supreme Court, Rensselaer County

Docket Number: 6147-09

Judge: George B. Ceresia

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STATE OF NEW YORK
 SUPREME COURT COUNTY OF ALBANY

In The Matter of DIALLORAFIK A. MADISON,
Petitioner,
-against-

NEW YORK STATE DEPARTMENT OF
 CORRECTIONAL SERVICES VIA BRIAN
 FISCHER, COMMISSIONER; AND CENTRAL
 NEW YORK PSYCHIATRIC CENTER (“OMH”)
 VIA MICHAEL HOGAN, COMMISSIONER,
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
 RJI # 01-09-ST0583 Index No. 6147-09

Appearances: Diallorafik A. Madison
 Inmate No. 94-A-7376
 Petitioner, Pro Se
 Mid-State Correctional Facility
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 Marcy, New York 13403

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 State of New York
 Attorney For Respondent
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 Assistant Attorney General
 of Counsel)

DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

The petitioner, an inmate at Mid-State Correctional Facility (“Mid-State”), has

commenced the instant CPLR Article 78 proceeding to review an adverse determination in connection with his request to be transferred to a single cell correctional facility. The petitioner maintains that he suffers from a disability within the meaning of the Americans With Disabilities Act (“ADA”, see 42 USC § 12201 et seq.). Specifically he asserts that he suffers from post traumatic stress disorder (“PTSD”), which limits his sleep to three hours per night and impairs his ability to concentrate and read.¹ On April 25, 2009 the petitioner, submitted an application to Mid-State requesting a reasonable accommodation under the ADA with respect to his PTSD. The application was denied on June 15, 2009. The petitioner subsequently filed a grievance, which was denied by the Inmate Grievance Resolution Committee (“IGRC”). The IGRC on June 25, 2009 issued a decision which recited as follows:

“‘OMH Unit Chief has determined that grievant can be double bunk.’ MS-19224-08 CORC notes grievant has no limitations that would require him to be housed in a single cell. If grievant feels that continued OMH intervention is needed, he should pursue via OMH. Grievance denied.”

Upon appeal the Superintendent, in a decision dated July 3, 2009, issued the following determination:

“In this investigation, the grievant alleges he filed a Request for Reasonable Accommodation on April 25, 2009 with regards to being moved to a single cell facility because of his documented OMH issues; however, his request was denied. The grievant is requesting ‘exhibit B’ is recognized in accordance with 7 NYCRR 1701.5 (3) (ii) (c), his Request for Reasonable Accommodation decision [be] overturned and he [be] granted single cell status.

¹The post traumatic stress disorder allegedly arose from an incident which occurred at Auburn Correctional Facility on October 30, 1999 when he was stabbed by another inmate.

“It should be noted the grievant filed complaints in MS-18975-08, MS-19124-08 and MS-19224-08, which were properly addressed.

“Contrary to the grievant’s assertions, sufficient evidence has not been presented to substantiate any malfeasance by staff.

“Directive #4040, section 701.1 (b), states, in part, that the grievance program is not intended to support an adversary process and section 701.3 (f), states, in part, any policy, regulation or rule of any outside agency (the Office of Mental Health) or action taken by an entity not under the supervision of the Commissioner is not within the jurisdiction of the IGP.

“The grievant is advised to address any further similar medical and/or OMH concerns with medical and/or OMH staff.

“The grievant may write to whomever he wishes regarding this complaint.

“Based on this investigation, this grievance is denied.”

The petitioner then filed an appeal with the Central Office Review Committee (“CORC”). In a decision dated September 16, 2009, CORC issued the following determination:

“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 notes that the grievant’s present housing location is appropriate. Further, the grievant has and continues to refuse to participate fully in the testing procedure to substantiate his alleged condition.

“Additional, CORC cites its prior decision MS-19124-08, dated 8/20/08, which states, in part, i.e.

‘CORC notes that the facility OMH Unit Chief has determined that the grievant can be double bunked. It is also noted that the grievant is scheduled for reevaluation as a result of his Request for Reasonable Accommodations.

‘With respect to the grievant’s appeal, CORC notes no malfeasance by DOCS staff. OMH is a separate agency not under DOCS jurisdiction.’”

“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]). Phrased differently, “[t]o prevail, petitioner must demonstrate that the Central Office Review Committee's determination was arbitrary and capricious or without a rational basis” (Matter of Patel v Fischer, ___ AD3d ___, 2009 NY Slip Op 8131 [3rd Dept., November 12, 2009] citing Matter of Keesh v Smith, 59 AD3d 798, 798 [2009]; Matter of Matos v Goord, 27 AD3d 940, 941 [2006]).

The Superintendent found that there was insufficient evidence to support malfeasance by staff. CORC, in its determination, pointed out that the grievant refused to participate fully in the testing procedure to substantiate his alleged condition. This finding is supported by an entry dated June 15, 2009 in the Request For Reasonable Accommodation Form of Karen Phillips, Deputy Superintendent for Program Services. The entry reads as follows:

“Explanation of modification or denial: Reports are not conclusive due to the condition as reported by the inmate due to his non-compliance to complete all of the testing components. Test was conducted for PTSD and there are indicators of some functional impairment, however, Mr. Madison refused to take the component which checks the validity of the test. OMH staff report that although there is also an absence of observable symptoms at this time. (sic) Current placement appears to be appropriate setting for him.”

The foregoing findings, in the Court's view, provide a sound basis for CORC's determination.

The Court must also point out that among the exhibits annexed to the petition are copies of letters that the petitioner has sent to various state officials. In the letters the petitioner voices assorted complaints with regard to evaluations and recommendations of health care professionals who have treated, tested or examined him. In many instances he expresses his disagreement with their findings and conclusions. None of the reports of said medical personnel however, have been furnished. Nor has the petitioner presented medical evidence in admissible form to substantiate his current claims of disability.² Similarly, petitioner's conclusory arguments that he has been the victim of various acts of retaliation are unsupported in the record.³

Apart from the foregoing, it is well settled that, ordinarily, an inmate has no statutory or constitutional right to housing at a particular facility (see Matter of Salahuddin v Goord, 64 AD3d 1091, 1091-1092 [3rd Dept., 2009]; Matter of Grant v Fischer, 63 AD3d 1398, 1398-1399 [3rd Dept., 2009]; Matter of Burr v Goord, 8 AD3d 853, 854 [3rd Dept., 2004]).

Under all of the circumstances, the Court is of the view that the petitioner failed to satisfy his burden of proof in the instant proceeding by presenting evidence in admissible form to demonstrate that the challenged determination is irrational, arbitrary or capricious.

²From records submitted by the petitioner, it appears that he was approved for single cell confinement in 2001 and 2002. There is no medical evidence in the record, however, to confirm that he currently suffers from a disability requiring such a confinement.

³These include a claim of retaliation by reason that he was transferred to Mid-State four months prior to his graduation from Bard College; and recently imposed limitations with respect to petitioner's access to the prison law library.

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.

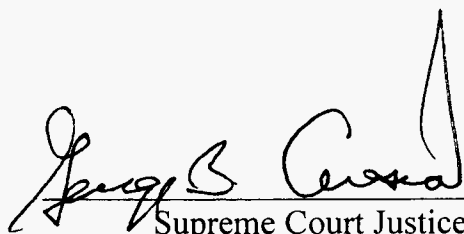
Accordingly it is

ORDERED and ADJUDGED, that the petition be and hereby is dismissed.

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: December 29, 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. Respondent's Answer dated September 23, 2009, Supporting Papers and Exhibits
3. Petitioner's Reply, sworn to September 28, 2009