Matter of Hurd v Fischer
2010 NY Slip Op 32826(U)
October 7, 2010
Sup Ct, Albany County
Docket Number: 1171-10
Judge: George B. Ceresia
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STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In The Matter of JEREMIAH HURD,

Petitioner,

-against-

BRIAN FISCHER, Commissioner New York State 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
RJI # 01-10-ST1282 Index No. 1171-10

Appearances: Jeremiah Hurd
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DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

The petitioner, a former inmate of the New York State Department of Correctional Services ("DOCS"), commenced the above-captioned CPLR Article 78 proceeding seeking review of a grievance determination dated February 3, 2010 with regard to the calculation

of his sentence.

On July 23, 2008 petitioner was sentenced in United States District Court (New Hampshire) to a twenty-one month term of imprisonment. This sentence was credited with 283 days of jail time for the following periods: 8/3/07 to 8/27/07, 10/19/07 to 4/18/08 and 5/9/08 to 7/22/08. On October 24, 2008 the petitioner was sentenced by Oneida County Court (New York State) as a second felony offender to two terms of two years to four years for counts of criminal possession of a forged instrument second degree. The Court imposed these sentences to run concurrently with each other and with the prior federal sentence. The petitioner was released from federal custody on April 22, 2009, and received into the custody of DOCS on April 27, 2009. On November 6, 2009, the petitioner was re-sentenced on the two convictions in Oneida County Court to two terms of one and one half years to three years, again, to run concurrently with the prior federal sentence. The petitioner maintains that the respondent improperly removed 185 days of jail time credit (the period from October 24, 2008 to April 22, 2009) from his sentence computation. He also complains that he has not received full credit against his state sentence for jail time credit he received against his federal sentence.

"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, 67 AD3d 1193 [3rd Dept., 2009] citing Matter of Keesh v Smith, 59 AD3d 798, 798 [2009]; Matter of Green v Bradt, 69 AD3d 1269, [3rd Dept., 2010]; Matter of Frejomil v Fischer, 68 AD3d 1371 [3rd Dept., 2009]; Matter of Matos v Goord, 27 AD3d 940, 941 [2006]).

A review of respondent's sentence calculation, as set forth in the letter-affirmation dated May 14, 2010 of Richard de Simone, Associate Counsel in Charge of DOCS' Office of Sentencing Review, reveals that the petitioner has been already credited with the 185 day period (the period from October 24, 2008 to April 22, 2009), not as jail time, but rather as time served under Penal Law § 70.30 (2-a). In addition, the petitioner is not entitled to jail time credit for the period between July 23, 2008 (the date of his sentence in federal court) to October 24, 2008 (the date of his sentence in Oneida County) (see Matter of Proctor v Bartlett, 216 AD2d 618 [3d Dept., 1995]). To this extent the Court finds that the petition has no merit.

As a part of his argument the respondent takes the position that under Correction Law § 600-a, only the county sheriff may certify jail time; and that the petitioner failed to join a necessary party to the proceeding, the Oneida County Sheriff. The Court does not agree.

Correction Law § 600-a recites as follows:

> "A record shall be kept by the sheriff, or in counties within the city of New York by the commissioner of correction of such city, of all jail time to which the defendant is entitled under subdivision three of section 70.30 of the penal law. In any case where the sheriff or the commissioner of correction of the city of New York has the duty of delivering a defendant to an institution not under his jurisdiction pursuant to sentence and

> commitment, such person shall deliver a certified transcript of such record to the person to whom the defendant is to be delivered."

In Guido v Goord (1 NY3d 345 [2004]), the Court of Appeals took the position that the Department of Correctional Services was under no obligation to collect documentation with regard to out-of-state or federal detention, and that it was the inmate's responsibility to obtain such information (see Guido v Goord, supra, at 349, footnote 3). This, in the Court's view, was borne of tacit recognition that there is no procedural mechanism in place to obtain such records. There is no reason to believe that a county sheriff would collect or maintain records with regard to a foreign state or federal detention. For this reason, the Court finds that the Oneida County Sheriff is not a proper or necessary party to the instant proceeding.

Notably, in this instance the petitioner has submitted a letter dated August 6, 2009 from the Strafford County Department of Corrections, Dover, New Hampshire. In the letter a Sgt. L. Noseworthy states that the petitioner was incarcerated at that facility from 10/20/2007 to 4/18/08 and from 6/12/08 to 8/8/08. The Court finds that the petitioner adequately satisfied his burden with respect to these periods of foreign state incarceration. The petitioner has also submitted an unsigned document dated August 15, 2007 entitled "Inmate Commitment Summary Report, Rockingham County Department of Corrections". Because that document is unsigned, the Court finds that the petitioner failed to satisfy his burden with respect to foreign state incarceration for the period August 3, 2007 to August 27, 2007.

Under the circumstances, the Court concludes that the petition must be granted to the limited extent that the instant matter be remanded to the respondent for review and

consideration of the period of incarceration certified by the Strafford County Department of Corrections, Dover New Hampshire and, if appropriate, a re-computation of petitioner's sentence under the provisions of Penal Law § 70.30. The Court notes however, that it has already found in this decision that petitioner is not entitled to jail time credit for the period on or after July 23, 2008. As such, the period in question is 223days, from October 20, 2007 to April 18, 2008 and from June 12, 2008 to July 22, 2008.

Accordingly it is

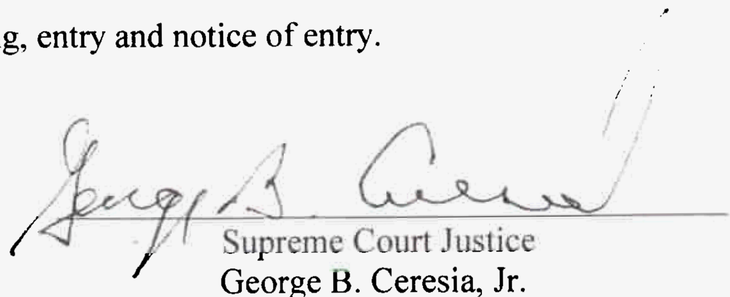
ORDERED and ADJUDGED, that the petition be and hereby is granted, as limited herein; and it is

ORDERED and ADJUDGED, that the instant matter is remanded to the respondent for review and consideration of the 223 days of foreign state incarceration credited to the petitioner and, if appropriate, a re-computation of petitioner's sentence under the provisions of Penal Law § 70.30, all in keeping with this decision-order-judgment.

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 and delivery 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: October 7, 2010
Troy, New York



Supreme Court Justice
George B. Ceresia, Jr.

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Papers Considered:

1. Order To Show Cause dated March 8, 2010, Petition, Supporting Papers and Exhibits
2. Respondent's Answer dated May 14, 2010, Supporting Papers and Exhibits