

Matter of Platten v Bezio
2011 NY Slip Op 31827(U)
June 22, 2011
Sup Ct, Albany County
Docket Number: 621-11
Judge: George B. Ceresia Jr
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STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In The Matter of the Application of
John Platten, 90-C-0145,

Petitioner,

For A Judgment Pursuant to Article 78
of the Civil Practice Law and Rules,

-against-

NORMAN BEZIO, as Director of Special Housing
and Inmate Disciplinary Programs,

Respondent.

Supreme Court Albany County Article 78 Term
Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding
RJI # 01-11-ST2359 Index No. 621-11

Appearances: John Patten,
 DIN # 90-C-0145
 Petitioner, Pro se
 Oneida Correctional Facility
 6100 School Road
 Rome, NY 13440

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State of New York
Attorney For Respondent
The Capitol
Albany, New York 12224
(Cathy Y. Sheehan,
Assistant Attorney General
of Counsel)

DECISION/ORDER

George B. Ceresia, Jr., Justice

The petitioner, an inmate at Oneida Correctional Facility is serving an indeterminate

sentence with a life maximum. He was found guilty after a Tier III disciplinary hearing held on April 29, 2009 of violating prison rules. The determination was reviewed and administratively affirmed on June 2, 2009. The petitioner thereafter commenced a CPLR Article 78 proceeding, which was transferred to the Third Department Appellate Division. The Appellate Division, on May 27, 2010, issued a decision modifying the disciplinary determination by dismissing one of the charges, and remitting the matter back to the Department of Correctional Services for an administrative redetermination of the penalty with respect to the remaining violations (see Matter of Platten v Bezio, 73 AD3d 1419 [3d Dept.]). Upon remittal, the respondent modified the penalty imposed, as relevant here, by reducing the good time withheld from twelve months to nine months.

In a letter dated October 14, 2010 addressed to the Chairman of the Time Allowance Committee, the petitioner requested that he be permitted to appear before the Time Allowance Committee to determine the amount of good time, if any, to be restored. This request was denied, apparently on October 15, 2010. By letter dated October 16, 2010 the petitioner attempted to appeal the decision of the Time Allowance Committee. By letter dated October 25, 2010, Lucien J. Leclaire, Jr., Deputy Commissioner of the Department of Correctional Services, indicated that the petitioner may be eligible for a Limited Credit Time Allowance (see Correction Law § 803-b), but only after the expiration of five years without any further recommended loss of good time. The petitioner requested reconsideration on November 2, 2010. Reconsideration was denied

Respondent has made a motion to dismiss the petition on grounds that the applicable statute of limitations had expired before the proceeding was commenced. CPLR 217

provides: “a proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner.” It is well settled that an administrative determination becomes final and binding, and the applicable statute of limitations begins to run, when the administrative action has its impact upon a party and it is clear that the party is aggrieved thereby (see, Matter of Edmead v McGuire, 67 NY2d 714, 716; New York City Off Track Betting Corp. v State of New York Racing & Wagering Bd., 196 AD2d 15, 18, lv denied 84 NY2d 804; Matter of Hunt Brothers Contractors, Inc. v. Glennon, 214 AD2d 817, 818-819 [3d Dept., 1995]; Matter of Biondo v State Bd. of Parole, 60 NY2d 832, 834; Mundy v Nassau County Civ. Serv. Comm., 44 NY2d 352, 357). In other words, the statute of limitations does not commence to run until the aggrieved party is notified of an administrative determination that is unambiguous and certain in its effect (see, Matter of Edmead v McGuire, *supra*, at 716; Singer v New York State and Local Employees’ Retirement System, 69 AD3d 1037, 1038 [3rd Dept., 2010]; Matter of Hunt Brothers Contractors v Glennon, *supra*, at p. 819; Matter of New York State Radiological Society v Wing, 244 AD2d 823, 666 NYS2d 285 [3d Dept., , 1997], mot for lv to app denied, 92 NY2d 802 [1998]). Finality does not occur until the administrative agency has arrived at a definitive position on the issue which inflicts actual concrete injury (see, Matter of Ward v Bennett, 79 NY2d 394, 400).

Requests for reconsideration do not, ordinarily, toll or revive the statute of limitations (see Lubin v. Board of Educ. of City of New York, 60 NY2d 974; Matter of Yarbough v Franco, 95 NY2d 342, 347-348 [2000]; Matter of Finger Lakes Racing Association, Inc. v State of New York Racing and Wagering Board, 34 AD3d 895, 896-897 [3rd Dept., 2006]).

“The statute of limitations runs from the initial determination ‘unless the agency conducts a fresh and complete examination of the matter based on newly presented evidence’” (Matter of Finger Lakes Racing Association, Inc. v State of New York Racing and Wagering Board, supra, at 897, quoting Matter of Quantum Health Resources v DeBuono, 273 AD2d 730, 732 [2000], lv dismissed 95 NY2d 927 [2000]). In this instance a new hearing was not granted.

In this instance, the respondent has not presented an affidavit by a person with knowledge to establish when any of the administrative determinations were received by the petitioner (particularly with respect to the final determination which modified the disciplinary penalty to include a recommended nine months loss of good time credit). Thus, the respondent has not satisfied his burden of proof of establishing when the statute of limitations commenced to run (see e.g. Matter of Jackson v Fischer, 67 AD3d 1207, 1208 [3rd Dept., 2009]).

The Court concludes that the motion must be denied.

Accordingly, it is

ORDERED, that respondent’s motion to dismiss should be and hereby is denied; and it is further

ORDERED, that respondent be and hereby is directed to serve and file an answer within thirty (30) days of the date hereof; and it is further

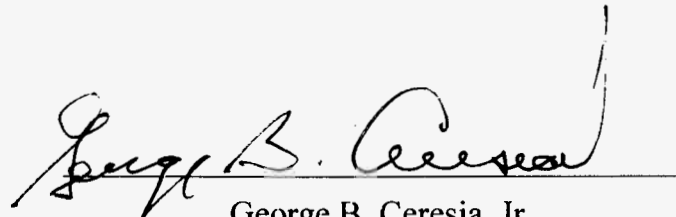
ORDERED, that respondent re-notice the proceeding in conformity with CPLR 7804 (f); and it is further

ORDERED, that the proceeding, after being re-noticed, shall be referred to the undersigned for disposition.

This shall constitute the decision and order of the Court. The Court will retain the papers until final disposition of the proceeding.

ENTER

Dated: June 22, 2011
Troy, New York


George B. Ceresia, Jr.
Supreme Court Justice

Papers Considered:

1. Order To Show Cause dated February 3, 2011, Petition, Supporting Papers and Exhibits
2. Respondent's Notice of Motion dated April 6, 2011, Supporting Papers and Exhibits