

Matter of Mabry v Fischer

2011 NY Slip Op 32994(U)

November 9, 2011

Sup Ct, Albany County

Docket Number: 3012-11

Judge: Jr., George B. Ceresia

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STATE OF NEW YORK
 SUPREME COURT COUNTY OF ALBANY

In The Matter of SHARON MABRY,

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
 RJ1 # 01-11-ST2712 Index No. 3012 -11

Appearances: Sharon Mabry
 Inmate No. 00-G-0299
 Petitioner, Pro Se
 Taconic Correctional Facility
 250 Harris Road
 Bedford Hills, NY 10507-2498

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 State of New York
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 of Counsel)

DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

In 2009 the New York State Legislature amended the Correction Law to add a new provision rendering qualified inmates eligible for conditional release or parole consideration

six months earlier than they would have been otherwise, referred to as a limited credit time allowance (“LCTA”, see Correction Law 803-b; Matter of Abreu v Fischer, 87 AD3d 1213, , 2011 NY Slip Op 6515 [3d Dept., September 22, 2011]). The statute established certain programming and educational criteria with respect to inmate eligibility. In a determination dated April 1, 2011 the petitioner was denied a limited credit time allowance by reason of “overall unacceptable level of program attendance”. The petitioner has commenced the above-captioned CPLR Article 78 proceeding to review the April 1, 2011 determination.

As set forth in Correction Law § 803-b:

“2. Every eligible offender under the custody of the department or confined in a facility in the department of mental hygiene may earn a limited credit time allowance if such offender successfully participates in the work and treatment program assigned pursuant to section eight hundred five of this article and:

(a) successfully completes one or more significant programmatic accomplishments; and

(b) has not committed a serious disciplinary infraction or maintained an overall negative institutional record as defined in rules and regulations promulgated by the commissioner; and

(c) has not received a disqualifying judicial determination.”
(Correction Law 803-b [2])

“‘[S]ignificant programmatic accomplishment’ means that the inmate:

(i) participates in no less than two years of college programming; or

(ii) obtains a masters of professional studies degree; or

(iii) successfully participates as an inmate program associate for no less than two years; or

(iv) receives a certification from the state department of labor for his or her successful participation in an apprenticeship program; or

(v) successfully works as an inmate hospice aid for a period of no less than two years; or

- (vi) successfully works in the division of correctional industries' optical program for no less than two years and receives a certification as an optician from the American board of opticianry; or
- (vii) receives an asbestos handling certificate from the department of labor upon successful completion of the training program and then works in the division of correctional industries' asbestos abatement program as a hazardous materials removal worker or group leader for no less than eighteen months; or
- (viii) successfully completes the course curriculum and passes the minimum competency screening process performance examination for sign language interpreter, and then works as a sign language interpreter for deaf inmates for no less than one year; or
- (ix) successfully works in the puppies behind bars program for a period of no less than two years.” (Correction Law 803-b [1] [c])

The petitioner argues that she qualifies for LCTA by reason that she has completed an inmate program associate training course in the field of teachers aide for adult basic education, with more than 1,500 hours of teaching two modules a day for three years. She has also completed her associates degree and her bachelors degree from Marymount College, earning well more than the 24 credits required to fulfill the LCTA criteria. Thus, in her view, she satisfies significant programmatic accomplishment under Correction Law 803-b (1) (c), (i) and (iii). She maintains that the respondent exceeded his authority by adding eligibility requirements to the LCTA program not authorized by the legislation. She argues that the adoption of additional criteria violates the State Administrative Procedure Act. She asserts that she suffers from Hepatitis C, and that she should be excused from not participating in Department of Correctional Services programing over the past five years through application of the Americans with Disabilities Act.

The Correction Law clearly states that in order to qualify for LCTA the inmate must successfully participate in the work and treatment program assigned pursuant to Correction Law 805 (see Correction Law 803-b [2], supra).¹ The respondent has presented documentary evidence, in the form of a Program Refusal Notification, which indicates that the petitioner refused to participate in a recommended program, Transitional Services Phase 2. This, in the Court's view, fully supports respondent's determination that the petitioner has not successfully completed the work and treatment program assigned to her pursuant to Correction Law § 805 (see Correction Law § 803-b). With regard to petitioner's claim of medical disability, the Court is of the view that the petitioner has not demonstrated how or in what manner the Americans With Disabilities Act would have any application to the situation at bar. The Court finds that the respondent properly interpreted Correction Law 803-b, consistent with the language set forth in the statute.

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

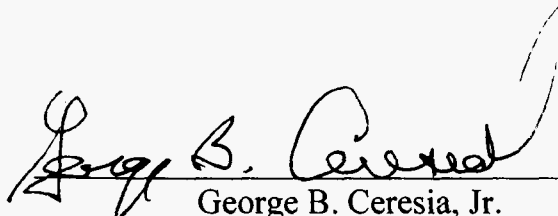
ORDERED and ADJUDGED, that the petition be and hereby is dismissed.

¹In addition, the Court observes that a written notice to the inmate population, issued by Executive Deputy Commissioner Anthony J. Annucci, which explained the LCTA program, twice mentioned that inmates must successfully be pursuing his or her recommended Earned Eligibility Programming.

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 9, 2011
Troy, New York


George B. Ceresia, Jr.
Supreme Court Justice

Papers Considered:

1. Order To Show Cause dated May 27, 2011, Petition, Supporting Papers and Exhibits
2. Answer dated July 29, 2011, Supporting Papers and Exhibits
3. Petitioner's Reply To Respondent's Answer and Exhibit