

Matter of Griffin v Schriro

2012 NY Slip Op 30933(U)

March 30, 2012

Sup Ct, New York County

Docket Number: 114797/10

Judge: Paul Wooten

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. PAUL WOOTEN
Justice

PART 7

In the Matter of the Application of
VERNIQUE GRIFFIN,
Petitioner,

INDEX NO. 114797/10

SEQ. NO. 001

-against-

For a Judgement Pursuant to the Provisions of
Article 78 of the New York Civil Practice
Law and Rules,

**Dr. Dora Schriro, as Correction Commissioner of the New
York City Department of Correction, NEW YORK
CITY DEPARTMENT OF CORRECTION and The CITY
OF NEW YORK,**

Respondents.

The following papers, numbered 1 to 3 were read on this motion by petitioner for an order and judgement pursuant to Article 78.

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits	<u>1</u>
Answering Affidavits — Exhibits (Memo)	<u>2,3</u>
Replying Affidavits (Reply Memo)	<u>4</u>

FILED

APR 10 2012

Cross-Motion: Yes No

NEW YORK
COUNTY CLERK'S OFFICE

In this Article 78 proceeding, Vernique Griffin (petitioner) seeks an order reversing, annulling and setting aside respondents' decision to terminate petitioner for violations of the terms of her probationary agreement dated December 9, 2010 and effective on April 15, 2010. Petitioner also seeks reinstatement to her position as a correction officer with the New York City Department of Correction with back pay from February 15, 2009 to April 27, 2009, to cover the time period when she was previously terminated and then reinstated subject to disciplinary charges. Respondents' oppose this application. The Court denies the petition in its entirety.

Petitioner's request for back pay is untimely. A party must commence a special proceeding under Article 78 of the CPLR by filing a petition within four months after the

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administrative determination becomes final and binding upon the aggrieved party (see CPLR 217[1]; *Matter of Best Payphones, Inc. v Department of Info. Tech. & Telecom. of City of N.Y.*, 5 NY3d 30, 34 [2005]). The terms of petitioner's reinstatement and limited probation, including a determination regarding back pay, were agreed upon on December 9, 2009 and became effective and final on April 15, 2010.¹ However, petitioner did not commence this Article 78 proceeding until November 12, 2010, more than 120 days after the determination. Accordingly, petitioner's request for back pay is time-barred and must be denied.

The Court also finds that petitioner's termination for two violations of a plea agreement signed by her on December 9, 2009 and effective as of April 15, 2010, in which petitioner was placed on a one year limited probation, was not improper or unlawful (see *Matter of Fortner v New York City Dept. of Correction*, 280 AD2d 381 [1st Dept 2001] [petitioner was properly terminated from his position as a New York City corrections officer. . . upon respondent's determination that he violated the terms of his limited probation as set forth in his negotiated plea deal]). Pursuant to the plea agreement, petitioner was on notice that she was on limited probation for one year in resolution of disciplinary charges for excessive absenteeism. Moreover, pursuant to the plea agreement, petitioner waived her rights as a tenured employee for the probationary period and subjected herself to termination as any other probationary employee (see Notice of Petition, exhibit A).

"It is well settled that a provisional or probationary employee may be discharged for any or no reason at all in the absence of a showing that his or her dismissal was in bad faith, for a constitutionally impermissible purpose or in violation of law" (*Matter of Smith v New York City Dept. of Correction*, 292 AD2d 198, 198-199 [1st Dept 2002], citing *Matter of Brown v City of New York*, 280 AD2d 368, 370 [1st Dept 2001]; see *Matter of Swinton v Safir*, 93 NY2d 758

¹ The Court notes that respondents allege that petitioner was on notice that she would not be receiving back pay as early as April 27, 2009.

[1999]). The burden is on petitioner to show by competent proof, that a substantial issue of bad faith exists, or that the termination was for an improper or impermissible reason (see *Matter of Che Lin Tsao v Kelly*, 23 AD3d 320, 321 [1st Dept 2006]).

Petitioner has failed to sustain her burden to demonstrate, by competent evidence, that her termination as a correction officer for violating the terms of her agreed upon probation was in bad faith (see *Matter of Fortner*, 280 AD2d at 382 ["petitioner adduced no evidence that his termination was effected in bad faith"]; *Matter of Simpson v Abate*, 213 AD2d 190 [1st Dept 1995] ["petitioner failed to meet her burden of showing that the respondent's determination to terminate her was made in bad faith"]). Moreover, the decision to terminate petitioner was rational as "[c]hronic absenteeism is a sufficient basis for terminating a probationary employee" (*Skidmore v Abate*, 213 AD2d 259, 260 [1st Dept 1995]).

For these reasons and upon the foregoing papers, it is,

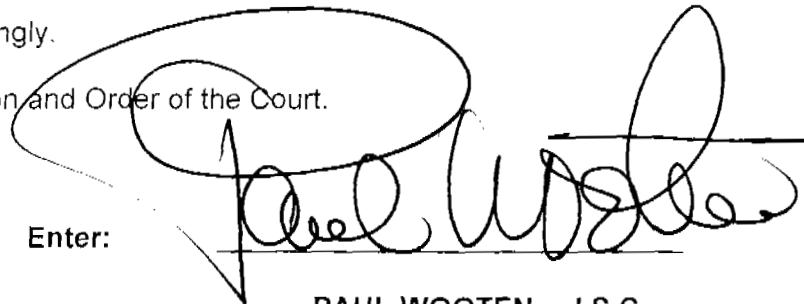
ORDERED that the petitioner's Article 78 petition is denied and the proceeding is dismissed without costs or disbursements to the respondents; it is further,

ORDERED that respondent The New York City Department of Correction shall serve a copy of this order, with notice of entry, upon petitioner and upon the Clerk of the Court, who is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

Dated: 3-30-12

Enter:



PAUL WOOTEN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

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