

Matter of Kroeger v Fischer

2012 NY Slip Op 31690(U)

June 12, 2012

Sup Ct, Albany County

Docket Number: 4176-11

Judge: George B. Ceresia Jr

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STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In The Matter of ANTHONY P. KROEGER,
Petitioner,
-against-

BRIAN FISCHER, COMMISSIONER, NYSDOCS,
Respondent,

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 # 01-12-ST3267 Index No. 4176-11

Appearances: Anthony P. Kroeger
Inmate No. 08-B-1220
Petitioner, Pro Se
Upstate Correctional Facility
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State of New York
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DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

The petitioner, an inmate currently at Upstate Correctional Facility, commenced the instant CPLR Article 78 proceeding to review a grievance determination. The grievance related to his claim that mail addressed to him from the United States Department of the Interior/United States Fish and Wildlife Services was illegally opened, in violation of Directive 4421 of the Department of Corrections and Community Supervision (DOCCS).

Turning first to a procedural issue, the original order to show cause directed that the petitioner serve his papers on or before July 29, 2011. The petitioner subsequently requested additional time to serve his papers, which was granted through issuance of an amended order to show cause on October 25, 2011. The amended order to show cause directed that the petitioner serve his papers on or before November 25, 2011. The petitioner again requested additional time to serve his papers, which was granted in the form of a second amended order to show cause issued on December 8, 2011. The second amended order to show cause required petitioner to serve his papers on or before January 6, 2012, and established a return date of February 17, 2012. The petitioner has submitted an affidavit of service which recites that papers were served on December 20, 2011. Notably however, the respondent had already filed its answer on September 2, 2011. By letter dated February 1, 2011, Assistant Attorney General Cathy Y. Sheehan objected to the extensions of time granted to the petitioner, and made reference to respondent's previously filed answer. Under the circumstances, the Court finds the proceeding to be fully submitted and ready for determination.

Turning to the merits, the grievance was denied by the Inmate Grievance Resolution Committee ("IGRC") on November 8, 2010. The determination recited as follows:

"Grievant is denied with clarification. Grievant is advised his grievance lacks the information needed to do a proper investigation. Per Mailroom Supervisor M. if grievant will send envelope to her, she will review it with counsel's office if necessary."

The petitioner filed an administrative appeal with the Superintendent, who also denied the grievance in a decision dated November 16, 2010 which recited as follows:

"Superintendent concurs with the decision of the IGRC. Grievant is denied with clarification. Grievant is advised his grievance lacks the information needed to do a proper investigation. Per mailroom Supervisor [if] grievant will send envelope to her she will review it with counsels office if necessary."

The petitioner then appealed to CORC, which denied the appeal in a decision dated November 1, 2010 which recited as follows:

"Upon full hearing of the facts and circumstances in the instant case, and upon recommendation of Department's Counsel, the action requested herein is hereby accepted in part.

"CORC notes that mail from the U.S. Department of Interior, U.S. Fish and Wildlife Services would be entitled privileged handling in accordance with Directive #4421. However, CORC has not been presented with any evidence that the grievant actually received mail from this government organization, nor has he submitted proof that he did.

"With regard to the grievant's appeal, CORC notes that staff have been advised in the future to review the legal mail log book and, if necessary, see the inmate to view the envelope at this

cell. He is advised to address any future similar concerns to an area supervisor, at that time, for the most expeditious means of resolution.

“CORC notes that Directive #4040, Section 701.1, states, in part, that the grievance program is not intended to support an adversary process.”

Judicial review of administrative decisions denying inmate grievances is limited to whether the determination is irrational, arbitrary or capricious or affected by an error of law (Matter of Ramsey v Fischer, 93AD3d 1000, 1001 [3d Dept., 2012]; Matter of Pride v New York State Department of Correctional Services, 91 AD3d 1003, 1004 [3d Dept., 2012]; Matter of Hernandez v Fischer, 79 AD3d 1544, 1546 [3d Dept., 2010]; see also Matter of Green v Bradt, 69 AD3d 1269 [3rd Dept., 2010]; 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 Green v Bradt, 91 AD3d 1235, 1237 [3d Dept., 2012]; Matter of Frejomil v Fischer, 68 AD3d 1371 [3rd Dept., 2009]; Matter of Simmons v New York State Department of Correctional Services, 82 AD3d 1382, 1383 [3d Dept., 2011]).

In this instance, because the petitioner did not present the envelope to the Mail Room Supervisor, the respondent was unable to conduct an investigation with regard to petitioner's grievance. The Court finds that the petitioner did not satisfy his burden of demonstrating that the grievance determination was arbitrary and capricious or without a rational basis. The Court need not address the remaining issues raised by the parties, all of which have been

considered. The Court concludes that the petition must be dismissed.

Accordingly, it is

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

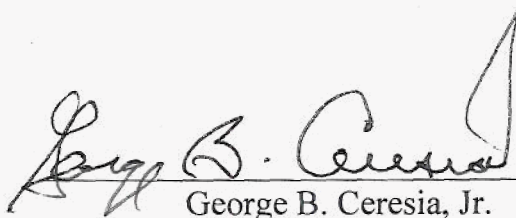
Accordingly it is

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: June 12, 2012
Troy, New York


George B. Ceresia, Jr.
Supreme Court Justice

Papers Considered:

1. Order To Show Cause dated June 24, 2011, Amended Order To Show Cause dated October 25, 2011, Second Amended Order To Show Cause dated December 8, 2011 Petition, Supporting Papers and Exhibits
2. Respondent's Answer dated August 31, 2011
3. Letter of Cathy Y. Sheehan, Assistant Attorney General, dated February 1, 2012