

Matter of Guillory v Hale
2015 NY Slip Op 30446(U)
March 30, 2015
Sup Ct, Albany County
Docket Number: 4753-14
Judge: Jr., George B. Ceresia
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STATE OF NEW YORK
 SUPREME COURT COUNTY OF ALBANY

In The Matter of PATRICK GUILLORY,

Petitioner,

-against-

JEFFREY HALE, DOCCS ASST. GRIEVANCE
 DIRECTOR,

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
 RJ # 01-14-ST6116 Index No. 4753 -14

Appearances: Patrick Guillory
 Inmate No. 09-B-0714
 Petitioner, Pro Se
 Clinton Correctional Facility
 PO Box 2000
 Dannemora, NY 12929

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 State of New York
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 of Counsel)

DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

The petitioner, an inmate currently housed at Clinton Correctional Facility, has commenced the instant CPLR Article 78 proceeding to review an adverse grievance

determination. As relevant here¹, he indicated in his grievance that he was improperly placed in administrative segregation at Southport Correctional Facility as a form of retaliation by prison authorities. He also alleged that Deputy Superintendent for Security Lamanna admitted to him that the petitioner was placed in administrative segregation because “you filed a lawsuit against me”. He asserted that Officer Lamanna’s statement was electronically recorded, and he requested a “litigation hold” on all audio and video recordings. Specifically, the petitioner alleges “[t]he respondent has violated N.Y. State spoliation laws relating to preserving [electronically stored information] and arbitrarily and capriciously denied the grievance to protect the State from liability”. He requests an order directing the respondent to preserve audio and visual footage of the incident.

The grievance was denied by the Superintendent of Southport Correctional Facility in a decision which recited as follows:²

“Grievant’s request is denied.

“Upon full hearing of the facts and circumstances in the instant case, the action requested is hereby denied. A thorough investigation of this grievance was conducted by the facility Superintendent.

“The facility Superintendent W... interviewed the grievant on 12/4/2013, in D-Block Interview Room. Even though the grievant [had] been notified by our Captain’s Office previously, the facility Superintendent once again reiterated that he is in D-Block for neither retaliation nor Administrative Segregation.

¹The petitioner also mentioned in his grievance that he had not received kosher meals. This portion of the grievance is not mentioned in the instant CPLR Article 78 petition.

²The determination of the Inmate Grievance Resolution Committee is not among the records submitted by the petitioner or the respondent.

The grievant and the facility Superintendent talked about how we felt closer monitoring in D-Block is a good practice until we have had a better idea of how he is adjusting to Southport C.F. [I]ts clear that he would rather be in one of the bigger blocks and we discussed this possibility in the future.

“Deputy Superintendent for Security Services L... was also interviewed and provided a written statement denying the allegations of this inmate. Deputy Superintendent for Security Services L... clearly explained once again that he is not in Administrative Segregation status. He went on to explain his current placement is appropriate due to what this Deputy Superintendent for Security Services felt was a need to be more closely monitored in this smaller block. There is certainly no evidence to suggest his placement with Southport C.F. is not appropriate. All due consideration will be given this inmate as he progresses through out PIMS System.

“After review of all documentation, I find no evidence to support grievant’s allegations of any wrongdoing by any staff. As such, this grievance is baseless and is denied.”

The petitioner appealed the matter to the Central Office Review Committee, which on December 4, 2013 rendered the following decision:

“Upon full hearing of the facts and circumstances in the instant case, the action requested herein is hereby denied as without merit. CORC upholds the determination of the Superintendent for the reasons stated.

“CORC notes that this matter has been properly investigated by the facility administration. DSS L... states that the grievant was not placed in D-Block in retaliation or for administrative segregation, and that he explained this to him. CORC also notes that DSS L...reviewed the video tape, however, his allegations remain unsubstantiated. CORC has not been presented with sufficient evidence to substantiate retaliation or malfeasance by staff.

“CORC notes that Directive #4040, section 701.1, states, in part, that the grievance program is not intended to support an adversary process and Section 701.6 (b) states, in part, that no

reprisals of any kind shall be taken against an inmate or employee for good faith utilization of this grievance procedure. An inmate may pursue a complaint that a reprisal occurred through the grievance mechanism.

“With respect to the grievant’s appeal, CORC asserts that all relevant information must be presented at the time of filing in order for a proper investigation to be conducted at the facility level. CORC upholds the discretion of the facility administration to review videotapes when deemed necessary based on security concerns, unusual incidents etc.”

The respondent has made a motion to dismiss the petition on grounds that petitioner failed to exhaust his administrative remedies, that his claims are duplicative of matters currently pending in federal court, and that the petition fails to state a cause of action.

It is well settled that before an issue may be considered in a CPLR Article 78 proceeding, it is necessary for the petitioner to exhaust all available administrative remedies (see Watergate v Buffalo Sewer, 46 NY2d 52, 57 [1978], citing, Young Men's Christian Assn. v Rochester Pure Waters Dist., 37 NY2d 371, 375; see also Matter of East Lake George House Marina v Lake George Park Commission, 69AD3d 1069 [3rd Dept., 2010]). This includes seeking review of all issues within the context of an administrative appeal (see Matter of Vasquez v Coombe, 225 AD2d 925, [3d Dept., 1996]; see Matter of Cruz v Travis, 273 AD2d 648 [3rd Dept., 2000]; see also Matter of Moore v New York State Board of Parole, 233 AD2d 653 [3rd Dept., 1996]; Matter of Tafari v Artus, 79 AD3d 1468, 1468-1469 [3rd Dept., 2010]).

A grievance is defined as “a complaint, filed with an [Inmate Grievance Program] clerk, about the substance or application of any written or unwritten policy, regulation, procedure or rule of the Department of Correctional Services or any of its program units, or

the lack of a policy, regulation, procedure or rule” (see 7 NYCRR 7012. [a]). The respondent maintains that the subject grievance, although making repeated demands that video and audio tapes be preserved, does not challenge DOCCS policy and/or procedure, or seek review of an action taken in violation thereof. In that respect, the Court finds that the respondent is correct. The petitioner simply makes demands in his grievance that certain action be taken (that the recordings be preserved). This is underscored by the fact that it appears that such evidence was preserved, as noted by CORC in its decision (which observed that DSS L... had reviewed the videotape). In this respect it appears that as of the filing of the grievance the petitioner was not yet aggrieved. He did not demonstrate that he suffered injury through an adverse action or determination with respect to preservation of recordings. In the event that the petitioner learns that the recordings were not preserved, the petitioner may file a grievance at that time.³

The Court finds that the petitioner’s grievance does not challenge a policy or procedure with regard to preservation of audio or video tapes and, in that respect, the petitioner has failed to exhaust his administrative remedies. In addition, because the petitioner has not demonstrated that he is aggrieved through an adverse action or determination, the petition fails to state a cause of action. The Court need not address the remaining issues raised by the respondent.

The Court concludes that the motion must be granted and the petition dismissed.

³The Court hastens to add that the Court is not taking a position here that such a grievance would have merit. The merit of such a grievance would require full review of all attendant circumstances, combined with a review of applicable regulations, policies and procedures, if any.

Accordingly it is

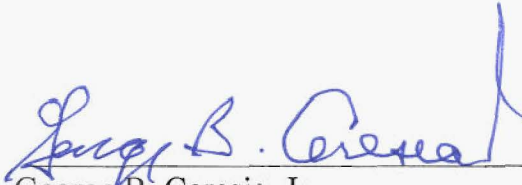
ORDERED, that the motion is granted; and it is

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: March 30, 2015
Troy, New York


George B. Ceresia, Jr.
Supreme Court Justice

Papers Considered:

1. Order To Show Cause dated September 22, 2014, Petition, Supporting Papers and Exhibits
2. Notice of Motion dated January 9, 2015, Supporting Papers and Exhibits