

Matter of Johnson v Annucci
2015 NY Slip Op 30748(U)
April 29, 2015
Sup Ct, Franklin County
Docket Number: 2015-7
Judge: S. Peter Feldstein
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**STATE OF NEW YORK
SUPREME COURT**

**COUNTY OF FRANKLIN
X**

In the Matter of the Application of
JOHNATHAN JOHNSON, #89-A-1042,
Petitioner,

for Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

**DECISION AND JUDGMENT
RJI #16-1-2015-0006.02
INDEX # 2015-7
ORI #NY016015J**

-against-

ANTHONY J. ANNUCCI, Commissioner,
NYS Department of Corrections and Community
Supervision,

Respondent.

X

This is a proceeding for judgment pursuant to Article 78 of the CPLR (apparently in the nature of mandamus to compel) that was originated by the Petition of Johnathan Johnson, verified on December 31, 2014 and filed in the Franklin County Clerk's office on January 5, 2015. Petitioner is an inmate at the Upstate Correctional Facility. Although the cause of action set forth in paragraph seven of the petition is somewhat difficult to discern, it appears that petitioner is challenging the failure of the DOCCS Inmate Grievance Program Central Office Review Committee (CORC) to timely issue decisions on administrative appeals with respect to inmate grievances UST-55016-14 and UST-54848-14. The Court issued an Order to Show Cause on January 14, 2015 and has received and reviewed respondent's Answer and Return, verified on February 12, 2015 and supported by the Letter Memorandum of Christopher J. Fleury, Esq., Assistant Attorney General, dated February 12, 2015. The Court has also received and reviewed petitioner's Reply thereto, sworn to on February 20, 2015 and filed in the Franklin County Clerk's office on February 25, 2015.

Inmate Grievance Program, as set forth in 7 NYCRR Part 701, was designed to provide inmates with “. . . an orderly, fair, simple and expeditious method for resolving grievances . . . and allegations of discriminatory treatment . . .” 7 NYCRR §701.1(a). Under the relevant provisions of 7 NYCRR §701.5 a three-step procedure is established with regard to the disposition of filed inmate grievance complaints. The first step in the process involves action by the facility Inmate Grievance Resolution Committee. *See* 7 NYCRR §701.5(b). The second step in the process is an intermediate administrative appeal to the facility superintendent. *See* 7 NYCRR §701.5(c). The third step in the inmate grievance process is a final administrative appeal to the DOCCS Inmate Grievance Program Central Office Review Committee (CORC). *See* 7 NYCRR §701.5(d). “The CORC shall review each appeal, render a decision on the grievance, and transmit its decision to the facility, with reasons stated . . . within 30 calendar days from the time the appeal was received.” 7 NYCRR §701.5(d)(2)(ii)¹.

A CPLR Article 78 proceeding brought by an inmate to challenge the results of an inmate grievance proceeding is ordinarily subject to dismissal for failure to exhaust administrative remedies if the inmate fails to pursue his/her grievance through to a final determination by the CORC prior to the commencement of the Article 78 proceeding. *See* CPLR §7801(1) and *Chaney v. VanGuilder*, 14 AD3d 739. In the case at bar it is not disputed that petitioner pursued his inmate grievance complaints completely through the first two steps of the grievance process and took a final administrative appeals to the CORC on or about November 13, 2014 (Grievance UST-55016-14) and November 17, 2014 (Grievance UST-54848-14). It is also not disputed that at least as of February 12, 2015 (the date of Assistant Attorney General Fleury’s Letter Memorandum) no final CORC

¹ In 7 NYCRR §701.5(d) two subdivisions “(2)” appear. It appears that the proper cite in the case at bar should be 7 NYCRR §701.5(d)(3)(ii).

determination with respect to either of petitioner's grievances had been rendered. Petitioner does not purport to challenge the results of either of his inmate grievance proceedings on the merits. Rather, he apparently seeks relief in the nature of mandamus to compel the CORC to issue final determinations on administrative appeal with respect to inmate grievances UST-55016-14 and UST-54848-14.

Respondent first argues that this proceeding should be dismissed for failure to exhaust administrative remedies since petitioner did not pursue his challenge to the failure of CORC to issue timely determinations on administrative appeal in the context of a new inmate grievance proceeding. The Court, however, rejects this argument out of hand. Given one of the stated purposes of the DOCCS Inmate Grievance Program - to provide inmates with an "expeditious" method for resolving their grievances/allegations of discriminatory treatment (*see* 7 NYCRR §701.1(a)) - and given the 30-day regulatory time frame for the CORC to issue a determination on administrative appeal, the Court finds it absurd, bordering on cynical, to suggest that the only recourse for an inmate facing inaction on the part of the CORC with respect to his/her final grievance appeal is to file another grievance and start the multi-step process all over again.

Citing 7 NYCRR §701.6(g)(2), petitioner argues in the alternative that this proceeding in the nature of mandamus to compel is without merit since ". . . Petitioner had the ability to appeal the determinations [presumably the facility superintendent's determinations with respect to Inmate Grievances UST-55016-14 and UST-54848-14] to a court with an Article 78 petition after not receiving a response from the CORC." The cited regulation provides as follows: "Time limit extensions maybe requested at any level of review (*e.g.*, time limits for holding an IGRC hearing, answering a grievance or an appeal, etc.), but such extensions may be granted only with the written consent of the

grievant. Absent such extension, matters not decided within the time limits may be appealed to the next step.” (Emphasis added).

Respondent’s argument to the contrary notwithstanding, the Court does not read 7 NYCRR §701.6(g)(2) so broadly as to constitute, in effect, a departmental waiver of its right to assert an exhaustion defense in response to a CPLR Article 78 proceeding brought by an inmate to challenge the results of an inmate grievance proceeding where no final CORC determination was issued notwithstanding the fact that more than 30 calendar days had elapsed from the time the inmate’s administrative appeal from the determination of the facility superintendent was received by CORC. In this regard the Court finds that it is not at all clear that a CPLR Article 78 proceeding commenced by an inmate seeking judicial review with respect the results of an inmate grievance proceeding constitutes an “[appeal] to the next step,” as that phrase appears in the last sentence of 7 NYCRR §701.6(g)(2). If, in the absence of a timely final determination on administrative appeal by the CORC, DOCCS officials desire to authorize, by regulation, judicial review of an underlying superintendent’s determination without raising an exhaustion defense, such regulation should specifically and unambiguously so provide. For example, 9 NYCRR §8006.4(c) provides as follows with respect to the failure of the DOCCS Parole Appeals Unit to issue findings and recommendations in connection with an inmate’s administrative appeal from a parole denial determination or the results of a parole violation proceeding: “Should the appeals unit fail to issue its findings and recommendation within four months of the date that the perfected appeal was received, the appellant may deem this administrative remedy to have been exhausted, and thereupon seek judicial review of the underlying determination from which the appeal was taken. In that circumstance, the division will not raise the doctrine of exhaustion of administrative remedies as a defense to such litigation.”

Based upon all of the above, it is, therefore, the decision of the Court and it is hereby

ADJUDGED, that the petition is granted, without costs and disbursements, but only to the extent that the CORC is directed to issue final determination with respect to petitioner's grievances UST-55016-14 and UST-54848-14 on or before May 29, 2015.

Dated: April 29, 2015 at
Indian Lake, New York.

S. Peter Feldstein
Acting Supreme Court Justice