

Matter of Dixon v Rock
2015 NY Slip Op 31293(U)
March 27, 2015
Supreme Court, Franklin County
Docket Number: 2013-832
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
ECHO WESTLEY DIXON, #00-A-6365,
Petitioner,

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

**DECISION AND JUDGMENT
RJI #16-1-2013-0430.109
INDEX # 2013-832
ORI #NY016015J**

-against-

DAVID ROCK, Superintendent,
Upstate Correctional Facility, and **S.
WOODWARD**, Inmate Grievance
Supervisor,

Respondents.

X

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the Petition of Echo Westley Dixon, verified on September 23, 2013 and filed in the Franklin County Clerk's office on September 25, 2013. Petitioner, who is an inmate at the Upstate Correctional Facility, challenged the alleged unequal distribution of food to inmates based upon religious belief. Petitioner also challenged the alleged failure of respondent Woodward to file his grievance(s).

The Court issued an Order to Show Cause on October 4, 2013 and a Supplemental Order to Show Cause on January 22, 2014. The Court received and reviewed respondents' Notice of Motion to Dismiss, supported by the Affirmation of Hilary D. Rogers, Esq., Assistant Attorney General, dated March 14, 2014, as well as by the Affidavit of Jeffery Hale, a DOCCS employee serving as Assistant Director of the Inmate Grievance Program Central Office Review Committee, sworn to on March 12, 2014. The Court also received and reviewed petitioner's opposing Affirmation, with exhibits, dated March 18, 2014, as well as additional correspondence from petitioner dated March 19, 2014 and April 4,

2014, filed in the Franklin County Clerk's office on March 26, 2014 and April 8, 2014, respectively.

Respondents' motion to dismiss was premised upon the assertion that petitioner failed to exhaust administrative remedies through the Inmate Grievance Program set forth in 7 NYCRR Part 701. By Decision and Order dated May 23, 2014 the Court found that petitioner's challenge to the alleged unequal distribution of food to inmates based upon religious belief must be dismissed since there was ". . . nothing in the record to suggest that petitioner ever filed - or even attempted to file - an inmate grievance complaint with respect to that issue." Regarding petitioner's challenge to the alleged failure of respondent Woodward to file his grievance(s) - specifically the alleged failure to file an inmate grievance complaint dated June 4, 2013¹ - the respondents' motion to dismiss was denied and it was directed that answering papers be served.

Both petitioner and respondents moved to reargue with respect to the Decision and Order of May 23, 2014. In this regard the Court received and reviewed petitioner's letter dated June 3, 2014, filed in the Franklin County Clerk's office on June 9, 2014, wherein he requested that the Court vacate the Decision and Order of May 23, 2014 ". . . and find that I have exhausted my administrative remedies on all claims." The Court also received and reviewed respondents' Notice of Motion to Reargue and to Dismiss, supported by the Affirmation of Hilary D. Rogers, Esq., Assistant Attorney General, dated June 23, 2014, as well as petitioner's "Affirmation" in opposition thereto, dated June 24, 2014 and filed in the Franklin County Clerk's office on June 26, 2014. Additional correspondence from petitioner, dated July 1, 2014, was filed in the Franklin County Clerk's office on July 7,

¹ Petitioner's June 4, 2013 grievance involved issues wholly unrelated to the alleged unequal distribution of food to inmates based upon religious belief.

2014. By Decision and Order dated August 5, 2014 both petitioner's and respondents' motions were denied and it was directed that answering papers be filed.

The Court has since received and reviewed respondents' Answer and Return, verified on September 9, 2014 and supported by the Letter Memorandum of Hilary D. Rogers, Esq., Assistant Attorney General, dated September 9, 2014, and by the Affidavit of respondent Scott Woodward, Inmate Grievance Supervisor, Upstate Correctional Facility, sworn to on September 3, 2014 (the Woodward Affidavit). The Court has also received and reviewed petitioner's Reply thereto, dated September 10, 2014 and filed in the Franklin County Clerk's office on September 16, 2014. Additional correspondence from petitioner, dated February 18, 2015 and filed in the Franklin County Clerk's office on March 3, 2015 has also been received and reviewed. Finally, the Court has received and reviewed petitioner's Notice of Motion Pursuant to CPLR 6001 & 5015, supported by his unsworn "Affidavit," dated March 15, 2015, both filed in the Franklin County Clerk's office on March 17, 2015.

Both parties continue to attempt to litigate with respect to claims that have been twice rejected by this Court. Petitioner continues to urge that the Court should not have found that he failed to exhaust administrative remedies with respect to his challenge to the alleged unequal distribution of food to inmates based upon religious belief. Respondents, for their part, continue to urge that petitioner also failed to exhaust administrative remedies with respect to his challenge to the alleged failure of the respondent Woodward to file his grievance. Both of these issues have been considered and rejected in the context of the Court's Decision and Order of May 23, 2014 as well as the Court's Decision and Order of August 5, 2014. They will not be considered again at this juncture. Thus, the only matter currently before the Court for disposition is

petitioner's challenge to the alleged failure of the respondent Woodward to file the Inmate Grievance Complaint dated June 4, 2013.

In petitioner's June 4, 2013 Inmate Grievance Complaint the following is stated:

"My name is Echo W. Dixon #00A6365, 10-C-50, and I am filing this grievance because officers are causing cell moves to be made and asking certain prisoners to assault other prisoners for them and to not stop fighting so that they can enter the cell and beat the prisoner who has filed a grievance against officers or sued the officers or one of their colleagues. This practice has been going on for quite some time and I am making sure that it is documented should officers do the same to me. I would also like to memorialize [sic] that these acts constitute crimes under the Penal Law and convicts are protected from their commission by Civil Rights Law §79-c. Moreover, this is a conspiracy to commit such acts and subversive acts tantamount to overthrowing the government prohibited by Civil Service Law §105. I am making it further known that officers are failing to perform duties enjoined upon them as required by Civil Service Law §95 and will be subjected to removal under Civil Service Law §75 the moment they conspire to harm me or intentionally place me under conditions to cause me harm. In accord to Civil Service Law §203. The New York State Correction Officers and Police Benevolent Association cannot provide representation by counsel for criminal charges against officers. I hereby intend to level the playing field with respect to corruption. Officers feel they are above the law and, because I am convicted of a crime, am subhuman and not deserving of regulatory, statutory and constitutional guarantees. Well, regardless of my conviction for crime, their acts against I [sic] and others are crimes; therefore, they, too, are criminals (stealing people sneakers and boots and property out of bins to retaliate against those who file grievances and lawsuits). Have they no shame? Action requested is to have officers subjected to disciplinary action and removal."

Respondent Woodward does not deny petitioner's assertion that the June 4, 2013 grievance complaint was not accepted for filing. After stating that petitioner personally handed the grievance complaint to him on June 13, 2013, respondent Woodward goes on to assert in paragraph two and three of the Woodward Affidavit as follows: "I reviewed the June 4th Grievance and determined it did not comply with the grievance criteria set forth in 7 N.Y.C.R.R. §701.5(a)(2) . . . namely, [it] was a generalized complaint that did not specify any particular grievable action nor how the inmate was personally affected by any

action . . . Since the June 4th Grievance did not comply with 7 N.Y.C.R.R. §701.5 . . . I returned it to Petitioner in person at his cell. At that time, I asked Petitioner to give specifics regarding times, dates, locations and names and resubmit the grievance so that a proper investigation could occur. Petitioner was not receptive to this request.”

“An inmate must be personally affected by the policy or issue he/she is grieving, or must show that he/she will be personally affected by that policy or issue unless some relief is granted or changes made.” 7 NYCRR §701.3(b). In addition to the foregoing, 7 NYCRR §701.5(a)(2) - which was cited in the Woodward Affidavit - provides, in relevant part, as follows: “In addition to the grievant’s name, department identification number, housing unit, program assignment, etc., the grievance should contain a concise, specific description of the problem and the action requested . . . The IGP supervisor [respondent Woodward in the case at bar] shall review the grievance complaint and designate the grievance code and title . . . The [grievance] clerk shall consecutively number and log each grievance at the time of receipt.”

Once a grievance has been submitted the first step in the review procedure is taken by the Inmate Grievance Resolution Committee (IGRC) (*see* 7 NYCRR §701.5(b)), the makeup of which is described in 7 NYCRR §701.4. If the IGRC is unable to resolve the grievance informally, “ . . . the full committee shall conduct a hearing to answer the grievance or make a recommendation to the superintendent.” 7 NYCRR §701.5(b)(2)(i). Under the provisions of 7 NYCRR §701.5(b)(4) the IGRC is authorized to dismiss and close a grievance in certain enumerated circumstances. Insofar as is relevant to this proceeding, the regulation provides that “[t]he IGRC may dismiss and close a grievance after a hearing if it determines, by majority vote (3 of 4), that . . . the grievant has not been or will be personally affected by the issue in his/her [grievance] complaint . . .” 7 NYCRR §701.5(b)(4)(i)(b). “If a grievant believes that a dismissal in his/her case is not authorized

by . . . [7 NYCRR §701.5(b)(4)(i)(b)] he/she may apply directly to the facility IGP supervisor [in this case respondent Woodward] for review . . . If the supervisor determines that the grievance does not fall into one of the categories cited in this section [7 NYCRR §701.5(b)(4)], then the grievance will be returned to the IGRC for a hearing and recommendation . . . An inmate may pursue a complaint that the IGP supervisor failed to reinstate an improperly dismissed grievance by filing a separate grievance.” 7 NYCRR §701.5(b)(4)(iii).

The Court finds nothing in the regulatory scheme for processing inmate grievance complaints, as described above, to suggest that a facility-level IGP supervisor (such as respondent Woodward) is vested with any authority to screen inmate grievance complaints for specificity in the description of the alleged problem and action requested (7 NYCRR §701.5(a)(2)) and/or with respect to how the inmate is/will be personally affected by the alleged problem (7 NYCRR §701.3(b)) and, if the IGP supervisor perceives the grievance complaint to be deficient, to return the complaint to the inmate/grievant without numbering/logging and without referring the grievance complaint to the IGRC. In this regard it is noted that departmental regulations specifically vest the IGRC, acting by majority vote after a hearing, with the authority to dismiss and close a grievance if the committee determines that “. . . the grievant has not been or will not be personally affected by the issue in his/her complaint . . .” 7 NYCRR §701.5(b)(4)(i)(b). While the Court finds nothing in the regulatory scheme specifically addressing the disposition of an inmate grievance complaint that is perceived as lacking in specific details with respect to times, dates, locations and names, the overall tenor of the scheme suggests that such details be developed during the informal resolution process before the IGRC and if the inmate/grievant is uncooperative in providing specific details, that the grievance be dismissed and closed by IGRC action pursuant to 7 NYCRR §701.5(b)(4)(i)(a).

Notwithstanding all of the foregoing, the Court finds it appropriate to caution both parties that nothing in this Decision and Judgment should be construed as a judicial determination with respect to whether or not petitioner's June 4, 2013 inmate grievance complaint complies with the provisions of 7 NYCRR §701.3(b), 7 NYCRR §701.5(a)(2) or any other regulatory provision. Rather, the Court simply finds that the authority to make an initial administrative determination with respect to the technical adequacy of an inmate grievance complaint lies with the facility IGRC, rather than the facility IGP supervisor, subject to potential review of an IGRC "dismiss and close" determination pursuant to the provisions of 7 NYCRR §701.5(b)(4)(iii).

To the extent petitioner, in his letter of February 18, 2015, sought permission to amend the pleadings in this proceeding to assert a claim for money damages, such application is denied. In addition, to the extent petitioner moves at this juncture for injunctive and other relief preventing him from being double-bunked and "... restraining the Respondents, their successors in office, agents, and employees, and all others acting in concert, conspiracy and participation with them, from permitting Respondent S. Woodward from handling, possessing, investigating, and reading any and all grievances filed at Upstate Correctional Facility, or any other correctional facility in the State of New York, refusing to file Petitioner's institutional claim, enjoin them to allow each and every prisoner at Upstate Correctional Facility to view the contents of their bins and storage bags and have them re-inventoried as a result of the theft of Petitioner's and other's sneakers, magazines, personal photographs, stamps, clothing, and other property by officers at Upstate Correctional Facility, and to vacate the ORDER dismissing certain of Petitioner's claims as unexhausted because it was entered as a result of Respondent S. Woodward's fraud, misrepresentation and deception on the court," such application is also denied.

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

ORDERED, that petitioner's motions are denied; and it is further

ADJUDGED, that the petition is granted, without costs or disbursements, but only to the extent that petitioner's June 4, 2013 grievance complaint is remanded with the direction that it be numbered, logged and passed on to the facility IGRC for processing in accordance with the provisions of this Decision and Judgment.

Dated: March 27, 2015 at
Indian Lake, New York.

S. Peter Feldstein
Acting Supreme Court Justice