

**Matter of Martin v Annucci**

2015 NY Slip Op 32327(U)

October 29, 2015

Supreme Court, Franklin County

Docket Number: 2015-440

Judge: S. Peter Feldstein

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This opinion is uncorrected and not selected for official publication.

**STATE OF NEW YORK  
SUPREME COURT**

**COUNTY OF FRANKLIN**

**X**

In the Matter of the Application of  
**NICHOLAS MARTIN, #00-A-0008,**  
Petitioner,

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

**DECISION AND JUDGMENT**

**RJI #16-1-2015-0227.36**

**INDEX # 2015-440**

**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 that was originated by the Petition of Nicholas Martin, verified on May 13, 2015 and filed in the Franklin County Clerk's office on May 15, 2015. Petitioner, who is an inmate at the Upstate Correctional Facility, is challenging the results of a Tier III Superintendent's Hearing held at Upstate on February 6, 2015. The Court issued an Order to Show Cause on May 29, 2015 and has received and reviewed respondent's Answer and Return, verified on July 24, 2015 and supported by the Letter Memorandum of Christopher J. Fleury, Esq., Assistant Attorney General, dated July 24, 2015. The Court has also received and reviewed petitioner's Reply thereto sworn to on August 10, 2015 and filed in the Franklin County Clerk's office on August 14, 2015.

On January 23, 2015 Petitioner was transferred from the Auburn Correctional Facility to the Upstate Correctional Facility. As the result of an incident that occurred upon his arrival at Upstate on that date petitioner was issued an inmate misbehavior report charging him with violations of inmate rules 102.10 (threats) and 109.15 (refusing

double bunk). The inmate misbehavior report, authored by C.O. Wyckoff, alleged, in relevant part, that C.O. Wyckoff “. . . was interviewing Inmate Martin . . . as an incoming draft to 8 Building [at Upstate]. During the interview Martin stated that he was not going to double bunk. I told Martin that Upstate Correctional is a double bunk facility and he has to double bunk. Martin responded by stating, ‘If you put me in a cell with a bunkie I will murder him, I won’t stop beating him until I kill the mother fucker.’ Inmate Martin was then moved to a cell with no other inmate.”

A Tier III Superintendent’s Hearing was held at the Upstate Correctional Facility on February 6, 2015 and at the conclusion thereof petitioner was found guilty of both charges and a disposition was imposed confining him to the special housing unit for 60 days (with 30 days suspended and deferred) and directing the loss of various privileges for a period of 30 days. Upon administrative appeal the results and disposition of the Tier III Superintendent’s Hearing of February 6, 2015 were affirmed. This proceeding ensued.

The only argument advanced in this proceeding is that the presiding hearing officer failed to interview a representative of the Office of Mental Health (OMH) with respect to petitioner’s mental state at the time of the January 23, 2015 incident and/or at the time of the February 6, 2015 hearing. Although petitioner alleged in the petition that he was admitted to an OMH satellite unit on January 23, 2015<sup>1</sup> and was not discharged from that unit until February 2, 2015, petitioner’s OMH placement was not brought up during the course of the Tier III Superintendent’s Hearing. No other issue with respect to

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<sup>1</sup> In counsel’s Letter Memorandum of July 24, 2015 it is asserted that petitioner was not transferred from general population at the Upstate Correctional Facility to the OMH satellite unit at the Clinton Correctional Facility until January 27, 2015. The DOCCS Locator System Chronological History Display printout annexed to respondent’s Answer and Return as Exhibit K appears to support respondent’s assertion on this point. The exhibit annexed to petitioner’s Reply, however, suggests that he was seen by OMH staff assigned to the Upstate Correctional Facility on January 23, 2015 and on that date was placed under one to one observation as a precaution against self-harm. Petitioner apparently remained under one to one observation at Upstate until he was transferred to the OMH satellite unit at the Clinton Correctional Facility.

petitioner's mental state/mental health was raised during the course of the hearing nor did petitioner request that the Hearing Officer interview an OMH representative.

The hearing officer presiding at a prison disciplinary proceeding where an inmate's mental health is "at issue" must consider evidence regarding such inmate's mental condition. *See Huggins v. Coughlin*, 76 NY2d 904, *aff'g* 155 AD2d 844. An inmate's failure to affirmatively raise an issue with respect to his/her mental condition during the course of an underlying disciplinary hearing, moreover, is not dispositive since constructive notice of the inmate's potentially compromised mental state may be imputed to the hearing officer in appropriate circumstances. *See Rosado v. Kuhlmann*, 164 AD2d 199, *lv denied* 77 NY2d 806. According to the Appellate Division, Third Department, in *Rosado*, ". . . where prison officials initiate an emergency referral for mental health services for an inmate and disciplinary proceedings arise from an incident occurring while the referral is being executed, the inmate's mental condition is an obvious matter of concern. The Hearing Officer, therefore, should consider the inmate's mental condition in resolving the disciplinary proceeding." *Id.* At 201.

Although petitioner in the case at bar was not subject to any psychiatric/OMH observation/treatment order at the time of the January 23, 2015 incident, and thus constructive notice of his potentially impaired mental state was not as obvious as in *Rosado*, this Court nevertheless finds that under the facts and circumstances of this case petitioner's mental condition should have been of concern to DOCCS staff and, therefore, made the subject of inquiry at the Tier III Superintendent's Hearing of February 6, 2015. In this regard it is noted that on the day of the bizarre incident of January 23, 2015 petitioner was referred to OMH staff at the Upstate Correctional Facility (presumably at the behest of DOCCS staff) and placed on one to one observation status to address the potential of self-harm. Four days later, on January 27, 2015, petitioner was transferred

from Upstate to an OMH satellite unit at the Clinton Correctional Facility where he remained for approximately one week before being returned to Upstate on February 2, 2015 - four days before the commencement of the Tier III Superintendent's Hearing of February 6, 2015.

The Court takes note of the DOCCS regulatory provisions identifying the circumstances under which an inmate's mental state must be deemed "at issue" in the context of a Tier III Superintendent's Hearing. *See* 7 NYCRR §254.6(b)(1). Although the "at issue" triggers set forth in 7 NYCRR §254.6(b)(1)(i) through (viii) are apparently not applicable under the facts and circumstances of this case, 7 NYCRR §254.6(b)(1)(ix) represents a catch-all provision whereby an inmate's mental state is deemed "at issue" when ". . . it appears to the hearing officer, based on the inmate's testimony, demeanor, the circumstances of the alleged offense or any other reason, that the inmate may have been mentally impaired at the time of the incident or mentally impaired at the time of the hearing." (Emphasis added). The Court simply does not read this regulatory provision as being applicable only when triggered by the actual perceptions of the hearing officer. Rather, the Court finds that this catch-all provision must be applied where, as here, information known to DOCCS staff should have prompted a finding that the inmate may have been mentally impaired at time of the incident or at the time of the hearing. Even if the hearing officer presiding at the Tier III Superintendent's Hearing of February 26, 2015 was not made aware of petitioner's interaction with OMH staff (particularly the one-week placement at an OMH satellite unit at the Clinton Correctional Facility) between the date of the incident and the date of the hearing, DOCCS staff should have made the hearing officer so aware. The Court therefore finds that the procedures set forth in 7 NYCRR §254.6(c) through (g) should have been implemented at the hearing.

Since there has been no determination that the results of the Tier III Superintendent's Hearing of February 6, 2015 were not supported by substantial evidence and since there has been no determination that one of petitioner's fundamental due process rights, as enunciated in *Wolff v. McDonnell*, 418 US 539, has been violated, equitable considerations dictate whether expungement, rather than remittal for a new hearing, is the proper remedy. See *Barnes v. Fischer*, 108 AD3d 990 and *Monko v. Selsky*, 246 AD2d 699. Given the fact that the limited dispositional penalties are not scheduled to be implemented until December 11, 2015, and given the extremely serious nature of the threats allegedly made by petitioner, the Court finds that re-hearing, rather than expungement, is warranted.

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 or disbursements, but only to the extent that the results and disposition of the Tier III Superintendent's Hearing of February 6, 2015 are vacated and the matter remitted for a new hearing not inconsistent with this Decision and Judgment.

**Dated:** October 29, 2015 at  
Indian Lake, New York.

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S. Peter Feldstein  
Acting Supreme Court Justice