

Matter of Matzell v Annucci
2019 NY Slip Op 34164(U)
March 7, 2019
Supreme Court, Albany County
Docket Number: 3111-18
Judge: Andrew G. Ceresia
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STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In The Matter of the Application of

MICHAEL MATZELL, 15-A-2958,

Petitioner,

-against-

ANTHONY J. ANNUCCI, ACTING COMMISSIONER,
NEW YORK STATE DEPARTMENT OF
CORRECTIONS AND COMMUNITY SUPERVISION,

Respondent,

For A Judgment Pursuant to Article 78
of the Civil Practice Law and Rules.

Supreme Court, Albany County, Article 78 Term
Hon. Andrew G. Ceresia, Supreme Court Justice
Index No. 3111-18 RJI No. 01-18-ST9577

Appearances:

Prisoners' Legal Services of New York
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Ceresia, J.:

Petitioner commenced the instant CPLR Article 78 proceeding to challenge a determination made by the Department of Corrections and Community Supervision ("DOCCS") that petitioner was ineligible for participation in the shock incarceration program ("shock" or "the shock program"). Respondent opposes.

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DECISION/ORDER/JUDGMENT

On July 9, 2015, in connection with a drug conviction, petitioner was sentenced to a term of four years in prison followed by three years of postrelease supervision. The sentencing court also ordered that participation in shock would be a component of the sentence. Petitioner began serving his period of incarceration. As the date upon which he would become time-eligible to participate in shock approached (see Correction Law § 865 [2]), petitioner inquired of prison officials as to his anticipated admission into the program. Petitioner was informed that he was not eligible for participation in shock because of disciplinary infractions that he had accrued while incarcerated. Petitioner's counsel contacted DOCCS and, following an exchange of letters, was ultimately advised by respondent's counsel that it was respondent's position that inmates who are judicially ordered into shock may nevertheless be denied participation based upon disciplinary infractions accrued while incarcerated. Petitioner thereafter commenced the instant proceeding to challenge this determination.

Review of an administrative agency's determination is limited to whether it was arbitrary and capricious, lacked a sound rational basis, or was affected by an error in law (see CPLR 7803 [3]; Matter of Kittle v D'Amico, 141 AD3d 991, 992 [2016]; Matter of Johnson Elec. Const. Corp. v New York State Dept. of Transp., 124 AD3d 1199, 1200 [2015]). "Deference is generally accorded to an administrative agency's interpretation of statutes it enforces when the interpretation involves some type of specialized knowledge. 'By contrast, where the question is one of pure statutory reading and analysis, dependent only on accurate apprehension of legislative intent, there is little basis to rely on any special competence or expertise of the administrative agency . . . In such circumstances, the judiciary need not accord any deference to the agency's determination, and is free to ascertain the proper interpretation from the statutory language and legislative intent'" (Belmonte v Snashall, 2 NY3d 560, 565-66 [2004], quoting

Matter of Gruber [New York City Dept. of Personnel], 89 NY2d 225, 231 [1996] [internal quotation marks and citations omitted]).

In this case, the determination as to whether an inmate who is judicially ordered into shock can nevertheless be prevented by DOCCS from entering the program, based upon disciplinary infractions accrued, is a matter of interpretation of statutory language and legislative intent. The shock program was first established in 1987 and, “[o]riginally, the selection of inmates for [s]hock lay solely in the discretion of [DOCCS]. . . courts and prosecutors had no authority to grant admission into the program” (People v Parker, 160 AD3d 767, 769 [2018]; see Correction Law § 867 [1], [2]; People ex rel. Dickerson v Unger, 62 AD3d 1262, 1263 [2009], lv denied 12 NY3d 716 [2009]; People v Taylor, 284 AD2d 573, 574 [2001]). Under the original contours of the program, which are still in place today, inmates wishing to participate in shock must apply to a screening committee which has the discretion to determine whether an inmate’s participation would be consistent with the welfare of the inmate and the community as well as DOCCS’ rules and regulations (see id.; Correction Law § 867 [1], [2]).

However, in 2009, as part of the Drug Law Reform Act, the legislature promulgated a new law allowing judges to order participation in shock as a component of a sentence in certain cases (see L. 2009, c. 56, pt. AAA, § 2, eff. April 7, 2009). The new statutory language states that, in the case of a judicially sentenced shock inmate, the screening committee may weigh in “only to the extent that [it] may determine whether the inmate has a medical or mental health condition” that would render the inmate unable to complete the program (Correction Law § 867 [2-a]). Even in such cases, the inmate must be provided with an alternative program (see Penal Law § 60.04 [7] [b]). Thus, the discretion of the screening committee is eliminated in cases of

judicially ordered shock. The new law also states that, notwithstanding the general rule that participation in shock is a privilege, a judicially sentenced shock inmate “*shall promptly commence participation in the program*” provided the inmate is otherwise statutorily eligible (Correction Law § 867 [2-a] [emphasis supplied]).

In the face of these clear statutory mandates, respondent nevertheless contends that DOCCS still retains discretion to bar even judicially-sentenced shock inmates from participation in the program. In support of this position, respondent relies upon a statutory phrase that was promulgated as part of the Drug Law Reform Act. Specifically, Penal Law § 60.04 (7) (a) recites that a judge may issue an order directing DOCCS to enroll an eligible defendant in the shock program, but then goes on to state:

“Notwithstanding the foregoing provisions of this subdivision, any defendant *to be enrolled* in such program pursuant to this subdivision shall be governed by the same rules and regulations promulgated by the department of corrections and community supervision, including without limitation those rules and regulations establishing requirements for completion and such rules and regulations governing discipline and removal from the program”

(Penal Law § 60.04 [7] [a] [emphasis supplied]). Respondent argues that the phrase “to be enrolled” refers to inmates who have yet to be placed in the program, and therefore the statute permits DOCCS to apply its rules and regulations to preclude such inmates from entering the program.

The Court disagrees with this interpretation, as respondent’s narrow reading of a single three-word phrase ignores the larger context of the sentence and paragraph in which it is found. The full sentence refers to any defendant who is “to be enrolled in such program *pursuant to this subdivision*” – i.e., a defendant who is “to be enrolled” in shock because a court has already

ordered DOCCS to do so. Nothing in the statute permits DOCCS to defy a court order. Rather, a plain reading of the full paragraph reveals that it contemplates that defendants who have been judicially ordered into the program will be subject to DOCCS' rules and regulations for completion, discipline, and removal from shock, but it does not contemplate that such defendants may be administratively prevented from entering the program in the first place. This interpretation places the "to be enrolled" phrase within a logical context. Certainly, a defendant who is judicially ordered to be enrolled in the program must still follow the rules of the program itself, once enrolled. If respondent's interpretation were to be adopted, however, then not only would the legislative intent behind the Drug Law Reform Act – to allow judges to order eligible defendants into the shock program and eliminate the discretion of the screening committee in such cases – be nullified, but the statutes enacting this intent would also be nullified. "It is a fundamental canon of statutory construction that a Court must avoid an interpretation of a statute that renders it a nullity" (Bailey v Joy, 11 Misc 3d 941, 946 [2006]).

The Court acknowledges the case law cited by respondent for the proposition that courts do not have the authority to guarantee an inmate's participation in shock (see e.g. People v Muhammad, 132 AD3d 1068, 1069 [2015]; People v Benson, 100 AD3d 1108, 1109 n 1 [2013]; People v Vanguilder, 32 AD3d 1110, 1110-11 [2006]). Indeed, these cases are not inconsistent with the Court's holding herein. That is, the Court acknowledges that an inmate may be found statutorily ineligible for shock notwithstanding a court order (see Correction Law § 867 [2-a] [stating that an inmate sentenced to shock shall promptly commence participation in the program "when such inmate is an eligible inmate"]; § 865 [1] [setting forth eligibility criteria with respect to age, criminal history, and other factors]; see also Penal Law § 60.04 [7] [b] [outlining the

“alternative-to-shock-incarceration program” for judicially ordered shock inmates with a medical or mental health condition]). However, none of the cases cited by respondent hold that an inmate who is judicially sentenced to shock may be found ineligible for the program based not upon statutory eligibility criteria but, rather, upon an administrative determination, as occurred here. It is also noteworthy that these cases either predate, or rely upon other cases that predate, the Drug Law Reform Act of 2009.

For the reasons set forth above, the Court finds that the controlling statutes do not permit DOCCS to administratively bar an inmate from entering the shock program when shock has been judicially ordered. To do so constitutes an administrative alteration of a sentence, which is not permitted (see Matter of Garner v New York State Dept. of Corr. Svcs., 10 NY3d 358, 362 [2008] [holding that respondent could not administratively impose a period of postrelease supervision]; Matter of Prendergast v State, Dept. of Corrs., 51 AD3d 1133, 1134 [2008] [same holding]).

Therefore, it is hereby

ORDERED AND ADJUDGED that the petition is granted, and it is further

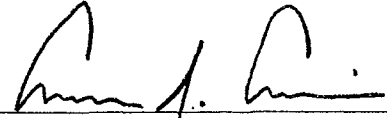
ORDERED AND ADJUDGED that respondent is to enroll petitioner in the shock incarceration program within 30 days of the date of this Decision/Order/Judgment, provided that petitioner is not found statutorily ineligible pursuant to Correction Law § 865 [1] or § 867 [2-a] prior to that date.

This constitutes the Decision/Order/Judgment of the Court. The original Decision/Order/Judgment is being returned to counsel for the petitioner. A copy of this Decision/Order/Judgment and all other original papers are being delivered to the Albany County

Clerk's Office. The signing of this Decision/Order/Judgment shall not constitute entry or filing under CPLR § 2220. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry, and notice of entry.

ENTER.

Dated: March 7, 2019
Albany, New York



Andrew G. Ceresia
Supreme Court Justice

Papers Considered:

- 1) Notice of Petition, dated May 8, 2018; Verified Petition, with annexed exhibits; Memorandum of Law;
- 2) Verified Answer, dated July 13, 2018, with annexed exhibits; Memorandum of Law;
- 3) Reply Affirmation of Elias Shebar, Esq., dated July 17, 2018;
- 4) Letter of Kyle W. Sturgess, Esq., dated November 1, 2018;
- 5) Letter of Mary Cipriano-Walter, Esq., dated November 2, 2018;