

Matter of Ketchmore v Annucci
2020 NY Slip Op 30530(U)
February 27, 2020
Supreme Court, Seneca County
Docket Number: 53044
Judge: Daniel J. Doyle
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STATE OF NEW YORK
SUPREME COURT SENECA COUNTY

In the Matter of the Application of
AARON KETCHMORE
DIN# 17a0767

Decision and Judgment

Petitioner

Index No. 53044

-vs-

ACTING COMMISSIONER ANNUCCI,
NYS DEPARTMENT OF CORRECTIONS AND
COMMUNITY SUPERVISION, AND
SUPERINTENDENT THOMS, FIVE
POINTS CORRECTIONAL FACILITY,

Respondents

Petitioner filed this Article 78 petition following a Tier III disciplinary determination that found him guilty of prison rule violations that was held at Five Points Correctional Facility beginning on January 25, 2019 and ending on February 20, 2019. The Petitioner timely appealed the Tier III hearing and the Superintendent affirmed the determination on April 15, 2019. The Petitioner thereafter commenced this Article 78 action by the filing of a petition on August 29, 2019. The Court has reviewed the petition of Petitioner, the Verified Answer and Return submitted by the Assistant Attorney General, Ted O'Brien, Esq., and

the Petitioner's reply.

CPLR 217[1] prescribes a four month statute of limitations for commencing an Article 78 action and it must be commenced within four months of the final administrative determination being challenged (*Mosley v Cully*, 118 AD3d 1495 [4th Dept 2014]). As the challenged determination was rendered on April 15, 2019, Petitioner was obligated to commence this action on or before August 15, 2019. Having failed to do so, the petition is untimely.

Were the Court to reach the merits of the action, it would be bound to uphold the determination. In an Article 78 challenge to an agency's decision the standard for review is whether the "determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion" CPLR 7803[3]. "An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts" (*Matter of Peckham v Calogero*, 12 NY3d 424, 431 [2009]). However, when the determination is supported by a rational basis, the Court "must sustain the determination" even if the Court "concludes that it would have reached a different result than the one reached by the agency" (*Sylvester v Fischer*, 126 AD3d 1330, 1330 [4th Dept 2015]).

Here, upon a review of the record, the decision reached at the agency level had a rational basis and was not in violation of lawful procedure. Therefore upon the papers submitted, this court finds that the petition is in all respects denied and dismissed without additional costs.

Finally, Petitioner was not deprived of due process as he was permitted to call witnesses and nothing in the record demonstrates that he was otherwise denied due process (see *Amaker v Coughlin*, 197 AD2d 886, 886 [4th Dept 1993]).

THIS CONSTITUTES THE DECISION AND JUDGMENT OF THE COURT.

Dated: February 27, 2020

A handwritten signature in black ink, appearing to read 'D. J. Doyle', written over a horizontal line.

The Honorable Daniel J. Doyle
Supreme Court Justice