

<b>State of New York v Schmidt</b>
2021 NY Slip Op 31998(U)
August 12, 2021
Supreme Court, Seneca County
Docket Number: 53711
Judge: Barry L. Porsch
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**SENECA COUNTY SUPREME COURT  
STATE OF NEW YORK**

The State of New York, on relation of

BLAKE WINGATE, DIN #15A3206

Petitioner

- against -

NURSE ADMINISTRATOR SCHMIDT, FACILITY  
HEALTH DIRECTOR, REGIONAL HEALTH  
SERVICES ADMINISTRATOR  
SONJI HENTON,

Respondents.

**DECISION AND  
ORDER**

Index No.: 53711

Petitioner commenced this action by way of Petition and Order to Show Cause. The Order to Show Cause directed petitioner to serve the respondents no later than June 4, 2021 and provided that service could be effectuated by regular mail.

Petitioner admits that the Attorney General was not served but claims this was due to the facility failing to provide him sufficient advances for copies and alleging that the facility attempts to prevent inmates from availing themselves of legal process (petitioner's rebuttal, July 20, 2021). Petitioner further avers that the parties have "colluded together in conspiracy to divert legal motions from receipt of this Court, by sabotage, obstruction of the postal delivery." (aff of petitioner at 1 [June 27, 2021]). However, petitioner offers no proof to support these allegations beyond his assertions and correspondence demonstrating his account balances and his grievances filed with the facility. The grievance report indicates that the petitioner requested an advance for legal copies, and said request was granted on June 1, 2021 (aff of petitioner, Ex. E [June 27, 2021]). Proof to support such claims is necessary to demonstrate that the inmate's incarceration presented an obstacle to compliance (*see Matter of Anderson v Fischer*, 112 AD3d 1089, 1090

[3d Dept 2013]).


On June 23, 2021; the respondents, through Assistant Attorney General Ted O'Brien submitted a motion to dismiss, alleging that service was never effectuated upon the respondents and therefore personal jurisdiction was never obtained, pursuant to both CPLR 3211 [a][8] and CPLR 7804[f]. The respondents further allege that as of June 23, 2021, no record exists in the Rochester Office of the Attorney General and that upon information and belief the petitioner has not filed proof of service either with the Court or with the Rochester Office of the Attorney General. The respondents advise that the petitioner's arguments with respect to advance postage receipts demonstrates that the petitioner never addressed mailings to the office of the Attorney General, but merely sent mail to the Seneca County Court and failed to attempt to send any mail directly to the AG's office (respondent's affirmation in response to motion to dismiss [Jul 15, 2021]). The respondents further submit a letter response dated August 9, 2021; wherein respondents outline the process for serving inmates via the Inmate Records office and further advises that the Attorney General's office has received copies of all of petitioner's correspondence which serves to refute Petitioner's contention that he was prevented from sending paperwork from Five Points Correctional Facility (respondent's letter [Aug. 9, 2021]).

Personal jurisdiction of a respondent may only be obtained where service of process is properly effectuated (*see Brownstone Capital NY, LLC v Lindsay*, 183 AD3d 687, 688 [2d Dept 2020]). Thus "an inmate's failure to comply with the service directives set forth in an order to show cause requires dismissal of the petition for lack of personal jurisdiction" (*Matter of Wise v New York State Div. of Parole*, 37 AD3d 959 [3d Dept 2007]). Failure to comply with service directives set forth in an order to show cause require dismissal of the petition for lack of personal jurisdiction (*see Dorcinvil v Annucci*, 186 AD3d 1853, 1854 [3d Dept 2020], citing *Smith v*

*Annucci*, 166 AD3d 1172, 1173 [3d Dept 2018]). The petitioner's failure to comply with the order to show cause by serving respondent and the Attorney General's office necessitates dismissal of the petition for failure to obtain personal jurisdiction over the respondents. Based upon the foregoing, the petition is dismissed pursuant to CPLR 3211[a][8].

THIS CONSTITUTES THE DECISION AND JUDGMENT OF THE COURT

Dated: 8-12, 2021

  
Barry L. Porsch  
Acting Supreme Court Justice