Matter of Walker v Commissioner, N.Y. State Dept. of Corr. & Community Supervision

2023 NY Slip Op 34912(U)

December 8, 2023

Supreme Court, Albany County

Docket Number: Index No. 905188-23

Judge: Richard M. Platkin

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STATE OF NEW YORK
SUPREME COURT

ALBANY COUNTY

In the Matter of
JUNARIAN WALKER,

Petitioner-Plaintiff,

-against-

COMMISSIONER, New York State Department of Corrections and Community Supervision,

Respondent-Defendant.

CONSOLIDATED DECISION, ORDER & JUDGMENT

Index Nos.: 905188-23, 905189-23, 905191-23, 905193-23, 905201-23

(Judge Richard M. Platkin, Presiding)

APPEARANCES:

PRISONERS' LEGAL SERVICES OF NEW YORK
Attorneys for Petitioner
(Karen L. Murtagh and Matthew McGowan, of counsel)
41 State Street, Suite M112
Albany, New York 12207

NEW YORK CIVIL LIBERTIES UNION FOUNDATION
Co-Attorneys for Petitioner
(Antony P. Gemmell and Molly Biklen, of counsel)
125 Broad Street, 19th Floor
New York, New York 10004

LETITIA JAMES, ATTORNEY GENERAL
Attorney for Respondent
(Peter A. McDaniel, Olivia R. Cox, Anthony R. Huntley, Mark J. Dolan and Jennifer J. Corcoran, of counsel)
The Capitol
Albany, New York 12224

Hon. Richard M. Platkin, A.J.S.C.

Petitioner, an incarcerated individual in the custody of the New York State Department of Corrections and Community Supervision ("DOCCS"), brings these hybrid CPLR article 78 proceedings/declaratory judgment actions challenging five separate disciplinary determinations rendered over a two-week period in July and August of 2022 (*see* Index No. 905188-23, NYSCEF Doc No. 1 ["Petition"], ¶ 3).[1] In each case, petitioner challenges DOCCS's imposition of "lengthy sanctions of segregated confinement" (*id.*) as violative of the Humane Alternatives to Long-Term Solitary Confinement Act of 2021 ("HALT Act") and related amendments to the SHU Exclusion Law of 2008.

BACKGROUND

Petitioner is an incarcerated individual "living with serious mental illness" (Petition, ¶ 1). "[H]e requires the most intensive level of psychiatric care available in the New York State prison system" (*id.*, ¶ 2; *see also* Correction Law § 137 [6] [e]). "At all relevant times, [petitioner] has been housed in a Residential Mental Health Treatment Unit (RMHTU) at Coxsackie Correctional Facility and designated to receive care at Office of Mental Health ('OMH') service level 1" (Petition, ¶ 2; *see id.*, ¶ 60).

"In the summer of 2022, over a two-week period during which he was placed on suicide watch, [petitioner] received five misbehavior reports for alleged misconduct. Following a hearing on each report, DOCCS imposed lengthy sanctions of segregated confinement, ultimately sentencing [him] to an aggregate total of 1,025 days of such confinement" (*id.*, ¶ 3).

Petitioner does not challenge the hearing determinations of guilt, but he alleges that the imposition of "segregated confinement" as a disciplinary sanction is unlawful because his

[1] References herein to the NYSCEF docket shall refer to the docket of Index No. 905188-23.

misconduct "neither rose to the level of 'exceptional circumstances' contemplated by the SHU Exclusion Law, nor met the clear criteria required under HALT [Act]" (*id.*, ¶ 7).

Petitioner therefore seeks (1) annulment of the challenged determinations to the extent they "subject[ed]" him to segregated confinement sanctions as violative of the HALT Act and SHU Exclusion Law, and (2) a declaration "that DOCCS's policies and practices as described herein violate the HALT Act and SHU Exclusion Law" (*id.*, ¶¶ 1, 8; *see* Wherefore, [a]-[c]).

Petitioner's challenges initially were brought in the form of a single Article 78 proceeding/declaratory judgment action that was ordered severed upon the motion of DOCCS (*see Matter of Walker v Annucci*, Index No. 900926-23).[2]

DOCCS, through its current Commissioner, opposes each petition/complaint through a verified answer (*see e.g.* NYSCEF Doc No. 23).

DISCUSSION

Petitioner alleges that the challenged disciplinary determinations violate the HALT Act and SHU Exclusion Law insofar as they subjected him to "lengthy sanctions of segregated confinement" (Petition, ¶ 3). Petitioner complains that DOCCS did not render "a written determination that [his] conduct presented the detailed and specific degree of danger that the Legislature requires under the HALT Act and SHU Exclusion Law to impose more than three continuous days of such sanctions" (NYSCEF Doc No. 14 at 4; *see* Petition, ¶¶ 4-8, 67-68).

The HALT Act, which became effective on March 31, 2022, "imposes specific limits and regulations regarding the placement of individuals in segregated and other specific forms of disciplinary confinement" (*Fuquan F. v Annucci*, ___ NYS3d ___, ___, 2023 NY Slip Op 23285,

[2] Given that all of the cases ultimately turn on the same threshold legal issue (*see infra*), however, the Court issues this consolidated disposition.

*2 [Sup Ct, Albany County 2023] [Bryant, J.]). As is relevant here, the HALT Act generally "caps admissions to segregated confinement at three consecutive days, or six days in any 30-day period" (Petition, ¶ 19; *see* Correction Law § 137 [6] [k] [i]).

DOCCS "may place a person in segregated confinement beyond the [foregoing] limits . . . or in a residential rehabilitation unit[3] only if, pursuant to an evidentiary hearing, [the agency] determines by written decision that the person committed one of [seven types of enumerated] acts and if the commissioner . . . determines in writing based on specific objective criteria the acts were so heinous or destructive that placement of the individual in general population housing creates a significant risk of imminent serious physical injury to staff or other incarcerated persons, and creates an unreasonable risk to the security of the facility" (Correction Law § 137 [6] [k] [ii]).

For its part, the SHU Exclusion Law provides that "[a]n incarcerated individual in a residential mental health treatment unit[4] shall not be sanctioned with segregated confinement for misconduct on the unit, or removed from the unit and placed in segregated confinement or a residential rehabilitation unit, except in exceptional circumstances where such incarcerated individual's conduct poses a significant and unreasonable risk to the safety of incarcerated

[3] Residential rehabilitation unit ("RRU") is defined as "a separate housing unit used for therapy, treatment, and rehabilitative programming of incarcerated people who have been determined to require more than fifteen days of segregated confinement pursuant to department proceedings. Such units shall be therapeutic and trauma-informed, and aim to address individual treatment and rehabilitation needs and underlying causes of problematic behaviors" (Correction Law § 2 [34]).

[4] Residential mental health treatment unit ("RMHTU") means "housing for incarcerated individuals with serious mental illness that is operated jointly by [DOCCS] and [OMH] and is therapeutic in nature. Such units shall not be operated as disciplinary housing units, and decisions about treatment and conditions of confinement shall be made based upon a clinical assessment of the therapeutic needs of the incarcerated individual and maintenance of adequate safety and security on the unit. Such units shall include, but not be limited to, the residential mental health unit model, the behavioral health unit model, the intermediate care program and the intensive intermediate care program" (Correction Law § 2 [21]).

individuals or staff, or to the security of the facility and he or she has been found to have committed [at least one of the acts enumerated in Correction Law § 137 (6) (k) (ii) (A-G)]" (*id.* § 401 [5] [a]).

DOCCS maintains, as a threshold matter, that petitioner's challenges should be dismissed because he "has not served any of his disciplinary sanctions in segregated confinement" (NYSCEF Doc No. 34 at 5).

"The HALT Act defines segregated confinement as a type of confinement in which the incarcerated individual is offered less than seven hours out-of-cell programming or other out-of-cell activities daily" (*Fuquan F.*, 2023 NY Slip Op 23285, *2, citing Correction Law § 137 [6] [j] [ii]). Correction Law § 2 (23) previously defined "segregated confinement" by general reference to disciplinary confinement within a special housing unit ("SHU"), but the HALT Act replaced that definition with a bright-line rule based on out-of-cell time: "segregated confinement" now means "any form of cell confinement for more than seventeen hours a day other than in a facility-wide emergency or for the purpose of providing medical or mental health treatment" (Correction Law § 2 [23], as amended by L 2021, ch 93, § 1).

Respondent submits affidavits from two DOCCS officials attesting that petitioner "currently [is], and has been for all times relevant to this lawsuit, housed in a Residential Mental Health Unit (RMHU)" (NYSCEF Doc No. 31 ["Donahue Aff."], ¶ 4).

RMHU, which is a form of RMHTU (*see* n 4, *supra*), "provides services to incarcerated individuals who are designated as seriously mentally ill (SMI). It is a therapeutic placement for incarcerated individuals who would otherwise be serving a disciplinary sanction in a Special Housing Unit (SHU) or Residential Rehabilitation Unit (RRU)" (Donahue Aff., ¶ 5).

"All individuals designated as [seriously mentally ill] by [OMH] are automatically placed in an RMHU . . . when they are given disciplinary sanctions that would otherwise include a period of segregated confinement" (*id.*, ¶ 6). In other words, RMHUs are "designed to address the corrections-based therapeutic treatment of incarcerated individuals currently diagnosed with a serious mental illness who, due to their behavior, are serving a confinement sanction" (7 NYCRR 320.2 [newly-added regulation, effective Aug. 9, 2023]).

Incarcerated individuals in RMHU "are offered at least seven hours per day of out-of-cell time including structured therapeutic programming and out-of-cell recreation" (Donahue Aff., ¶ 7). Specifically, 7 NYCRR 320.2 obliges RMHUs to offer "four hours of structured out-of-cell therapeutic programming and/or mental health treatment along with three hours out-of-cell congregate programming, services, treatment, recreation, activities, and/or meals, with an additional one hour of recreation, for a total of seven hours out-of-cell on a daily basis."

Petitioner was housed in RMHU when he "accumulated disciplinary penalties for five misbehavior reports he received in the summer of 2022. Such penalties included terms of segregated confinement. Notwithstanding, Petitioner has continued to serve his disciplinary sentences in the RMHU," and he "has not been housed in SHU or RRU during any portion of his disciplinary sanction for [said] five misbehavior reports" (Donahue Aff., ¶¶ 9-15).

Further, in "compliance with the SHU Exclusion Law, Petitioner was not removed from the RMHU or placed in segregated confinement. He remained in the RMHU during his disciplinary sanction. Despite the misbehavior report and subsequent disciplinary sanction," which, in the view of DOCCS, "clearly presents an exceptional circumstance," petitioner "remained in the appropriate therapeutic environment" (*id.*, ¶¶ 16-22; *accord* NYSCEF Doc No. 33).

Petitioner does not controvert the factual underpinnings of respondent's argument. In fact, petitioner acknowledges that, as "an individual living with serious mental illness" who "requires the most intensive level of psychiatric care," he has been housed in RMHU at "all relevant times" (Petition, ¶¶ 1-2; *see id.*, ¶¶ 55-56; *see* Correction Law § 137 [6] [d] [i]). In his petitions, which are verified solely by counsel, petitioner merely asserts that DOCCS cannot impose "additional segregated confinement sanctions against people already housed in RMHTUs unless their conduct both rises to the level of 'exceptional circumstances' and meets specified criteria under the HALT Act" (Petition, ¶ 6 [footnote omitted]; *see also id.*, ¶¶ 77, 81-82, 91).

But petitioner does not address the substance of respondent's argument that RMHU is not "segregated confinement" within the definition established by the HALT Act because inmates receive out-of-cell programming for at least seven hours per day. And petitioner does not allege that he was subjected to segregated confinement *within* RMHU by being denied the requisite seven hours of programming (*cf. Fuquan F.*, 2023 NY Slip Op 23285, *2 [petitioners allegedly "placed in a setting that constitutes 'segregated confinement' as that term is used in (Correction Law) § 137"]; *Delgado v State of New York*, ___ NYS3d ___, ___, 2023 NY Slip Op 23376, *4-5 [Ct Cl 2023] [Marnin, J.] [finding movant's claim under the HALT Act facially meritorious to permit late filing of a claim where the State did "not refute that movant was assessed a penalty of and confined to the SHU for 180 days"]). Nor does petitioner allege that he would have been housed in a setting less restrictive than RMHU but-for the challenged sanctions (*cf. Matter of Griffin v Annucci*, Sup Ct, Albany County, July 6, 2023, Connolly, J., index No. 901471-23 at 2 [petitioner allegedly "remain(ed) confined because of the SHU penalty"]).

Petitioner does argue, in a footnote in reply, that the authorization for extended segregated confinement established by Correction Law § 137 (6) (k) (ii) applies to "placement in

. . . [RMHTUs] for any amount of time" (NYSCEF Doc No. 37 at n 4). However, the statutory language relied upon by petitioner refers to placement in "segregated confinement," and petitioner has not shown that RMHU (or RMHTU) falls within the definition of that term.

Petitioner further contends that it is "immaterial" whether RMHUs "constitute 'segregated confinement' under the HALT Act" because Correction Law § 401 (1) obliges RMHUs to comply with Correction Law § 137 (6) (k) (NYSCEF Doc No. 37 at 11-12). But the Legislature's general declaration that inmates in RMHU are entitled to the same procedural and substantive safeguards against segregated confinement as other prison inmates cannot reasonably be understood as extending the HALT Act to non-segregated confinement.[5]

In sum, the Legislature adopted the HALT Act and related amendments to the SHU Exclusion Law "to limit segregated confinement and provide more humane and effective alternatives" (Petition, ¶ 18 [internal quotation marks and citation omitted]). Here, the undisputed facts show that petitioner was never placed in or otherwise subjected to segregated confinement by reason of the challenged discipline. "Despite the misbehavior report[s] and subsequent disciplinary sanction[s], Petitioner remained in the appropriate therapeutic environment" where he received "at least seven hours of out-of-cell time daily" (Donahue Aff., ¶¶ 15, 22).

[5] Insofar as petitioner argues that Correction Law § 401 (1) implicitly expanded Correction Law § 137 (6) (k) to encompass RMHU placements, the Legislature certainly did not manifest that intention with any clarity. In fact, the absence of any reference to RMHU (or RMHTU) in Correction Law § 137 (6) (k) is glaring, given the Legislature's express inclusion of RRUs (*see* Correction Law § 137 [6] [k] [ii] ["The department may place a person in segregated confinement beyond the limits of subparagraph (i) of this paragraph or in a residential rehabilitation unit only if . . . ."]). And to the extent that the text of the HALT Act or SHU Exclusion Law could even be considered doubtful on this point, deference should be accorded to DOCCS's reasonable construction (*see Lorillard Tobacco Co. v Roth*, 99 NY2d 316, 322 [2003]; *cf. Matter of Matzell v Annucci*, 183 AD3d 1, 5 [3d Dept 2020]).

On these facts, petitioner has not stated a cause of action for CPLR article 78 relief for violations of the HALT Act and SHU Exclusion Law.

Finally, given that petitioner was not subjected to segregated confinement, the Court further concludes that the petitions do not present a ripe and justiciable controversy on his claim for a declaration that DOCCS's policy regarding segregated confinement violates the HALT Act and the SHU Exclusion Law (*see* CPLR 3001; *Church of St. Paul & St. Andrew v Barwick*, 67 NY2d 510, 518 [1986]).[6]

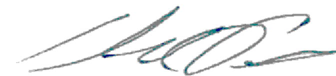
CONCLUSION

Based on the foregoing, it is

ORDERED and **ADJUDGED** that the Petitions/Complaints in these cases are dismissed.

This constitutes the Consolidated Decision, Order & Judgment of the Court, the original of which is being uploaded to NYSCEF for entry by the Albany County Clerk. Upon such entry, counsel for respondent shall promptly serve notice of entry upon all parties entitled thereto.

Dated: Albany, New York
December 8, 2023



RICHARD M. PLATKIN
A.J.S.C.

12/08/2023

Papers Considered:

NYSCEF Doc Nos. 1-14, 18, 23-34, 37-39.[7]

[6] Because "ripeness and justiciability are matters pertaining to subject matter jurisdiction," they can be considered by the Court "sua sponte" (*333 Cherry LLC v Northern Resorts, Inc.*, 66 AD3d 1176, 1178 n 3 [3d Dept 2009] [citation omitted]).

[7] The Court takes judicial notice of the filings in the other four cases, which are substantially similar in all material respects.