Matter of Morgan v Brown
2006 NY Slip Op 30800(U)
May 31, 2006
Supreme Court, Ulster County
Docket Number: 05-4466
Judge: Mary MacMaster Work

[* 1]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ULSTER

In the Matter of the Application of

DARRYL MORGAN, #88-A-3526,

Petitioner,

- against -

W. BROWN, S. BUTLER, J. BARNES, C. MILEWSKI, SUPERINTENDENT, DEPUTY SUPERINTENDENT OF PROGRAMS, GUIDANCE AND RSAT COUNSELORS, ALL EMPLOYEES FO THE EASTERN CORRECTIONAL FACILITY,

Respondents.

DECISION/ORDER

INDEX NO. 05-4466
RJI NO. 55-06-00063

HON. MARY M. WORK
Assigned Justice

APPEARANCES:

DARRYL MORGAN
Petitioner, Pro Se

HON. ELIOT SPITZER
ATTORNEY GENERAL
Attorney for Respondents,
by Steven H. Schwartz, Principal Attorney

WORK, M., J.

Petitioner commenced the instant article 78 proceeding seeking review of a determination of a grievance challenging his assignment to the Residential Substance Abuse Treatment program on the ground that there is no factual basis for requiring him to attend such program.

The standard of judicial review herein is limited to "whether the record as a whole provides a rational basis for the underlying determination, which will not be disturbed absent a

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showing that it is 'wholly arbitrary or without any rational basis' (Cove v. Sise, 71 N.Y.2d 910, 912; see, Matter of Curtiss v. Angello, 269 A.D.2d 675)." (Woodward v. Governor's Office of Employee Relations, 279 A.D.2d 725, 726-727 [2001]). In determining whether there is a rational basis for the determination, the Courts will give significant deference to determinations of correctional policy and requirements (see Matter of Flowers v. Sullivan, 149 AD2d 287, 293-294 [1989]), with "a balancing of the competing interests at stake, the importance of the right asserted, and the extent of the infringement *** weighed against the institutional needs and objectives being promoted." (Matter of Lucas v. Sculley, 71 NY2d 399, 406 [1988]). Furthermore, an administrative determination carries a presumption of regularity (see Altamore v. Barrios-Paoli, 90 NY2d 378, 386 [1997]; Nehorayoff v. Mills, 282 A.D.2d 932 [2001]). The petitioner must overcome such presumption by submission of "factual allegations of an evidentiary nature or other competent evidence tending to establish his or her entitlement to the requested relief." (Matter of Rodriguez v. Goord, 260 A.D.2d 736, 736-737 [1999]; see also Matter of Barnes v La Vallee, 39 NY2d 721 [1976]; Matter of Tebout v. Goord, 290 A.D.2d 833 [2002]).

Petitioner contends that respondents improperly considered material in a pre-sentence report for a prior felony conviction indicating that he had used "angel dust" from 1979 to 1981, claiming that such information is confidential. While the respondents' regulations limit release and disclosure of such records, petitioner has not shown that they prohibit the Department's own use of the records. Such use does not constitute either a release or a disclosure. Accordingly, the objection is without merit.

Petitioner also contends that he has not used any drugs for at least 25 years, and as such, should not be required to participate in a drug treatment program. He has referred to prior

decisions of the Department of Corrections which found that inmates who had not used drugs for several years did not need such programming. However, respondents have shown that they changed their policies concerning drug treatment programs because of evidence that persons with drug dependencies could readily relapse, even after many years. Respondents have thus set forth the reasons for changing their position (cf. Matter of Charles A. Field Delivery Serv., Inc., 66 NY2d 516, 516-517 [1985]). Petitioner also relies upon Matter of Domenech v. Goord, (196 Misc.2d 522 [2003], affd 20 A.D.3d 416 [2005]), for the proposition that respondents may not rely upon a history of drug usage from several decades in the past. Matter of Domenech is readily distinguishable in that the petitioner therein had not used drugs or alcohol for thirty years and was only four years into his sentence. Petitioner herein has been incarcerated for most of the 25 years since his significant drug use. His abstinence could readily be attributable to the significant restrictions on his ability to obtain and use drugs. Moreover, Matter of Domenech involved the issue of the right to medical treatment, a significant constitutional issue. Petitioner herein has no similar interests in his assigned programing.

While it is certainly possible that petitioner has managed to overcome his drug dependence, it is likely that many inmates in his position would still be at risk for relapsing into old ways. Petitioner has not alleged any significant interest in not being assigned to the program. Under such circumstances there is a rational basis for requiring petitioner to participate in the program.

The petition is denied in all respects.

This constitutes the decision and order of the Court. All papers including this decision and order are returned to the Attorney General. The signing of this decision and order shall not

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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.

DATED: May 31, 2006
Kingston, New York

ENTER:

MARY M. WORK
Acting Supreme Court Justice

Papers considered:

1. Order to Show Cause dated January 23, 2006.
2. Petition dated December 6, 2005, with supporting documents.
3. Answer dated March 21, 2006, with supporting documents and Record of the Proceeding Under Consideration.
4. Affirmation of Steven H. Schwartz, Esq. dated March 21, 2006.
5. Affidavit of Dwight Bradford dated March 13, 2006.
6. Undated Reply.

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