Matter of Johnson v Ramsdell
2012 NY Slip Op 31691(U)
June 21, 2012
Sup Ct, Albany County
Docket Number: 4571-11
Judge: George B. Ceresia Jr
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STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In The Matter of JONATHAN JOHNSON,

Petitioner,

-against-

TIMOTHY RAMSDELL, PRISON GUARD;
BRIAN FISCHER, COMMISSIONER, NYSDOCS,

Respondent,

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

Supreme Court Albany County Article 78 Term
Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding
RJI # 01-11-ST2865 Index No. 4571-11

Appearances: Jonathan Johnson
Inmate No. 89-A-1042
Petitioner, Pro Se
Upstate Correctional Facility
P.O. Box 2000
309 Bare Hill Road
Malone, NY 12953

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Attorney General
State of New York
Attorney For Respondent
The Capitol
Albany, New York 12224
(William J. McCarthy,
Assistant Attorney General
of Counsel)

DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

The petitioner, an inmate at Upstate Correctional Facility, commenced the instant CPLR Article 78 proceeding to direct respondent Timothy Ramsdell, a Correction Officer, to return mail allegedly confiscated by respondent Ramsdell on February 17, 2011. The

respondent, in response, made a motion to dismiss the petition under CPLR 7804 (c) on grounds that the petitioner failed to properly serve the order to show cause upon the respondent or the Attorney General, and that the petition failed to state a cause of action. In a decision-order dated January 13, 2012, the Court partially granted and partially denied the motion to dismiss. The Court, construing the petition liberally (see CPLR 3026), found that the petition adequately stated a cause of action under CPLR Article 78 to review a determination which denied a grievance the petitioner had filed in connection with the foregoing incident. The Court also found, however, that the petition failed to set forth facts sufficient to state a claim for violation of his constitutional rights, which it dismissed. By reason of respondents' assertions that the papers were not properly served, the Court directed the petitioner to re-serve the order to show cause, petition and supporting papers upon the respondent.[1] The petitioner subsequently requested an extension of time to serve the papers, which was granted in an order dated February 14, 2012. The papers apparently were served, and the respondent has now served an answer.

Before reaching the merits of the petition, the Court must first address a motion the petitioner made pursuant to CPLR 2221 to reargue and renew the Court's order dated January 13, 2012. The petitioner argues that the Court erred in dismissing his claim that the non-delivery of his mail was an infringement of his constitutional right to access to the courts; and in denying his motion to amend the petition to assert a claim for money damages.

A motion to reargue, directed to the sound discretion of the Court, must demonstrate

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[1]In addition, the Court denied a motion of the petitioner to amend the petition to add a claim for $1,000,000.00 in money damages.

that the Court overlooked, misapplied or misapprehended the relevant facts or law (see, CPLR 2221 [d] [2]; Loris v S & W Realty Corp., 16 AD3d 729, 730 [3rd Dept., 2005]; Matter of Smith v Town of Plattekill, 274 AD2d 900, 901-902 [3d Dept., 2000]; Spa Realty Associates v. Springs Associates, 213 AD2d 781, 783 [3rd Dept., 1995]; Grassel v Albany Medical Center, 223 AD2d 803, 803 [3rd Dept., 1996]). Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided (see, Foley v Roche 68 AD2d 558, 567 [1st Dept., 1979]), lv denied 56 NY2d 507). A motion to renew must be based upon newly discovered evidence which existed at the time the prior motion was made, but was unknown to the party seeking renewal (see CPLR 2221 [e] [2]; M & R Ginsburg, LLC v Orange Canyon Development Company, LLC, 84 AD3d 1470, 1472 [3d Dept., 2011]; 2 North Street Corporation v Getty Saugerties Corporation, 68 AD3d 1392,1396-1397 [3rd Dept., 2009]; First Union Bank v Williams, 45 AD3d 1029, 1030-1031 [3rd Dept., 2007]; Spa Realty Associates v. Springs Associates, supra, at p. 783; Grassel v. Albany Medical Center, supra, at p. 804), or upon a demonstration that there has been a change in the law that would change the prior determination (see, CPLR 2221 [e] [2]). It must also demonstrate a reasonable justification for not placing such new facts before the Court on the original application (see, CPLR 2221 [e] [3]; Matter of Mouawad, 61 AD3d 1169 [3rd Dept., 2009]; First Union Bank v Williams, supra; see also, Spa Realty Associates v. Springs Associates, supra, at p. 783-784; Grassel v. Albany Medical Center, supra, at p. 804; Barnes v State, 159 AD2d 753, 753, 754 [3rd Dept., 1990]). "Renewal is not a means by which to remedy the failure to present evidence which, with due diligence, could have been produced at the time of the original motion" (Kahn v Levy, 52 AD3d 928, 930 [3rd

Dept.,2008], citing Tibbits v Verizon N.Y., Inc., 40 AD3d 1300, at 1303, Johnson v Title N., Inc., 31 AD3d at 1072, Matter of Cooke Ctr. for Learning & Dev v Mills, 19 AD3d at 837, and N.A.S. Partnership v Kligerman, 271 AD2d 922, 923 [2000]).

In this instance, the petitioner has not demonstrated how, or in what respect, the Court overlooked, misapplied or misapprehended the relevant facts or law. Nor has the petitioner presented newly discovered evidence, not available at the time of the original motion. The Court concludes that petitioner's motion to reargue and/or renew must be denied.

Turning to the merits, petitioner's grievance, dated February 18, 2011, indicates that on February 17, 2011 respondent Correction Officer Timothy Ramsdell "denied grievant his legal mail from the courts, which appeared on the legal mail sheet." He requested that an investigation be conducted with respect to the foregoing matter.

The grievance was denied by the Inmate Grievance Resolution Committee ("IGRC") on March 15, 2011. The IGRC stated: "[t]here is no evidence to support Grievant's allegation of being denied legal mail by officer." The petitioner appealed to the Superintendent, who upheld denied of the grievance in a decision dated March 22, 2011which recited as follows:

> "I concur with the response from the I.G.R.C.
>
> "The grievant is advised that all the issues raised in this grievance are addressed in the response of the I.G.R.C. The Officer named in the grievant's complaint has submitted a written statement which states that at no time has he denied the grievant his legal mail. There is no evidence to support the grievant's allegation of being denied legal mail."

The petitioner then appealed to CORC, which denied the appeal in a decision dated June 8, 2011. The determination recited:

> "Upon full hearing of the facts and circumstances in the instant case, the action requested herein is hereby accepted only to the extent that CORC upholds the determination of the Superintendent for the reasons stated.
>
> "CORC notes that CO R. . . states he did not refuse the grievant his legal mail on February 17, 2011, and that a review of the legal mail log for 2/17/11 indicates that he refused to sign for his mail. CORC advises the grievant to address future similar concerns to the area supervisor, at that time, for the most expeditious means of resolution.
>
> "With regard to grievant's appeal, CORC upholds the discretion of the facility administration to review videotapes when deemed necessary based on security concerns, unusual incidents, etc."

Judicial review of administrative decisions denying inmate grievances is limited to whether the determination is irrational, arbitrary or capricious or affected by an error of law (Matter of Ramsey v Fischer, 93AD3d 1000, 1001 [3d Dept., 2012]; Matter of Pride v New York State Department of Correctional Services, 91 AD3d 1003, 1004 [3d Dept., 2012]; Matter of Hernandez v Fischer, 79 AD3d 1544, 1546 [3d Dept., 2010]; see also Matter of Green v Bradt, 69 AD3d 1269 [3rd Dept., 2010]; Matter of Clark v Fischer, 58 AD3d 932 [3rd Dept., 2009]). Phrased differently, "[t]o prevail, petitioner must demonstrate that [the Central Office Review Committee's] determination was arbitrary and capricious or without a rational basis" (Matter of Green v Bradt, 91 AD3d 1235, 1237 [3d Dept., 2012; Matter of Frejomil v Fischer, 68 AD3d 1371 [3rd Dept., 2009]; Matter of Simmons v New York State Department of Correctional Services, 82 AD3d 1382, 1383 [3d Dept., 2011]).

As the attorney for the respondent points out, the mail log for the date in question contains a notation that the petitioner refused his mail. Under procedures adopted by the New York State Department of Corrections and Community Supervision (DOCCS), upon

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refusal to sign for his legal mail, the mail would have been returned to the sender marked "addressee refused to accept" (see 7 NYCRR 721.3 [b][6]; DOCCS Directive 4421 § 721.3 [b] [6] [i]). The Court finds that the petitioner failed in his burden to demonstrate that the grievance determination was made in violation of lawful procedure, is affected by an error of law, is irrational, arbitrary and capricious, or an abuse of discretion.

The Court concludes that the petition must be dismissed.

Accordingly, it is

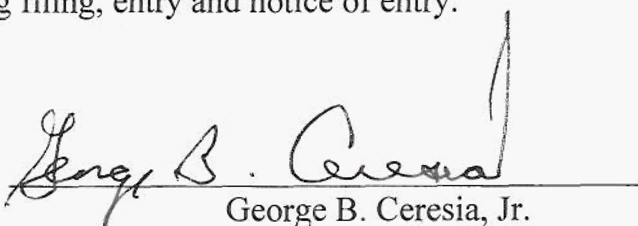
ORDERED, that petitioner's motion to reargue and/or renew the decision-order dated January 13, 2012 is denied; and it is

ORDERED and ADJUDGED, that the petition be and hereby is dismissed.

This shall constitute the decision, order and judgment of the Court. The original decision/order/judgment is returned to the attorney for the respondents. All other papers are being delivered by the Court to the County Clerk for filing. The signing of this decision/order/judgment and delivery of this decision/order/judgment does not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry and notice of entry.

ENTER

Dated: June 20, 2012
Troy, New York



George B. Ceresia, Jr.
Supreme Court Justice

Papers Considered:

1. Order To Show Cause dated July 21, 2011, Petition, Supporting Papers and Exhibits
2. Petitioner's Motion To Reargue and Renew, filed January 23, 2012
3. Respondent's Letter dated January 31, 2012
4. Respondent's Answer dated April 30, 2012, Supporting Papers and Exhibits

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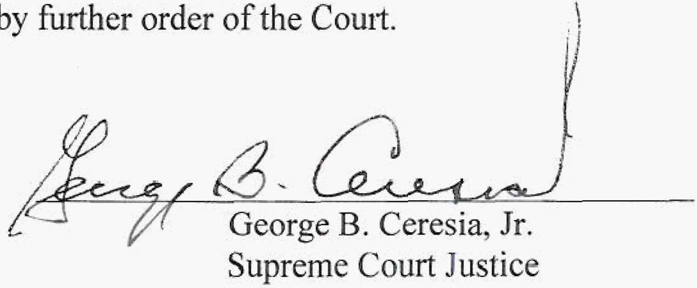
SEALING ORDER

The following documents having been filed by the respondent with the Court for *in camera review* in connection with the above matter, namely, two copies of respondent's Exhibit A, Confidential Material Submitted to the Court for In Camera Review, it is hereby

ORDERED, that the foregoing designated documents, including all duplicates and copies thereof, shall be filed as sealed instruments and not made available to any person or public or private agency unless by further order of the Court.

ENTER



Dated: June 21, 2012
Troy, New York

George B. Ceresia, Jr.
Supreme Court Justice