

Covington v Annucci
2014 NY Slip Op 32471(U)
September 25, 2014
Supreme Court, Seneca County
Docket Number: 48357
Judge: Dennis F. Bender
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STATE OF NEW YORK
SUPREME COURT COUNTY OF SENECA

RONNIE COVINGTON
DIN # 04-A-3883

DECISION AND
JUDGMENT

Petitioner

Index No. 48357

-against-

ANTHONY J. ANNUCCI, COMMISSIONER OF NYS
DEPARTMENT OF CORRECTIONS AND COMMUNITY
SUPERVISION,

Respondent.

The Petitioner herein, Ronnie Covington, filed this Article 78 proceeding challenging the Five Points Correctional Facility's provision of medical care to the Petitioner by female staff. The Petitioner alleges he is an orthodox Muslim male prisoner and under the Islamic religious law, he is only to be physically and visually examined by male medical staff during medical visits, examinations, observations, and treatments.

Per determination made on January 2, 2014, the Central Office Review Committee (CORC.) denied the grievance. In doing so, it states "CORC asserts that there is no requirement to provide male doctors for Islamic or male inmates and that the grievant is not entitled to be seen by the health care provider of his choice. It is noted, however, that efforts are made to schedule Islamic male inmates with male nurses and providers but due to the limited number of medical staff available, this may not always be possible. Further, CORC asserts that he has access to appropriate medical care and finds no compelling reason to revise the Health Services Policy Manual (HSPM) at this time." (Exhibit E, Verified Answer and Return) In addition, per the Affidavit of Robert Jansen, Nurse Administrator, there are thirty-one (31) medical staff employees at Five Points Correctional Facility but only eight (8) of them are male. He states, "Sick call procedures are initiated at 8:30 a.m, during which time only female nurses are available to see inmates. The two males nurses on the medical staff work during the evening shift." (Exhibit G, Return).

In their Answer and Return, the Respondents allege affirmative defenses, i.e. that the Court lacks personal jurisdiction because Petitioner failed to properly serve Anthony Annucci, Commissioner of the New York State Department of Corrections and Community Supervision, and that the petition was not timely filed within the four (4) month statute of limitations.

The affirmative defenses would normally require a hearing. All of the Petitioner's documentation is dated in late April, but the same did not get filed with the Seneca County Clerk until June 16, 2014. The Petitioner submits he mailed the verified petition and the accompanying papers on April 27, 2014. With regard to the service, the Respondent, Anthony Annucci, indicates he was only served with the Verified Petition Exhibits on September 8, 2014. The Petitioner avers in his reply that he sent copies of the paperwork to the Commissioner on July 7, 2014 and in accordance with the Affidavit of Service that he had notarized on July 9, 2014. Thus, issues of fact are raised regarding both defenses.

No hearing on those affirmative defenses is needed, however, because the petition fails on the merits. It is noted in the CORC's decision, "due to the scheduling of patients at the facility, it is not possible to ensure that the Petitioner will only be seen by a male health care provider and due to the predominance of female nurses, it is not possible for the Petitioner to only interact with male nurses."

In the Rivera v Smith decision 63 NY 2d 501 (1984), a prison inmate commenced an Article 78 proceeding challenging disciplinary actions initiated against him. In that case, the Court of Appeals said intrusion on the right of a Muslim inmate to free exercise of his religious beliefs was unacceptable when he was subjected to random pat frisk performed by female correction officers, when there were male correction officers available to perform the pat frisks. In this case, the facility indicates that it is willing to have the Petitioner seen by a male medical provider when a male medical care provider is available, but there are certain times during the facility's schedule that it is not possible. There is no requirement that Five Points Correctional Facility adjust its schedule of

having inmates called out for sick leave calls at 8:30 in the morning to accommodate the Petitioner's religion. It is a balancing act between the religious interests of the Petitioner versus the penalogical interests of the facility. It has been consistently acknowledged by the Courts that the religious rights of inmates are subject to reasonable curtailment if necessary for proper discipline and management of the correctional facility. Rivera v Smith, *Supra*

The Petitioner did not allege any occasions where female medical care providers provided treatment for him when male medical care providers were in the vicinity. Indeed, the Respondents indicate they are willing to have the male medical case providers provide the care if they are on duty at the same time as the female care providers. Due to the markedly lower percentage of male medical care providers, however, there are many occasions where there are only female medical care providers on duty when inmates are seen.

This Court finds the restrictions in place are reasonable under the circumstances presented and that the petition is in all respects denied and dismissed.

THIS CONSTITUTES THE DECISION AND JUDGMENT OF THE COURT.

DATED: September 25, 2014



HON. DENNIS F. BENDER, ACTING J.S.C.