

Matter of Johnson v Annucci
2016 NY Slip Op 30541(U)
March 2, 2016
Supreme Court, Franklin County
Docket Number: 2015-628
Judge: S. Peter Feldstein
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**STATE OF NEW YORK
SUPREME COURT**

**COUNTY OF FRANKLIN
X**

In the Matter of the Application of
JOHNATHAN JOHNSON, #89-A-1042,
Petitioner,

for Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

**DECISION, ORDER AND
JUDGMENT
RJI #16-1-2015-0346.48
INDEX # 2015-628
ORI #NY016015J**

-against-

ANTHONY J. ANNUCCI, Acting Commissioner,
NYS Department of Corrections and Community
Supervision,

Respondent.

X

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the Petition of Johnathan Johnson, verified on July 24, 2015 and filed in the Franklin County Clerk's office on July 29, 2015. Petitioner, who is an inmate at the Upstate Correctional Facility, is challenging the failure of the DOCCS Inmate Grievance Program Central Office Review Committee (CORC) to render timely final determinations with respect to the following inmate grievances: UST-56074-15, UST-56026-15, UST-55973-15, UST-55988-15, UST-55951-15 and UST-56065-15.

The Court issued an Order to Show Cause on August 6, 2015 and has received and reviewed respondent's Notice of Motion to Dismiss supported by the Affirmation of Christopher J. Fleury, Esq., Assistant Attorney General, dated September 9, 2015. The Court has also received and reviewed petitioner's Notice of Cross-Motion supported by his Affidavit sworn to on September 15, 2015 and filed in the Franklin County Clerk's office on September 17, 2015. The Court next received and reviewed Assistant Attorney

General Fleury's Affirmation in Opposition to Petitioner's Cross-Motion, sworn to on September 30, 2015.

By Letter Order dated November 4, 2015 the Court directed the litigants to "... address, in detailed evidentiary form, the issue of whether or not petitioner timely took administrative appeals to the CORC from the facility-level grievance denial determinations with respect to Inmate Grievances UST-55973-15, UST-55988-15 and/or UST-56065-15." In response thereto the Court has received and reviewed petitioner's "Affidavit in Evidentiary Form," sworn to on November 4, 2015 and filed in the Franklin County Clerk's office on November 25, 2015. The Court has also received and reviewed the Letter Memorandum of Christopher J. Fleury, Esq., Assistant Attorney General, dated November 23, 2015 and supported by the Affidavit of Brandi Collyer, Inmate Grievance Program Supervisor, Upstate Correctional Facility, sworn to on November 5, 2015 (the Collyer Affidavit).

As reflected in respondent's motion papers, the CORC issued final determinations on administrative appeal with respect to inmate grievances UST-55951-15, UST-56026-15 and UST-56074-15 on or about July 8, 2015, July 22, 2015 and July 29, 2015, respectively (the first two before this proceeding was commenced by filing and the third on the day this proceeding was commenced). As far as those grievances are concerned the Court finds that this proceeding has been rendered moot.

With respect to Inmate Grievance UST-55973-15 the Court notes that a copy of the facility-level determination of Superintendent Uhler is annexed to the Petition as Exhibit C thereof. On that copy the "Appeal Statement" at the bottom of the determination is filled in (apparently in the petitioner's handwriting) and dated May 15, 2015. The language of the Appeal Statement is as follows: "Objection[.] the cases cited within the law library request pertains to information on federal and state courts proceedings[.]"

Notwithstanding the foregoing, it is asserted in respondent's motion papers that no administrative appeal to the CORC was taken with respect to Inmate Grievance UST-55973-15. A copy of the facility-level determination of Superintendent Uhler with respect to Inmate Grievance 55973-15 is annexed to the respondent's motion papers as part of Exhibit C thereof. The Appeal Statement at the bottom of that copy is blank.

With respect to Inmate Grievance UST-55988-15 the Court notes that a copy of the facility-level determination of Superintendent Uhler is annexed to the Petition as Exhibit D thereof. On that copy the "Appeal Statement" at the bottom of the determination is filled in (apparently in the petitioner's handwriting) and dated June 6, 2015. The language of the Appeal Statement is as follows: "Objection: The investigation failed to revail [sic] while the PA discontinued grievant's medications, which is a requirement[.]" Notwithstanding the foregoing, it is asserted in respondent's motion papers that no administrative appeal to the CORC was taken with respect to Inmate Grievance UST-55988-15. A copy of the facility-level determination of Superintendent Uhler with respect to Inmate Grievance 55988-15 is annexed to the respondent's motion papers as part of Exhibit D thereof. The Appeal Statement at the bottom of that copy is blank.

With respect to Inmate Grievance UST-56065-15 the Court notes that a copy of the facility-level determination of Superintendent Uhler is annexed to the Petition as Exhibit F thereof. On that copy the "Appeal Statement" at the bottom of the determination is filled in (apparently in the petitioner's handwriting) and dated June 9, 2015. The language of the Appeal Statement is as follows: "Objection: Grievant request video-tape evidence to support the denial of law library and no law library document are [sic] presented[.]" Notwithstanding the foregoing, it is asserted in respondent's motion papers that no administrative appeal to the CORC was taken with respect to Inmate Grievance UST-56065-15. A copy of the facility-level determination of Superintendent Uhler with

respect to Inmate Grievance 56065-15 is annexed to the respondent's motion papers as part of Exhibit F thereof. The Appeal Statement at the bottom of that copy is blank.

In the Collyer Affidavit, which was submitted in response to the Court's Letter Order of November 4, 2015, Ms. Collyer states that she ". . . conducted an exhaustive review and search of [inmate grievance] appeals in the records maintained at Upstate Correctional Facility and have found no evidence that Inmate Johnathan Johnson, No. 89-A-1042, has filed an administrative appeal of the Superintendent's determination relative to Grievances UST-55973-15, UST-55988-15 and UST-56065-15." As far as his response to the Letter Order of November 4, 2015 is concerned, petitioner provides no specific details as to when and/or how his administrative appeals from Superintendent Uhler's determinations were transmitted to the inmate grievance clerk at the Upstate Correctional Facility for ultimate transmission to the CORC. *See* 7 NYCRR §701.5(d)(1). Rather, petitioner merely states that on May 15, 2015, June 6, 2015 and June 9, 2015, respectively, his administrative appeals were "submitted" to "CORC." He also directs the Court's attention to the filled-in Appeal Statements on the copies of the facility-level determinations of Superintendent Uhler annexed to the Petition as Exhibits C, D and F thereof. Significantly, petitioner did not provide any contemporaneous proof of the submission of the appeals (such as affidavits of service executed on or about May 15, 2015, June 6, 2015 and June 9, 2015) nor did he provide any documentary evidence tending to demonstrate the receipt of the appeals by the grievance clerk. Under these circumstances the Court finds that petitioner's challenges with respect to inmate grievances UST-55973-15, UST-55988-15 and UST-56065-15 must be dismissed based upon failure to exhaust administrative remedies.

To the extent petitioner cross moves for an order converting this CPLR Article 78 proceeding into an action for declaratory judgment pursuant to CPLR §3001, the Court

finds nothing in the papers before it to support the issuance of such an order. The cross-motion is therefore denied.

Based upon all of the above, it is, therefore, the decision of the Court and it is hereby

ORDERED, that respondent's motion is granted; and it is further

ORDERED, that petitioner's cross-motion is denied; and it is further

ADJUDGED, that the petition is dismissed.

Dated: March 2, 2016 at
Indian Lake, New York.

S. Peter Feldstein
Acting Supreme Court Justice