

Matter of Reeder v Annucci
2017 NY Slip Op 30278(U)
February 7, 2017
Supreme Court, Franklin County
Docket Number: 2016-562
Judge: S. Peter Feldstein
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SUPREME COURT**COUNTY OF FRANKLIN****X**

In the Matter of the Application of
RASZELL REEDER, #94-A-6388,
 Petitioner,

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

DECISION AND JUDGMENT
RJI #16-1-2016-0357.70
INDEX # 2016-562

-against-

ANTHONY J. ANNUCCI, 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 Raszell Reeder, verified on August 11, 2016 and supported by the Petitioner's Affidavit in Support of Order to Show Cause, sworn to on August 11, 2016. Both of these documents were filed in the Franklin County Clerk's Office on September 8, 2016. Petitioner, who is an inmate at the Upstate Correctional Facility, appears to be challenging the final result of an inmate grievance proceeding (UST-57335-15).

The Court issued an Order to Show Cause on September 19, 2016. In response, the Court has received and reviewed the Answer and Return, including a confidential exhibit for *in camera* review, together with a Letter-Memorandum dated December 1, 2016 by Christopher J. Fleury, Esq., Assistant Attorney General. The petitioner submitted a Reply dated December 7, 2016, which was not filed with the Franklin County Clerk.

In sum and substance, it appears that the petitioner is challenging the denial of Inmate Grievance UST-57335-15. Inmate Grievance UST-57335-15 consists of 35 pages of grievances submitted beginning on or about December 8, 2015 through February 9, 2016. The grievances share similar complaints insofar as the petitioner is challenging the practices of the New York State Department of Corrections and Community Supervision (hereinafter

referred to as “DOCCS”) in the transfer of inmates, the use of security video, the length of time security video is held, the disposition of items seized during a cell search, the number of and placement of security cameras, as well as the use of force by Correction Officers. It is noted that many of the grievances are mere suggestions by the petitioner and do not seek relief. The Inmate Grievance Resolution Committee responded on January 12, 2016¹ as follows:

“All FOIL issues need to be addressed to C. Davies. The grievant should make timely requests for videos. There is no policy in Directive #4040 to FOIL videos to address grievances. Any issues with grievant’s Article 78’s need to be addressed to the filing courts. S. Woodard is no longer employed at Upstate CF. All grievances have been addressed in accordance with Directive #4040.

The mail issues have already been addressed in grievance UST-56447-15. The grievant has appealed it to CORC. A response will be sent to him as soon as it is received. The grievant will be on camera during all cell moves. There is now a new policy for incoming money in accordance with Directive #2788. He can address al (*sic*) these concerns with inmate Accounts. It is the decision of the judge if he wishes for the inmate to be present at a hearing, therefore it is outside the discretion of DOCCS. When cell searches are completed, a contraband slip is filledout (*sic*) stating the items that are confiscated. If the officer failed to leave a slip or took items that aren’t listed he is advised to bring it to the attention of an area supervisor. If the grievant has issues with any hearings he needs to appeal the ticket in accordance with NYCRR, Chapter V. This remedies any factual or procedural errors in his disciplinary report.” Resp. Ex. B.

On February 18, 2016, Superintendent Donald Uhler addressed UST-57335-15 as follows:

¹ It is noted that the IGRC responded to the petitioner on January 12, 2016, yet additional grievances were received after such date and still labeled as UST-57335-15. It is further noted that the inmate grievances filed after January 12, 2016 were similar in nature to those previously consolidated into UST-57335-15.

“Upon review of this grievance and all proper documentation this grievance is denied.

All FOIL issues must be addressed to the FOIL Office. All FOIL allegations are currently being addressed in UST-57577-16. CORC upholds the discretion of the facility administration to review video tapes when deemed necessary based on security concerns. The grievant may initiate a FOIL request for consideration to obtain the video footage he is seeking.

All allegations regarding mail have previously been addressed in UST-56447-16.

All proper procedures are being followed during cell searches.

Whether or not the grievant is present during his hearing is outside the jurisdiction of DOCCS.

Disciplinary Hearings may be appealed in accordance to Directive 7 NYCRR, Chapter V, and this appeal mechanism affords the opportunity to remedy any factual or procedural errors in a disciplinary report. Grievance may not be used as a substitute appeal mechanism.

The grievant is advised to address all medical concerns through the sick call mechanism.” Resp. Ex. C.

Similarly, on June 1, 2016, the Central Office Review Committee (hereinafter referred to as “CORC”) noted “that the instant complaint was properly investigated and finds no malfeasance by staff.” Resp. Ex. D. Furthermore, the CORC made the following determination:

“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 mail and supplies are dispensed in accordance with the SHU orientation manual, and the grievant must be dressed and on the gate with his lights on when they are delivered. CORC asserts that OMH staff speak to an inmate prior to a cell extraction, and that while cameras are placed throughout the facility there is no provision to place one inside of an inmate’s cell. It is noted that body cameras are used during extractions, trash removed during a cell search is appropriately disposed of, and the digital recordings are retained in accordance with Directive #4942. Further, CORC asserts that there is no provision to advance funds for commissary purchases, and that the grievant may request an advance for postage as outlined in

Directive #2788. In addition, mail to Human Rights Watch is not entitled to privileged handling, and CORC upholds the discretion of the Court to utilize teleconference to speak with an inmate.

CORC asserts that searches are documented in accordance with Directive #4910, and are a necessary part of correctional security activity designed to promote the safety of all concerned by interception of contraband and by deterring inmates from possessing contraband. It is noted that the grievant's 'Box In' pamphlet from the American Civil Liberties Union was denied for legitimate security concerns. It is also noted that Executive staff make every effort to respond to correspondence in a timely manner. The grievant should address concerns regarding the status of his grievances to the IGP Supervisor, and it is not necessary to file multiple grievances on the same issues. CORC advises him to address medical concerns via sick call and upholds the discretion of the Facility Health Services Director to determine medical care as outlined in HSPM #6.01. CORC further notes that the temperature within the facility is appropriately monitored and the vents provide proper air circulation.

CORC advises the grievant that he may initiate a Freedom of Information Law Request (FOIL) for consideration to obtain the document he is requesting in accordance with existing Facility procedures, and upholds the discretion of the facility administration to determine when to review videotapes based on security concerns, unusual incidents, etc. CORC notes that a disciplinary hearing may be appealed in accordance with 7 NYCRR, Chapter V, which affords the opportunity to remedy any factual or procedural errors in a disciplinary report. It is noted that inmates are forwarded the hearing disposition upon completion of the hearing, but not Unusual Incident/Use of Force documents. CORC has not been presented with any compelling reason to change mail and extraction procedures, adjust cell temperature, increase ventilation, change deprivation policy, add cameras, or send videos to the FBI." Resp. Ex. D.

Although in the majority of the petitioner's grievances as well as in the petition it is difficult to decipher what the petitioner is seeking, it appears that the petitioner is challenging the CORC's determination. "In order to prevail, petitioner was required to demonstrate that CORC's determination was irrational or arbitrary and capricious (*see Matter of Williams v Goord*, 41 AD3d 1118 [2007], *lv denied* 9 NY3d 812 [2007]; *Matter of Matos v Goord*, 27 AD3d 940, 941 [2006])." *Keesh v. Smith*, 59 AD3d 798.

In light of the numerous and varied claims by the petitioner in his grievances that have been consolidated into Inmate Grievance UST-57335-15, this Court does not find that the CORC determination was irrational or arbitrary and capricious. Indeed, the CORC determination was lengthy and appeared to address the many “themes” that the petitioner had addressed. While the petitioner disagrees with DOCCS’s policies for use of video taping and retention of the tapes, transportation of inmates, transfers and housing decisions, “CORC appropriately deferred to prison officials in this matter, which relates to institutional security (*see Matter of Green v. Bradt*, 69 AD3d 1269, 1270, *lv. denied* 14 NY3d 710).” *Shoga v. Annucci*, 122 AD3d 1180, 1181, 997 NYS2d 788, 790.

Based upon all of the above, it is, therefore, the decision of the Court and it is hereby **ADJUDGED**, that the petition is dismissed.

Dated: February 7, 2017 at
Indian Lake, New York.

S. Peter Feldstein
Acting Supreme Court Justice