

Miller v Annucci

2017 NY Slip Op 31003(U)

May 15, 2017

Supreme Court, Seneca County

Docket Number: 50979

Judge: Dennis F. Bender

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK
SUPREME COURT COUNTY OF SENECA

THE PEOPLE OF THE STATE OF NEW YORK
ex rel.

TERRELL MILLER
DIN # 16-B-0878

Petitioner

-against-

DECISION AND
JUDGMENT
Index No. 50979

ANTHONY J. ANNUCCI, ACTING COMMISSIONER
NEW YORK DEPARTMENT OF CORRECTIONS
AND COMMUNITY SUPERVISION; STEVEN A.
CLAUDIO, DEPUTY COMMISSIONER, COMMUNITY
SUPERVISION

Respondents

The Petitioner herein, Terrell Miller, has filed this Article 78 proceeding which challenges his denial to be transferred to a Correctional Facility in the State of North Carolina. The Petitioner is presently incarcerated in New York State at Five Points Correctional Facility. The Petitioner indicates he applied for a transfer of confinement under the Interstate Corrections Compact to North Carolina and on January 25, 2017 he was advised by Steven A. Claudio, Deputy Commissioner, Community Supervision that "...New York State Department of Corrections and Community Supervision does not participate in the ICAOS; therefore, you will not be able to transfer to a North Carolina facility. As for a transfer of parole supervision through ICAOS, you can discuss this matter with your Offender Rehabilitation Counselor (ORC) when you are being prepared for release four months prior to your parole eligibility date." (Petitioner's Exhibit B)

It would have been helpful if the response from Mr. Claudio had addressed what the petitioner was applying for, to wit, a transfer from his current facility to one in North Carolina under the Interstate Corrections Compact ((Corrections Law Article 5-A, Sections 100-109). Clearly, the

correctional facilities don't participate in ICAOS, as it for parolees under community supervision. While he acknowledged the petitioner had requested a transfer under both the ICC and ICAOS, he then only addressed the ICAOS request. (See Claudio letter dated January 25, 2017). As far as requesting a transfer pursuant to the Interstate Corrections Compact (Corrections Law § 101 through § 109), while New York State could choose to transfer the Petitioner to a North Carolina facility, the Petitioner cannot demand transfer to a facility of another state. In McCarthy v Teta, 101 F 3d 108 (2nd Circuit, 1996), the Federal appellate court noted ,

“McCarthy’s due process claim fails because he does not have a liberty interest in a transfer to a federal prison or a different state prison system. Prison transfers do not implicate a liberty interest in the absence of state law suggesting otherwise (Citing Olim v Wakinekona, 461 US 238, 247-48 (1983). Denials of transfer requests logically do not involve greater rights under the federal Due Process Clause (Citation omitted)”. McCarthy v Teta, *supra*

Nor does state law provide such a remedy. Pursuant to Corrections Law 104(a), it is clear the only entity with authority to determine whether an inmate should be transferred to another state is the Department of Corrections and Community Supervision. The statutory framework appears to be directed solely towards the discretion and convenience of correctional administration, and provides no remedy for the inmate who might desire transfer.

“In general, a prisoner has “no right to remain at any particular prison facility, and no justifiable expectations that he would not be transferred unless found guilty of misconduct (Montanye v Haymes, 427 US 236).” Cole v Smith, 84 AD 2d 942 (4th Dept, 1981).

“Inmates have no right to remain at a particular facility or any expectation that transfer will not occur without misconduct (Citations omitted) and respondent is not required

to give reasons for such transfer (Citation omitted)". Henry v Coughlin, 189 AD 2d 1054 (3rd Dept, 1993). Accord, Salahuddin v Coughlin, 222 AD 2d 950 (3rd Dept, 1995).

In Partee v Bennett, 253 AD 2d 950(3d Dept., 1998), the Commissioner's decision to deny an inmate's transfer request to the State of Tennessee was upheld. "An inmate is not entitled to select the facility to which he will be confined (citation omitted), and under the circumstances presented here, we decline to interfere with the broad discretion of the Commissioner of Correctional Services to determine whether the requested transfer was warranted (citation omitted)." *Supra*.

The petitioner indicates he was only asking that his application for transfer be considered, and that he wasn't demanding a transfer. The Court agrees with the Respondent, however, that it appears there isn't even a procedural avenue for an inmate to make such a request under the current statutory scheme, which is in contrast to the provisions for an inmate seeking transfer to a correctional facility in a foreign nation. (Corrections Law §71(1-b). Although there is nothing requiring the Respondent to respond to such a request, if the Respondent chooses to do so, it would be preferable that it respond on the merits, and indicate the request for transfer is denied. While an inmate isn't entitled to an explanation for the denial, the inmate would at least know his request was reviewed and considered.

The petition is in all respects denied and dismissed.

THIS CONSTITUTES THE DECISION AND JUDGMENT OF THE COURT.

DATED: May 12, 2017



HON. DENNIS F. BENDER
Acting Supreme Court Justice