

Matter of McDonagh v New York City Dept. of Corr.

2023 NY Slip Op 34035(U)

November 14, 2023

Supreme Court, New York County

Docket Number: Index No. 150786/2023

Judge: Erika M. Edwards

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ERIKA M. EDWARDS

PART 10M

Justice

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INDEX NO. 150786/2023

In the matter of the application of

MOTION DATE 01/25/2023

RONALD WILLIAM MCDONAGH,

MOTION SEQ. NO. 001

Petitioner,

- v -

NEW YORK CITY DEPARTMENT OF CORRECTION;
LOUIS A. MOLINA, as Commissioner of the New York City
Department of Correction; and CITY OF NEW YORK

**DECISION + ORDER ON
MOTION**

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Upon the foregoing documents, the court denies Petitioner Ronald William McDonagh's ("Petitioner") Verified Petition and the court dismisses it against Respondents New York City Department of Correction ("DOC"), Louis A. Molina, as Commissioner of the New York City Department of Correction and City of New York (collectively, "Respondents").

Petitioner brought this Article 78 Petition against Respondents seeking an order adjudging and declaring that Respondent's determination denying indefinitely the restoration of Respondent's firearms privileges in a Firearm Review Board ("FRB") Determination, dated September 26, 2022, was arbitrary, capricious, unreasonable and unlawful; annulling, rescinding, and voiding said Determination; directing Respondents to restore Petitioner's firearms privileges forthwith; awarding Petitioner lost pay and benefits, other damages, attorneys' fees and costs, or in the alternative, ordering a trial of any disputed facts, pursuant to CPLR 7804(e).

Petitioner alleges in substance that he is a retired Correction Officer with Respondent DOC and he was authorized to carry a firearm both on and off duty. He had his firearms privileges revoked in October 2017, following his unwarranted arrest. Petitioner further alleges that he applied to have his firearms privileges restored, but Respondents improperly denied his application based on his arrests on October 8, 2017, and December 2, 2021, even though both criminal cases were ultimately dismissed and sealed. Petitioner further argues that the denial violated his due process rights because he was not afforded a hearing.

Petitioner further alleges that Respondents knew, or should have known, that both arrests were related to his contentious relationship with his ex-wife, who made false accusations against him to undermine his relationship with their son. Petitioner further alleges that Respondents failed to consider Petitioner's substantial record of extraordinary law enforcement service as a Park Police Officer, Campus Peace Officer and Correction Officer, and his military service in the Army, Army National Guard and Army Reserves. He also has extensive community service, which included his service as a volunteer 9/11 first responder. Over the years, Petitioner received extensive firearms training and law enforcement training and he obtained the rating of "Sharp Shooter" in the Army, "Pistol Expert" in the Police Academy, "Pistol Expert" in the DOC, and many other awards and honors.

Respondents oppose Petitioner's Verified Petition and argue in substance that Respondents' determination was not arbitrary, capricious, unreasonable, or unlawful. They argue that the Verified Petition fails to state a claim because there was ample support for their determination and that Petitioner was afforded due process. They further argue that at all times relevant to the Verified Petition, they acted reasonably, lawfully and in good faith, without malice and in accordance with the State and United States Constitutions and applicable laws and

regulations. Respondents further argue that Petitioner had his firearm privileges revoked after his arrest on October 8, 2017, and that there were ample reasons for the DOC's FRB to deny Petitioner's request for restoration of his firearm privileges.

Respondents further argue in substance that Petitioner's arrest on October 8, 2017, was for leaving his son and daughter, who were eight years old and four years old, respectively, alone in his apartment. When the police officers arrived, they found the apartment to be unsanitary and uninhabitable for children and a dog was locked inside of a cage lying in a pool of urine. The dog was determined to be malnourished and neglected. Petitioner was also found to have failed to safeguard two firearms in his apartment while his two young children were present. On February 9, 2021, Petitioner pled guilty to Charges and Specifications in his Departmental Disciplinary proceeding and he forfeited sixty compensation and/or vacation days and probation for the remainder of his career. His criminal case was dismissed after an Adjournment in Contemplation of Dismissal.

Respondents further argue that Petitioner was arrested on December 2, 2021, for allegedly hitting his twelve-year-old son in the face with a closed fist on November 24, 2021, which caused a bruise and laceration to his son's face, which were documented by photographs taken by the police officers. Petitioner denied the allegations and stated in substance that his son had missed thirty days of school and that when Petitioner tried to take him to school, his son injured his face when he dropped to the ground to avoid getting into Petitioner's car. Petitioner's criminal case was dismissed and sealed on speedy trial grounds.

Respondents argue in substance that because of the overwhelming evidence submitted to demonstrate Petitioner's multiple acts of wrongdoing and misconduct, as well as his own admissions, the determination to deny the restoration of his firearm privileges was rationally

based and not arbitrary or capricious. Petitioner had a FRB hearing where he testified and presented evidence, however, he failed to accept responsibility for his actions and instead, blamed his ex-wife, his son and the police officers for lying about both incidents, despite the credible evidence to the contrary. The denial was indefinitely because Petitioner had already retired from the DOC at the time of the FRB hearing.

Respondents also argue that Petitioner's Verified Petition fails to state a due process claim because Petitioner does not have a property interest in his firearm privileges, and, even if he did, he was afforded adequate process, as he appeared for a hearing, presented evidence and testified on his own behalf. Therefore, he had adequate notice, an opportunity to be heard, and a meaningful post-deprivation remedy through his Article 78 Verified Petition.

In an Article 78 proceeding, the scope of judicial review is limited to whether a governmental agency's determination was made in violation of lawful procedures, whether it was arbitrary or capricious, or whether it was affected by an error of law (*see* CPLR § 7803[3]; *Matter of Pell v Board of Educ.*, 34 NY2d 222, 230 [1974]; and *Scherbyn v BOCES*, 77 N.Y.2d 753, 757-758 [1991]). In reviewing an administrative agency's determination, courts must ascertain whether there is a rational basis for the agency's action or whether it is arbitrary and capricious in that it was without sound basis in reason or regard to the facts (*Matter of Stahl York Ave. Co., LLC v City of New York*, 162 AD3d 103, 109 [1st Dept 2018]; *Matter of Pell*, 34 NY2d at 231). Where the agency's determination involves factual evaluation within an area of the agency's expertise and is amply supported by the record, the determination must be accorded great weight and judicial deference (*Testwell, Inc. v New York City Dept. of Bldgs.*, 80 AD3d 266, 276 [1st Dept 2010]). When a court reviews an agency's determination it may not substitute its judgment for that of the agency and the court must confine itself to deciding whether the

agency's determination was rationally based (*Matter of Medical Malpractice Ins. Assn. v Superintendent of Ins. of State of N.Y.*, 72 NY2d 753, 763 [1st Dept 1988]).

Furthermore, an agency is to be afforded wide deference in the interpretation of its regulations and, to a lesser extent, in its construction of the governing statutory law, however an agency cannot engraft additional requirements or assume additional powers not contained in the enabling legislation (*see Vink v New York State Div. of Hous. and Community Renewal*, 285 AD2d 203, 210 [1st Dept 2001]).

Here, the court agrees with Respondents and finds that the determination to deny Petitioner's application to restore his firearm privileges indefinitely was rationally based and not arbitrary, capricious, unreasonable or unlawful. Based on the evidence presented in support of Petitioner's wrongdoing and misconduct arising from his two arrests, his admissions and own testimony, such evidence provided ample support for Respondents to exercise their discretion to deny Petitioner's application. It is of no moment that the criminal cases were ultimately dismissed and sealed as the credible evidence supporting the misconduct is sufficient for Respondents to decline to restore Petitioner's firearm privileges. Additionally, the fact that Petitioner was found to have failed to safeguard his two firearms while his children were present in the home could have been sufficient for the denial, even without the additional evidence of misconduct.

Additionally, the court finds that Petitioner failed to demonstrate his entitlement to any of the relief requested. Petitioner had already retired from the DOC, so even if he had prevailed, he is not entitled to lost pay and benefits. Additionally, Petitioner failed to demonstrate that Respondents did not consider, or give sufficient weight, to his impressive and extensive history of service and training in the military and various law enforcement agencies, including his

achievement of exceptional ratings for his firearms proficiency and his 9/11 heroism. However, Respondents determined that such history was insufficient to overcome Petitioner’s alleged misconduct.

Furthermore, for the reasons argued by Respondents, the court finds that Petitioner failed to state a claim for any violation of his due process or other constitutional rights.

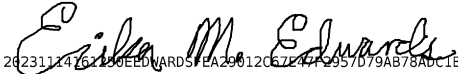
Therefore, the court denies Petitioner’s Verified Petition and dismisses it as against all Respondents.

The court has considered any additional argument raised by the parties which was not specifically discussed herein and the court denies all additional requests for relief which were not expressly granted herein.

As such, it is hereby

ORDERED and ADJUDGED that the court denies Petitioner Ronald William McDonagh’s Verified Petition and the court dismisses the Verified Petition as against Respondents New York City Department of Correction, Louis A. Molina, as Commissioner of the New York City Department of Correction and City of New York, with prejudice and without costs to any party.

This constitutes the decision and order of the court.


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<u>11/14/2023</u> DATE			<u>ERIKA M. EDWARDS, J.S.C.</u>
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE