

Pro Se

Vol. 33 No 2 March 2023

Published by Prisoners' Legal Services of New York

Summary Judgment Granted to Claimant for Wrongful Confinement

In 2016, Claimant Ibrahim Gyang spent 74 days on "Contraband Watch." The condition of the contraband watch cell was abysmal; it was filthy, with urine and feces staining the walls and floors. During the time he was confined to the cell, the lights were on 24 hours a day. There was no running water in the cell, so Mr. Gyang had to request bed pans and urinals when he needed them. During this confinement, he was provided only hospital or state issued clothing, was allowed no personal property and was not allowed to shower. He was only allowed soap, toothpaste, a toothbrush and a small amount of water at certain times, and was not allowed to keep these items in the cell. During the time that he spent in the cell, he only received one change of clothing and two changes of bedding. In addition, Mr. Gyang was not allowed to leave the cell except for medical appointments and could not have visitors.

After Mr. Gyang was released from contraband watch, he moved for permission to file a late claim for wrongful confinement in the Court of Claims. The Court granted

that motion, whereupon Mr. Gyang moved for summary judgment. As many of you know, a party is entitled to summary judgment when the undisputed facts show that as a matter of law, they are entitled to a judgment in their favor.

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STATE ATTORNEY GENERAL REACHES AGREEMENT OVER VIOLATIONS OF CONSUMER RIGHTS OF INCARCERATED NEW YORKERS

A Message from the Executive Director, Karen L. Murtagh

“Denying New Yorkers a service or product they paid for is illegal and unjust . . . Every New Yorker has rights, and my office will continue to defend and protect those rights.”

New York State Attorney General Letitia James

On December 16, 2022, New York Attorney General Letitia James reached an agreement with JPay, LLC to **remediate** (make up for) its failure to provide adequate media and communication services to incarcerated individuals housed in DOCCS facilities.

The full settlement is viewable at this link:

https://ag.ny.gov/sites/default/files/jpay_aod_final_fully_executed.pdf.

Many readers of this column are already aware of the services JPay provides, but, as background, here is some basic information.

According to the AG, since at least 2019, JPay has provided tablets to incarcerated individuals. Tablets can be used to buy educational materials, music, movies and communications services. Incarcerated individuals may also pay for services to communicate with approved family and friends using a secure messaging system. Family members of incarcerated individuals can purchase communication services (digital “stamps”) in order to send secure messages to their incarcerated loved ones.

To utilize JPay's services, incarcerated consumers transfer funds from their facility accounts to create what’s called a “kiosk media account”. This media account may be used to purchase, **inter alia** (among other things), educational course materials, podcasts, eBooks, daily news feeds, music, movies and games which can be downloaded onto the JP5 Tablet when the JP5 Tablet is connected to a JPay kiosk.

Since the introduction of this service in 2019, incarcerated individuals in DOCCS custody have sent the Attorney General more than 540 consumer complaints about JPay. The complaints were very similar, with hundreds of incarcerated individuals reporting that the free or replacement JPS Tablets were not timely shipped or received; were defective and would not download and/or replay the purchased items; did not keep a charge; and/or had batteries that swelled and/or rapidly overheated.

Among other things, incarcerated consumers also repeatedly complained that JPay failed to (1) honor requests for refunds when purchased educational material, music and videos would not download; (2) timely ship promised replacement JP5 Tablets and/or charging devices; (3) reinstate secured messages and photographs that became unavailable following technical issues and/or systems updates; and/or provide technical support when a service they paid for was not delivered.

The State Attorney General, following her comprehensive investigation of the matter, reached an agreement with JPay in December that requires JPay to do the following:

1. provide 100 digital stamps to every individual presently incarcerated at a DOCCS facility. The provision of these digital stamps has a total value of approximately \$500,000 in credits. The digital stamps can be used to communicate with approved family, friends and others outside DOCCS facilities;
2. hire at least 11 customer service representatives to exclusively handle complaints from individuals incarcerated in NYS DOCCS facilities, and at least 10 site representatives to handle so-called “Level 2” complaints;
3. resolve complaints – also known as “trouble tickets” – about devices and services within 14 days of receiving them and accurately inform individuals when they can expect their product or service to be delivered;
4. ensure that all their kiosks at DOCCS facilities are properly maintained and that technical support is available; and
5. pay the state of New York \$50,000 in penalties.

Said the Attorney General in announcing the agreement:

“JPay failed to deliver services to incarcerated individuals and did little to fix issues with their devices. As a result of today’s agreement, JPay must improve its services and provide better customer support to incarcerated individuals.”

We applaud the AG for tackling this problem and taking the steps necessary to assist the incarcerated population in their efforts to successfully reintegrate into society – a goal shared by the State of New York – which, of course, was the purpose of allowing JPay services into DOCCS facilities in the first place.

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In *Ibrahim Gyang v. State of New York*, Claim No. 136490, Motion No. 98266 (Ct. Clm. Nov. 1, 2022), the Court used the following analysis to determine whether to grant the claimant's request for damages. First, the Court noted, a claimant alleging wrongful confinement must show that:

1. The defendant intended to confine the claimant;
2. The claimant was conscious of the confinement; and
3. The confinement was not privileged.

In looking at the issue of whether the confinement was privileged, the Court first examines whether the confinement is based on a "discretionary judgment." Examples of confinement that is imposed as a result of discretionary judgments are the determinations made at disciplinary or protective custody hearings. These are considered discretionary because the DOCCS official – the hearing officer – weighs various factors, reaches a conclusion and imposes a result which is not dictated by the procedure that the hearing officer is required to follow.

Unlike the discretionary decisions made at prison disciplinary and protective custody hearings, the decision of whether to place an individual on contraband watch is governed by the terms of Directive 4910. This Directive provides that an incarcerated individual may be placed on contraband watch where there "is probable cause to believe that the incarcerated individual has either ingested a contraband item or inserted a contraband item into the rectal cavity." Further, where an incarcerated individual has been placed on

contraband watch in accordance with the Directive, pursuant to Section (V)(J)(5), they must be released from that status within 48 hours unless:

1. A defecation containing contraband occurs, in which case the person will be retained until two negative defecations occur; or
2. Two negative defecations do not occur within 48 hours, in which case the person will be detained until two negative defecations occur; or
3. A radiological detection search conducted pursuant to the Directive indicates the presence of a contraband item which remains in the body. In this case, the temporary isolation may continue for up to seven days with the written approval of the Superintendent – or their designee – and the Facility Health Services Director must be notified.

According to the undisputed facts, Mr. Gyang was placed on contraband watch at 8:00 a.m. on October 3. Although, as Mr. Gyang argued, the Directive permitted that at most, he be retained in that status for a maximum of 7 days, he was not released from the watch until December 16 – 74 days later – even though no contraband was ever recovered.

Some other material facts that were undisputed:

- On November 5, 33 days after the confinement began, an x-ray was taken which was allegedly positive for contraband; the x-ray report indicated that there was a scalpel cutting type weapon in claimant's pelvic area.

- On November 7, apparently after Mr. Gyang defecated, an officer allegedly saw something in Mr. Gyang's mouth that he refused to spit out. Mr. Gyang received a misbehavior report for this. At the hearing, he was found not guilty of possession of a weapon, smuggling, non-compliance with a strip frisk and guilty of refusing a direct order.
- On December 13, an x-ray allegedly revealed contraband.
- On December 16, an abdominal x-ray showed no contraband, whereupon Mr. Gyang was released from contraband watch.

According to the contraband watch log, Mr. Gyang had negative defecations on October 5 at 9:45 a.m. and on October 6 at 12:15 p.m. The Court found that while on October 4, DOCCS had probable cause to confine the claimant to contraband watch, once he had a second negative defecation on October 6, and had not undergone any radiological detection search indicating the presence of a contraband item, the Directive required his release from contraband watch confinement.

Under these circumstances, the Court ruled, because DOCCS had failed to comply with the Directive concerning contraband watch, the State lost immunity for its conduct. Moreover, the Court wrote, "it is clear that the defendant intended to confine the claimant and that the claimant was conscious of and did not consent to the confinement."

The only other question on liability left to address, the Court wrote, was whether the

confinement was privileged. In order to show that the confinement was not privileged, the claimant must show that it is more probable than not that if the defendant had properly complied with the Directive, the outcome would have been different. With respect to this question, the Court found that had the defendant complied with the Directive, Mr. Gyang would have been released on October 6. Instead, he was retained in contraband watch an additional 71 days. Thus, the Court held that Mr. Gyang had shown that confinement to contraband watch after October 6 was not privileged.

The Court then turned to the question of damages. In this case, because the conditions under which Mr. Gyang was confined were more restrictive than the conditions in SHU, the Court awarded Mr. Gyang damages in an amount higher than the damages typically given to people wrongfully held in SHU.

Guy E. Owen, Esq., through the PLS Pro Bono Partnership Program, represented Ibrahim Gyang in this Court of Claims action.

NEWS & NOTES

CONVICTIONS BEYOND A CONVICTION

We are happy to announce "Convictions Beyond a Conviction" is now available in the library of every DOCCS correctional facility! "Convictions Beyond a Conviction" is a compilation of poems that were collected by

Prisoners' Legal Services of New York as part of our 2022 celebration of National Pro Bono Week. Incarcerated individuals were given the opportunity to submit poems focusing on who they are apart from their conviction and incarceration, with an emphasis on what they believe in; what their ambitions, hopes, and dreams are; what their families mean to them; and how their pasts have shaped who they are now. PLS received an unprecedented number of submissions for "Convictions Beyond a Conviction," and we would like to express our gratitude to each and every person who submitted a poem for consideration. Our goal in creating "Convictions Beyond a Conviction" was to give all incarcerated New Yorkers a chance to contribute, express themselves, and have their voices heard. By sharing the poems within the book, we hope to educate the public, and recruit attorneys to take cases *pro bono*, thus increasing access to justice for indigent incarcerated persons across the State. Due to the limited number of copies available, PLS is not able to provide "Convictions Beyond a Conviction" to individuals. We hope, however, that by making it available through each facility's library, "Convictions Beyond a Conviction" can be read and enjoyed by all.

Using "They" to Refer to An Individual Whose Gender Is Not Known or Is Not Relevant

You may have noticed that in *Pro Se*, when we refer to an individual whose gender is unknown or irrelevant, we use the pronoun "they" and the possessive "theirs." The reason we do this is that the alternative construction – "he/she/they" – is too long and awkward a construction; the more conventional

construction – "he or she" – leaves out people who do not identify as male or female; and the most conventional, but now rarely used construction – "he" – leaves out women and people who do not identify as male or female. This usage of the third person plural forms to apply to an individual has been adopted by the Modern Language Association (MLA) Style Guide, the Washington Post Style Guide and the American Association of Psychologists (APA) Style Guide. The Chicago Manual of Style and the Associated Press (AP) Stylebook, recognizing the groundswell acceptance of "they" as a singular pronoun, have given approval to the use of they as a singular pronoun, though not with the whole-hearted embrace that the MLA, the Washington Post and the APA have.

Here are two examples of the use of *they* as a singular pronoun from this issue of *Pro Se*:

- An incarcerated individual may have access to information in their parole file prior to a scheduled appearance before the Board of Parole.
- When a person is admitted to DOCCS custody, they are given a rule book.

Although the construction may seem somewhat awkward when you first read or use it, it is worth keeping in mind that as long ago as the late 1500s, William Shakespeare used *they* as a third person singular pronoun in *A Comedy of Errors*: "There's not a man I meet but doth salute me as if I were their well-acquainted friend."

PREP SPOTLIGHT

Jill Marie Nolan

PLS' PREP program is a holistic program staffed by licensed Social Workers who help incarcerated persons serving their maximum sentence develop skills necessary for successful re-entry into their communities. We also help connect clients to services that meet their re-entry needs and work with clients for three years post-release. You are eligible to apply for the PREP Program if you are within 6-18 months of your maximum release date, do not require post-release supervision or SARA-compliant housing and are returning to one of the five (5) boroughs of New York City or to Dutchess or Orange County. If you meet these requirements and did not receive an application, you can request one by writing to:

*Jill Marie Nolan, LCSW
PREP Coordinator
Prisoners' Legal Services of New York
10 Little Britain Road, Suite 204
Newburgh, NY 12550*

The PREP spotlight shines on **The SUNY Bronx Educational Opportunity Center (EOC)**. The SUNY Bronx EOC provides career training, high school equivalency preparation, free haircuts, job and internship placement, and more. The SUNY Bronx EOC's vocational programs include Patient Care Technician, Certified Nursing Assistant, Master Barber, Medical Assistant and Home Health Aide. All services are free of charge.

To qualify for vocational programs, applicants must have proof of income, proof of education (High School Diploma or equivalent), government issued identification, social security

card, and proof of legal status and NY state residency. Applicants must also meet the income requirements.

To apply, visit www.bronxeoc.org upon your release or call the admissions department at: 718-530-7039. The SUNY Bronx EOC is located at 1666 Bathgate Avenue in the Bronx.

PRO SE VICTORIES!

Matter of Andre L. Scott v. Brian Callahan, General Counsel, New York Commission of Correction, Index No. 10451-21 (Sup. Ct. Albany Co. July 28, 2022). Andre Scott successfully challenged the Commission of Correction's (COC) decision to deny his FOIL request. The Court, having found that the denial lacked a reasonable basis, granted the petition and directed the COC to forward the records to Mr. Scott. The Court reserved a decision on the issue of costs and disbursements until it received an affidavit from Mr. Scott detailing his costs and disbursements and any opposition thereto from the COC. Mr. Scott submitted a sworn statement that he had spent a total of \$40.80 on the filing fee, copy charges, and postage. The COC did not oppose the request for fees.

Noting that "a court is required to award the petitioner reasonable counsel fees and other litigation costs reasonably incurred where the petitioner has substantially prevailed and the court finds that the agency had no reasonable basis for denying access," and having found that Petitioner Scott had substantially prevailed and that the COC had

no reasonable basis for denying access, the Court awarded \$40.80 and ordered the COC to satisfy the award within 30 days.

Matter of Jesse J. Barnes v. Shelley M. Mallozzi, et al., Index No. 9163-21 (Sup. Ct. Albany Co. Sept. 12, 2022). In this Article 78 action, Jesse J. Barnes requested that use of force reports relating to an incident that resulted in a Tier III hearing that was later reversed must be expunged from his records. The Court noted that while DOCCS may retain the reports in its general departmental records, the agency is required to expunge the reports from the petitioner's records based on the respondent's decision to dismiss or administratively reverse the disciplinary charges against him.

Matter of Randy Williams v. Anthony J. Annucci, 2022 WL 17490458 (3d Dep't Dec. 8, 2022). In this case, Randy Williams challenged a Tier III hearing determination finding that he engaged in smuggling, made false statements and attempted to organize a demonstration. The charges arose from an investigation showing that Mr. Williams used his access to a copy machine for Incarcerated Liaison Committee (ILC) related copying to copy documents that were unrelated to his ILC work. The respondent conceded, and the Court agreed, that the charge of attempting to organize a demonstration was not supported by substantial evidence.

In 2022, the Attorney General Agreed to Reverse Six Hearings Challenged by *Pro Se* Incarcerated Petitioners

Matter of Rashod Coston v. Thomas, 201 A.D.3d 1303 (4th Dep't 2022)

Matter of Roman G. Key v. NYS DOCCS, 203 A.D.3d 1374 (3d Dep't 2022)

Matter of Michael Stubbs v. Venettozzi, 204 A.D.3d 1215 (3d Dep't 2022)

Matter of Jeffrey Morgan v Rodriguez, 207 A.D.3d 1022 (3d Dep't 2022)

Matter of Troy Lee Kennedy v. Monetgari, 210 A.D.3d 1434 (4th Dep't 2022)

Matter of Manuel Nunez v. Donald Venettozzi, 210 A.D.3d 1170 (3d Dep't 2022)

Pro Se Victories! features descriptions of successful *pro se* administrative advocacy and unreported *pro se* litigation and. In this way, we recognize the contribution of *pro se* jailhouse litigants. We hope that this feature will encourage our readers to look to the courts for assistance in resolving their conflicts with DOCCS. The editors choose which unreported decisions to feature from the decisions that our readers send us. Where the number of decisions submitted exceeds the amount of available space, the editors make the difficult decisions as to which decisions to mention. Please submit copies of your decisions as *Pro Se* does not have the staff to return your submissions.

STATE COURT DECISIONS

Disciplinary and Administrative Segregation

Court Finds HO Wrongfully Denied Body Cam Footage

Jacques Dorcinvil was given two misbehavior reports for having, on two separate occasions, obstructed vision into his cell and on the second occasion, of also having refused to turn down the volume on his television. After Mr. Dorcinvil was found guilty of the charges at two separate hearings, he filed a single Article 78 challenge to the determinations of guilt made at the hearings. In *Matter of Dorcinvil v. Miller*, 211 A.D.3d 1205 (3d Dep't 2022), the Court reversed the determination of guilt relating to one of the reports because the hearing officer wrongfully denied Mr. Dorcinvil's request for the officer's body cam footage.

The Court found that the hearing officer's denial of petitioner's request for the body cam footage was a violation of his rights to the production of evidence. After the petitioner requested the body cam footage, the hearing officer replied that the body cam was turned off and therefore the footage did not exist. The record, the Court noted, did not reflect the measures taken by the hearing officer that led him to conclude that the camera was not on. As such, the Court wrote, the petitioner's request for the body cam footage was improperly denied. The Court found that the appropriate remedy was to

annul the hearing and remit for a new hearing.

Practice Point: Although not addressed in the decision, we suggest that if you request body cam footage at a prison disciplinary hearing and the hearing officer responds that there is no footage because the camera was turned off, you ask the hearing officer how they determined that the footage was not available.

Jacques Dorcinvil represented himself in this Article 78 proceeding.

Court Finds Insufficient Evidence of Two Charges

Thomas White was charged with disorderly conduct, violent conduct, creating a disturbance, refusing a direct order, interference, and refusing a search or frisk. The Misbehavior Report alleged that following Mr. White's refusal to spit out an object that an officer had observed in his mouth during a random frisk, Mr. White made a sudden movement in an attempt to flee and force was necessary to prevent him from fleeing. Mr. White was found guilty of the charges, and after exhausting his administrative remedies, he filed an Article 78 proceeding challenging the Tier II hearing. The petition was transferred to the Appellate Division because it raised a claim of evidentiary insufficiency, that is, Mr. White argued that the determination of guilt was not supported by substantial evidence.

In *Matter of White v. LaManna*, 209 A.D.3d 1031 (2d Dep't 2022), the Second Department held that all but two of the charges were supported by substantial evidence. A determination of guilt is supported by substantial evidence when the "disciplinary authorities have offered such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact. See, *Matter of Bryant v. Coughlin*, 77 N.Y.2d 642, 647 (1991) and *Matter of Johnson v. Griffin*, 168 A.D.3d 734 (2d Dep't 2019). The Misbehavior Report, the Court found, was substantial evidence that the petitioner had refused a direct order, created a disturbance, interfered with an employee, and refused a search or frisk.

The two charges that the Court opined were not supported by substantial evidence were 1) engaging in disorderly conduct and 2) engaging in violent conduct. With respect to the disorderly conduct charge, the Court first noted that the rule prohibiting disorderly conduct provides that "an incarcerated individual shall not engage in unauthorized sparring, wrestling, body-punching, or other forms of disorderly conduct." Here, the Court wrote, the Misbehavior Report does not allege that the petitioner engaged in any of the forms of disorderly conduct set forth in the rule or in any other similar act that could fall within the rule's definition of disorderly conduct.

Nor, the Court continued, does the Misbehavior Report establish that the petitioner was guilty of engaging in violent conduct. The Report merely states that "force became necessary," without indicating that the petitioner committed any particular violent act that required the use of force to regain control of the petitioner. Finally, the Court found, there was no other evidence in

the record to support the determination that petitioner was guilty of disorderly conduct or violent conduct.

Thomas White represented himself in this Article 78 proceeding.

Court Finds No Violation of Right to Call Witnesses

In an Article 78 proceeding challenging four prison disciplinary hearings, the Court rejected a claim that the hearing officer at the third hearing had violated the petitioner's right to call witnesses. With respect to this hearing, the petitioner was found guilty of engaging in violent conduct, creating a disturbance, refusing a direct order and making threats. See, *Matter of Clark v. Lt. Jordan*, 2023 WL 162179 (3d Dep't Jan. 12, 2023).

The petitioner argued that the hearing should be reversed because there was no reason in the record for two witnesses' alleged refusals to testify. Neither witness had previously agreed to testify. Both had refused to sign the witness refusal form and neither gave a reason for his refusal. The petitioner did not ask the hearing officer to determine the reason that the witnesses refused to testify. In this context – where the witnesses who refused to testify had not previously agreed to testify – by failing to request that the hearing officer determine the reason for the refusal, the Court wrote, the petitioner had failed to preserve the issue of whether his right to call witnesses had been violated. For this reason, the Court affirmed the lower court's dismissal of the petition.

Jahmel Clark represented himself in this Article 78 proceeding.

Petition Challenging Sufficiency of Evidence of Intoxication Dismissed

In *Matter of Greene v. Vann*, 211 A.D.3d 1221 (3d Dep't 2022), the petitioner asked the court to reverse a Tier II hearing determination that he was intoxicated where the conclusion was not supported by urinalysis or any other scientific testing. The petitioner argued that in the absence of such evidence, the decision was not supported by substantial evidence. Because CPLR 7804(g) requires that Article 78 proceedings seeking to overrule agency determinations on the basis of evidentiary insufficiency be transferred to the Appellate Division, the Supreme Court, Albany County, transferred the petition to the Third Department.

The Third Department reviewed the record of the hearing and found that the determination of guilt was supported by substantial evidence. This evidence consisted of the misbehavior report stating that the author, upon receiving a report that petitioner was creating a disturbance and appeared to be under the influence of an intoxicant, spoke to the petitioner who admitted that he had been smoking K-2. Other evidence included a report from a nurse who examined the petitioner.

The Court went on to say that petitioner's argument that the determination of guilt was undermined by the absence of any urinalysis or other scientific testing identifying the substance as an intoxicant was not raised at the hearing and therefore was unpreserved. When an issue is unpreserved, a court cannot

address it. Nonetheless, the Court wrote that the argument was "without merit," inasmuch as the basis for the intoxicant charge stemmed from petitioner's observable behavior and subsequent medical assessment, and not from a urinalysis or other scientific test.

Practice Point 1: Remember to raise at the hearing and on administrative appeal your objections to the sufficiency of the evidence and the hearing officer's violation of your constitutional and regulatory rights.

Practice Point 2: There are several health conditions, for example diabetes and epilepsy, that can cause an individual to appear intoxicated. If you suffer from such a condition and are charged with intoxication but have not consumed alcohol or drugs, be sure to inform the hearing officer that your medical condition may have caused you to appear intoxicated.

Wilburforce Greene represented himself in this Article 78 proceeding.

Parole

Court Rules Parole Applicant Is Not Entitled to See Judge's Letter

In 2019, Jorge Linares requested a copy of a letter from his parole file. The letter had been written by his sentencing judge. DOCCS refused to produce the letter because it was marked confidential. Mr. Linares then filed an

Article 78 to challenge the Department's denial of his request. The Supreme Court, Orange County, dismissed the petition and Mr. Linares appealed.

In *Matter of Linares v. Annucci*, 210 A.D.3d 895 (2d Dep't 2022), the Court first explained that Executive Law §259-k(2) "permits the Board of Parole 'to make rules for the purpose of maintaining the confidentiality of records, information contained therein, and information obtained in an official capacity by officers, employees or members of the board of parole.'" Pursuant to this section of the law, the Board of Parole adopted 9 NYCRR 8000.5(c) which provides that an incarcerated individual may have access to information in their parole file prior to a scheduled appearance before the Board of Parole or an authorized hearing officer of the Division of Parole or prior to the timely perfection of an administrative appeal of a final decision of the Board.

Some of the information in an individual's parole file, however, will not be given to them. Specifically, 9 NYCRR 8000.5(c)(2)(i)(a)(2), provides that to the extent that they contain materials which would reveal sources of information obtained upon a promise of confidentiality, access to portions of the case record which will be considered by the Board or an authorized hearing officer at a hearing or in an appeal of a final decision of the Board will not be granted.

Here, the Court found, the letter that Mr. Linares requested contained materials which would reveal sources of information obtained upon a promise of confidentiality. Thus, the Court held, the lower court properly denied

Mr. Linares' request for access to the letter from the sentencing judge.

Jorge Linares represented himself in this Article 78 proceeding.

Court of Claims

Court Finds Officer's Conduct Was Within the Scope of His Employment

In *Antoine Galloway v. State of New York*, 2023 WL 162184 (3d Dep't 2023), the Third Department considered the question of whether the DOCCS employees whom the lower court held had committed the tort of battery/assault against Antoine Galloway at Clinton C.F. were acting within the scope of their employment when they did so. The lower court held that they were not and dismissed the claim.

The facts giving rise to this decision are as follows. A month before the use of force that was at issue in the decision, Mr. Galloway filed a complaint under the Prison Rape Elimination Act (PREA) against Officer Poupore, alleging that the officer had squeezed his testicles during a pat frisk. Thus, the officer was aware of the complaint before the **battery** (intentional offensive bodily contact to which the victim did not consent) occurred. On the day that the battery took place, Mr. Galloway was ordered to report for an interview relating to his PREA complaint and as he approached the interview room, he saw Officer Poupore and Officer Wood, along with several other officers, near the interview

room. When he reached the officers, Officer Poupore directed him to put his hands on the wall for a pat frisk and when Mr. Galloway did so, Officer Poupore repeatedly directed him to separate his legs and walk his feet away from the wall. According to Mr. Galloway, when he had walked his feet back as far as possible, Officer Poupore punched him and Mr. Galloway was then pulled to the floor where officers beat, punched, kicked, stomped and hit him with a baton. According to the officers, it was Mr. Galloway who initiated the physical altercation by punching Officer Poupore in the face.

The lower court ruled that the claimant was **credible** (believable) but ruled that the conduct in which the officers engaged was outside the scope of their employment. The State of New York is only **liable** (legally responsible) for conduct by state employees which is within the scope of their employment. The claimant appealed.

The Third Department did not reverse the lower court's finding with respect to the respective parties' credibility. The Appellate Court did, however, disagree with respect to the finding that the officers' conduct was beyond the scope of their employment.

Known as the doctrine of *respondeat superior*, the State of New York is liable for the intentional or negligent acts of its employees when these acts within the scope of their employment provided that the acts are generally foreseeable and a natural incident of the employment. *See, Judith M. v. Sisters of Charity Hospital*, 93 N.Y.2d 932, 933 (1999). To determine whether a state employee's conduct is within the scope of their

employment, the courts look to several factors, including:

- the connection between the time, place and occasion for the act;
- the history of the relationship between the employer and the employee as spelled out in actual practice;
- whether the act is one commonly done by the employee;
- the extent of the departure from normal methods of performance; and
- whether the specific act was one that the employer could have reasonably anticipated (i.e., whether it whether foreseeable).

See Rivera v. State of New York, 34 N.Y.3d 383, 390 (2019). In cases involving the use of force, whether an employee is acting within the scope of employment requires consideration of whether the employee was authorized to use force to effectuate the goals and duties of the employment. *Id.*

In deciding the appeal in Claimant Galloway's case, the Third Department first noted that it accepted the lower court's findings with respect to credibility, that is, that the claimant was a credible witness. Turning to the issue of whether the officers' conduct was within the scope of their employment, the Court noted that "the account of the incident satisfies the time, place and occasion factor." The Court also found that there was no dispute as to the officers' relation to the employer and the

common nature of the conduct that preceded the assault. The question of whether the officers' conduct was within the scope of their employment turns on, the court wrote, "the extent to which the assault departed from normal employment-related conduct and whether the assault itself could reasonably have been anticipated."

The Court found that the sequence of events" – a direction to go to an interview, a direction to position himself for a pat frisk, numerous directions to back up, followed by the officer punching the claimant – demonstrated that the officers' conduct was within the scope of their employment. Further, the officers' description of the claimant's resistance led the Court to the conclusion that they were authorized to use force. Accordingly, the Court wrote, "while the force employed . . . clearly crossed the line of sanctioned conduct, it cannot be readily divorced from the pat frisk and the ensuing efforts to subdue the claimant so as to render it outside the scope of employment."

The Court found additional support for its conclusion that the officers' conduct was within the scope of their employment in DOCCS' investigation of the incident. Due to the investigator's decision to **condone** (approve) the conduct, the Court found that conclusion to be a tacit admission that the conduct was within the scope of employment.

Daniel Lebersfeld, The Dratch Law Firm, PC, represented Antoine Galloway in this Court of Claims action.

Miscellaneous

Court Rejects Defendant's Ineffective Assistance Claim

In 2016, while Defendant Hatcher was in DOCCS custody due to a 2015 conviction, he was charged with assaulting a correction officer. He agreed to plead guilty to attempted assault in the second degree with the understanding that he would be sentenced to a prison term of 1½ to 3 years to be served consecutively to his 2015 sentence. The plea did not require that he waive his right to appeal.

Prior to sentencing, Defendant Hatcher moved to withdraw his plea, arguing that his defense counsel's failure to provide him with a copy of various discovery materials rendered his plea involuntary. The Supreme Court, Greene County denied the motion and imposed the agreed upon sentence. Defendant Hatcher filed a Notice of Appeal.

In January 2022, prior to the completion of the defendant's direct appeal, and pursuant to Criminal Procedure Law (CPL) §440.10, Defendant Hatcher moved to vacate the judgment of conviction, alleging that he had been denied effective assistance of counsel. The moving papers did not include an affirmation from his defense attorney. The People opposed the motion and the County Court denied the motion without a hearing.

In *People v. Hatcher*, 211 A.D.3d 1236 (3d Dep't 2022), the Court considered both the defendant's direct appeal of the judgment of conviction and the appeal from the order

denying his CPL 440.10 motion. With respect to the 440 motion to vacate the judgment of conviction, the defendant argued that had he personally received the discovery materials in a timely manner and been able to make his own assessment thereof – as opposed to relying on his defense counsel’s evaluation of the materials – he would not have pleaded guilty.

The Court found that defendant’s argument – that the absence of an opportunity to independently review the discovery materials and assess the strength of the People’s case rendered his plea involuntary – was meritless. The defendant, the Court noted, retained the authority over certain fundamental decisions, including whether or not to plead guilty or proceed to trial. He did not, the Court continued, have a personal veto power over counsel’s exercise of professional judgment. “[T]he mere fact that the defendant, as a layperson, and defense counsel disagreed as to the legal import of the discovery documents, the corresponding strength of the People’s case and/or any viable defenses thereto neither deprived defendant of decision-making authority over a fundamental aspect of his case nor rendered his plea involuntary.”

Because the defendant’s CPL §440.10 motion did not include an affirmation from the defense counsel, or an explanation for the failure to include one, the Court concluded that summary denial of the appeal was warranted. In reaching this result, the Court cited *People v. Fish*, 208 A.D.3d 1546, 1548 (3d Dep’t 2022).

Finally, the Court noted, it has consistently held that “in the context of a guilty plea, a defendant has been afforded meaningful representation when he or she receives an advantageous plea and nothing in the record casts doubt upon the apparent effectiveness of counsel.”

Angela Kelley, Esq., Albany, represented Jayvel Hatcher in this Criminal Appeal.

Court Affirms Convictions for Prison Offenses

In *People v. Jones*, 180 N.Y.S.3d 722 (3d Dep’t 2023), the Court reviewed the defendant’s conviction for promotion of prison contraband in the first degree and assault in the second degree. The charges were filed after the defendant, who was incarcerated at Elmira C.F., allegedly slashed another incarcerated individual with a weapon. After his conviction, the defendant appealed, arguing that because no weapon was recovered, the verdict was not supported by legally sufficient evidence and was against the weight of the evidence.

The statute prohibiting promotion of prison contraband in the first degree is violated when a person confined in a correctional facility knowingly and unlawfully makes, obtains or possesses any dangerous contraband. See Penal Law (PL) §205.25(20). Contraband is defined as “any article or thing which a person confined in a [correctional] facility is prohibited from obtaining or possessing by statute, rule, regulation or order,” and dangerous contraband is defined as “contraband which is capable of such use

as may endanger the safety or security of a [correctional] facility or any person therein.” P.L. §205.00(3) and (4).

To establish that an individual has committed the offense of assault in the second degree, the People must produce evidence showing either that:

- the defendant, with the intent to cause physical injury to another person, caused injury to such person by means of a deadly weapon or dangerous instrument; or
- while incarcerated for the commission of a crime, the defendant, with the intent to cause physical injury to another person, caused such injury to such person.

See, P.L. 120.05(2) and (7).

At Defendant Jones’ trial, the People introduced the following evidence. A correction officer testified that while he was in the yard, he saw the defendant making slashing motions in the direction of the victim. As the officer ran toward them, they began throwing punches at each other. After separating the two, the officer saw a cut running from the victim’s ear to his jawbone. A nurse testified that the cut was bleeding seriously enough that the victim had to get treatment at the hospital. Photographs of the cut were introduced at the trial.

While there were 15 or 20 incarcerated individuals near the area where the incident occurred, the officer testified that other than the defendant, none of them were close enough to have cut the victim. The officer admitted that he did not see a weapon in the defendant’s hand nor was a weapon found. A

second officer testified that after the fight was broken up, the victim had no contact with anyone else.

After the incident, all of the incarcerated individuals in the area went through metal detectors and no weapon was recovered nor was a weapon found during a search of the yard. A sergeant testified that it was not unusual for a weapon not to be recovered after someone is cut in prison and that when a person is admitted to DOCCS’ custody, they are given a rule book which includes a rule prohibiting the possession of any instrument capable of causing bodily harm. A copy of the rule book and the card signed by the defendant acknowledging receipt of a rule book was admitted into evidence.

The victim said that he had been cut from behind and denied that the defendant had cut him. Rather, he testified, the defendant was standing in front of him, and after he was cut, he (the victim) lashed out at all of the incarcerated individuals who were near him. He could not remember whether the defendant was among the individuals at whom he lashed out. In rebuttal, the officer who testified for the People testified that incarcerated individuals generally do not disclose the identities of the incarcerated individuals who injure them in fights.

To show respect for the fact finder at a trial – usually a jury – when a defendant, on appeal, raises the issue of the sufficiency of the evidence supporting the verdict, the appellate court is required to **construe** (look at) the evidence in the light most favorable to the People. That means, if evidence could be viewed in two different lights – for example, the fact that no weapon was recovered – the court must view the evidence in the light that favors the prosecution’s theory of the

case, because by convicting the defendant, that is the way that the jury viewed it.

Here, the Court found, where an officer saw the defendant making slashing motions, there were no other people close enough to have cut the victim, and the victim had been cut, a rational person could conclude that even though no knife was recovered, the defendant possessed a weapon, in violation of DOCCS' rules, and intentionally used it to cause injury to the victim. The Court noted that "a different verdict would not have been unreasonable given that a weapon was never found and the victim testified that someone other than the defendant cut him." However, the Court continued, "when viewing the evidence in a neutral light and deferring to the jury's credibility determinations," the weight of the credible evidence supports the conclusion that the defendant possessed a weapon which he intentionally used to cause physical injury to the victim.

John Cirando, Esq., Syracuse, represented Lawrence Jones in this appeal from Mr. Jones' conviction.

Failure to Comply with OSC Directions Results in Dismissal

After Jemal Albritton's denial of parole was administratively affirmed, he filed an Article 78 challenge to the Board of Parole's decision. The Supreme Court, Albany County, granted the respondent's motion to dismiss. On appeal, the Third Department affirmed the lower court's decision, finding that the petitioner had failed to comply with the Order to Show Cause (OSC)

which the lower court had issued. The OSC directed the petitioner to serve a copy of the signed OSC on the respondent and the Attorney General (AG) by July 2, 2021. The AG moved to dismiss, asserting that the petitioner had failed to serve both the respondent and the AG with a copy of the signed OSC.

In *Matter of Albritton v. New York State Division of Parole*,* 210 A.D.3d 1164 (3d Dep't 2022), the Third Department first noted that "[i]t is well established that the failure of an incarcerated individual to comply with the directives set forth in an order to show cause will result in dismissal of the petition for lack of **personal jurisdiction** [the basis for the court's authority to hear the case against the respondent] unless the individual demonstrates that imprisonment presented obstacles beyond his or her control which prevented compliance." In support of this statement, the Court cited *Matter of Marino v. Annucci*, 146 A.D.3d 1241 (3d Dep't 2017).

Here, the Court noted, the petitioner, in an unsworn submission, acknowledged that he did not serve the signed OSC as directed but claimed that was because he never received a signed order to show cause. In support of this assertion, the petitioner attached a print out of legal mail sent to him in the month of June, 2021, which included mail received from the lower court on June 8 but failed to show *what* he had received from the court on that date. The Court found that the petitioner's unsworn and unsupported assertion filed in response to the respondent's motion to dismiss was insufficient to excuse his non-compliance with the service requirements of the OSC. Under these circumstances, the Court held, the lower court

properly granted the respondent's motion to dismiss for lack of personal jurisdiction.

*In the decision, the Court noted that the respondent should have been New York State *Board* of Parole, not *Division* of Parole.

Jemal Albritton represented himself in this Article 78 proceeding.

Court Finds Petition Challenging Removal from Job Is Moot

Anthony Arriaga was a law library clerk at Sing Sing C.F. from May 2014 through September 2018 and from April 2018 to February 2019, when, as a result of the identification and review of incarcerated individuals holding “sensitive positions: required by a February 2019 Directive, he was removed from the position of law library clerk. Following Mr. Arriaga’s removal, he filed a grievance which he pursued until he received a decision from the Central Office Review Committee (CORC) upholding the denial of the grievance. Mr. Arriago then filed an Article 78 petition arguing that his removal from the law library position was arbitrary and capricious. The Supreme Court, Albany County, ruled that the petitioner had “failed to demonstrate that his removal was arbitrary and capricious, and that considering the deference afforded to prison administrators regarding matters of internal security, there was no reason to disturb the denial of the petitioner’s grievance” and dismissed the petition.

In *Matter of Arriaga v. Malin*, 2023 WL 162178 (3d Dep’t 2023), the Court first ruled that because the petitioner had been transferred

to another prison after the lower court’s ruling, the review of the denial of his grievance alleging an improper removal from a job at Sing Sing was moot. That is, because petitioner was no longer at Sing Sing, there was no longer a dispute about whether he should be reinstated as the law library clerk at that prison.

To defeat the argument that his petition should be dismissed, the petitioner argued that the exception to the mootness doctrine applied because the February 2019 Directive governs all facilities, not just Sing Sing. The Court rejected this argument, finding that such a challenge to the Directive as a whole – as opposed to the Directive’s application to the petitioner – must be raised in an action for a declaratory judgment. While the Court could have, in the interests of justice, converted the Article 78 to an action for a declaratory judgment, the Court declined to do so. The Court did not give a reason for not converting the claim into a claim for a declaratory judgment.

Anthony Arriaga represented himself in this Article 78 proceeding.

IMMIGRATION MATTERS

Nicholas Phillips

This column reviews three Second Circuit Court of Appeals cases—one decided in December 2022 and two which remain pending after oral argument—with potentially significant consequences for noncitizens who have New York State convictions for possession or sale of a “narcotic drug” as defined by New York Penal Law (“NYPL”). These three cases concern a

type of legal analysis known as the “categorical approach,” which determines whether a *state* criminal offense *categorically matches* a corresponding *federal* offense.

The categorical approach is applied in federal sentencing and in immigration law. In federal sentencing law, a defendant’s sentence may be **enhanced** (increased in severity) if his or her prior convictions categorically match certain enumerated federal offenses. Similarly, immigration law assigns a variety of negative immigration consequences to state criminal convictions if they categorically match federal immigration offenses listed in the Immigration and Nationality Act (“INA”).

The first case, *United States v. Gibson*, 55 F.4th 153 (2d Cir. 2022), takes place in the federal sentencing context. In that case, after defendant Vincent Gibson pleaded guilty to several offenses in the federal district court in Buffalo, New York, the United States Attorney’s Office (“USAO”) urged the court to sentence him as a “career offender” as defined by Section 4B1.1 of the United States Federal Sentencing Guidelines (“Guidelines”). The Guidelines establish recommended sentencing ranges for criminal offenses based on a variety of factors. They are designed to “avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct” while also accounting for “the nature and circumstances of the offense and the history and characteristics of the defendant.” 18 U.S.C. §3553(a).

Under Guidelines §4B1.1, a defendant is a “career offender” if he or she “has at least two prior felony convictions of either a crime of violence or a controlled substance offense.”

Gibson acknowledged that his New York State conviction for robbery in the first degree was a federal “crime of violence” and that he therefore had one prior “career offender” conviction. However, Gibson argued that his prior New York State drug convictions were not “controlled substance offenses” under the Guidelines because he had been convicted of selling a “narcotic drug” as defined by NYPL §220.07. That statute, Gibson argued, included substances *not* regulated under federal law, thus making his convictions a categorical mismatch. Resolving this question had significant practical implications for Gibson: the recommended imprisonment range for a career offender would be 151 to 188 months, but without the career offender enhancement the recommended range was 92 to 115 months—a substantial reduction.

To determine whether Gibson’s prior drug convictions were a categorical match to the controlled substance offense defined by the Guidelines, the district court judge applied the categorical approach. That required the judge to review the plain text of Gibson’s statute of conviction to determine the minimum conduct criminalized by the statute, and then compare that minimum conduct to the federal generic offense. After analyzing the statute of conviction, the district court found that NYPL §220.07 criminalized the possession or sale of naloxegol, an opium alkaloid derivative, while federal law did not. The district court concluded that Gibson’s conviction was not a federal controlled substance offense under the Guidelines. The court therefore declined to sentence Gibson as a career offender and instead entered a sentence of 60 months for each of his crimes, with the sentences to run concurrently.

The USAO appealed to the Second Circuit. On appeal, the USAO offered no objections to the district court's determination that NYPL's definition of "narcotic drug" includes substances which are not criminalized under federal law. However, the USAO argued that the district court committed legal error by comparing the substances criminalized under the NYPL to the federal substances criminalized *at the time of Gibson's sentencing* in 2020, instead of to the federal substances criminalized *at the time Gibson was convicted of the crime* in 2002. This was a crucial error, argued the USAO, because naloxegol was only removed from the federal controlled substances list in 2015, and so at the time of Gibson's conviction in 2002, there was no categorical mismatch between the New York and federal schedules.

The Second Circuit rejected the USAO's arguments and affirmed Gibson's sentence. In so holding, the *Gibson* Court noted that when Congress enacted the Controlled Substances Act ("CSA")—the statute listing the drugs and substances controlled by federal law—"Congress launched a panorama of controlled substances that it plainly envisioned would be ever-evolving, not an unchanging array engraved in stone." 55 F.4th at 162. Congress accomplished this by providing that the schedule of prohibited substances "shall be updated and republished on an annual basis," 21 U.S.C. §812(a), a task which is carried out by the Attorney General or his Department of Justice designee. Given the constantly evolving nature of the CSA, the *Gibson* Court concluded that it would be unfair to impose a sentence enhancement for Gibson's 2002 conviction since it could encompass conduct—the possession and sale of naloxegol—which became legal under federal law in 2015, when naloxegol was removed from the CSA.

Two other Second Circuit cases—*Deere v. Garland*, No. 21-6473, and *Lopez v. Garland*, No. 21-6227—present a very similar question in the immigration context. (Both cases are litigated by the Immigration Unit of Prisoners' Legal Services of New York ("PLSNY").) *Deere* and *Lopez* concern the deportation proceedings of two lawful permanent residents who, like Gibson, were previously convicted of New York State drug crimes involving a "narcotic drug" as defined by NYPL §220.07. In removal proceedings, the Department of Homeland Security ("DHS") alleged that their drug convictions were "controlled substance offenses" as defined by the INA which made them deportable from the United States. In response, *Deere* and *Lopez* argued that their convictions were not a categorical match because New York's definition of "narcotic drug" criminalizes a variety of substances which are legal under federal law. After DHS' view prevailed before the immigration judge and Board of Immigration Appeals, both *Deere* and *Lopez* sought review before the Second Circuit, which consolidated their cases for joint review.

On December 7, 2022—one day after *Gibson* was decided—the Second Circuit heard oral argument in *Deere* and *Lopez*, with John Peng of PLSNY arguing that petitioners' convictions are not deportable offenses because they do not categorically match the definition of a federal controlled substance offense. A decision in *Deere* and *Lopez* remains pending. Should the Court find that NYPL's definition of "narcotic drug" is broader than the federal definition contained in the INA, as *Gibson* did with the definition contained in the Guidelines, then a significant number of New York criminal offenses involving possession or sale of a "narcotic drug" would no longer be removable offenses under the INA.

WHAT DID YOU LEARN?

Brad Rudin

1. Confinement under Directive 4910 is authorized when DOCCS possesses probable cause to believe that an incarcerated individual has:

- a. created an extraordinary security risk that can only be managed by placing the individual on “contraband watch.”
- b. engaged in a persistent course of conduct promoting the smuggling of controlled substances into the facility.
- c. ingested a contraband item or inserted a contraband item into the rectal cavity.
- d. destroyed evidence of any contraband that would be admissible in a Tier III hearing or criminal trial.

2. In the case of *Ibrahim Gyang v. State of New York*, the Court of Claims held that an incarcerated individual subject to “contraband watch” must be released:

- a. within 48 hours irrespective of the circumstances.
- b. after 74 days unless a longer period of confinement is authorized by the superintendent of the facility.
- c. after seven days of negative defecation testing.
- d. within 48 hours depending on the results of the defecation testing.

3. The Court in *Gyang* held that the State lost its immunity for confining the petitioner under “contraband watch” because DOCCS did not possess:

- a. probable cause for this kind of confinement.
- b. evidence of contraband resulting from defecation testing.
- c. a warrant authorizing a search of the bodily waste of the petitioner.
- d. any reason to suspect that the petitioner possessed a cutting type weapon in his pelvic area.

4. The case of *Matter of Jesse J. Barnes v. Shelley M. Mallozzi* holds that when a Tier III determination is reversed and the court orders DOCCS to expunge all references to the charges:

- a. Expunge all hearing records including any use of force reports from the individual’s prison records.
- b. destroy any record of the proceeding in DOCCS files regardless of the circumstance.
- c. destroy any record of the proceeding in DOCCS records upon the written request of the incarcerated person.
- d. expunge any document from the record of the incarcerated person upon a written request directed to the superintendent of the facility.

5. According to the decision of the Court in *Matter of Dorcinvil v. Miller*, where the hearing officer reports that requested body cam footage is not available because the camera was turned off, if requested by the accused individual, the hearing officer must:

- a. dismiss the misbehavior report and bar any additional proceeding based on that report.
- b. make an adverse inference about the truthfulness of the evidence presented by the author of the misbehavior report.
- c. explain their basis of knowledge for the conclusion that the camera was not on.
- d. sanction the incarcerated person for making a meritless request for evidence.

6. In *Matter of White v. LaManna*, the Court found that a charge of disorderly conduct requires:

- a. an explanation for the disorderly nature of the incarcerated person's behavior.
- b. some proof about how others reacted to behavior of the charged incarcerated person.
- c. substantial evidence about the intent of the charged person.
- d. an allegation that the incarcerated individual engaged in one of the forms of disorderly conduct set forth in the rule or in any other similar act that could be defined as disorderly conduct.

7. When a witness for an incarcerated person declines to testify at a disciplinary hearing, the best course of action for the individual facing disciplinary charges is to:

- a. ask the hearing office to determine the reason that the witnesses refused to testify.
- b. wait for a court to address this issue.
- c. apply for a subpoena directing the witness to appear at the hearing and testify.
- d. request that the non-testifying witness be charged in a misbehavior report.

8. The charge of intoxication is proven by substantial evidence *only* when established by:

- a. scientific testing.
- b. scientific testing in combination with the testimony of a medical doctor.
- c. a physical examination conducted by a medical doctor.
- d. none of the above.

9. When a charged incarcerated person challenges the sufficiency of the evidence in a disciplinary hearing, that objection should first be made:

- a. in an Article 78 proceeding.
- b. during the hearing.
- c. when the case reaches the Court of Appeals.
- d. as part of the grievance process.

10. The Third Department’s decision in *Antoine Galloway v. State of New York* is helpful to incarcerated persons because it found that:

- a. all acts of officer misconduct fall within the officer’s scope of employment.
- b. an officer’s scope of employment is not relevant to the State’s liability for bad acts committed by the officer.
- c. the officer’s use of force in *Galloway* was within the officer’s scope of employment.
- d. all acts of officer misconduct fall outside of the officer’s scope of employment.

ANSWER KEY:

- 1c
2d
3b
4a
5c
6d
7a
8d
9b
10c

Your Right to an Education



- Are you under 22 years old with a learning disability?
- Are you an adult with a learning disability?
- Do you need a GED?
- Do you have questions about access to academic or vocational programs?

If you answered “yes” to any of these questions, for more information, please write to:

Maria E. Pagano – Ed’n Unit
Prisoners’ Legal Services
14 Lafayette Square, Suite 510
Buffalo, New York 14203
(716) 854-1007

Pro Se
114 Prospect Street
Ithaca, NY 14850

PLS OFFICES

Requests for assistance should be sent to the PLS office that provides legal assistance to the incarcerated individuals at the prison where you are in custody. Below is a list of PLS Offices and the prisons from which each office accepts requests for assistance.

PLS ALBANY OFFICE: 41 State Street, Suite M112, Albany, NY 12207

Adirondack • Altona • Bare Hill • Clinton • CNYPC • Coxsackie • Eastern • Edgecombe • Franklin
Gouverneur • Great Meadow • Greene • Hale Creek • Hudson • Marcy • Mid-State • Mohawk
Otisville • Queensboro • Riverview • Shawangunk • Sullivan • Ulster • Upstate • Wallkill • Walsh
Washington • Woodbourne

PLS BUFFALO OFFICE: 14 Lafayette Square, Suite 510, Buffalo, NY 14203

Albion • Attica • Collins • Groveland • Lakeview • Orleans • Wende • Wyoming

PLS ITHACA OFFICE: 114 Prospect Street, Ithaca, NY 14850

Auburn • Cape Vincent • Cayuga • Elmira • Five Points

PLS NEWBURGH OFFICE: 10 Little Britain Road, Suite 204, Newburgh, NY 12550

Bedford Hills • Fishkill • Green Haven • Sing Sing • Taconic

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COPY EDITING AND PRODUCTION: ALETA ALBERT