Pro Se

Vol. 34 No 4 July 2024 **Published by Prisoners' Legal Services of New York**

SECOND CIRCUIT REVERSES SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS ON FIRST AMENDMENT RELGIOUS CLAIM

In May 2024, the Second Circuit, in *Chamma Brandon v. Mark Royce, Deputy Superintendent of Security, et al.*, 2024 WL 2163942 (2d Cir. May 15, 2024), reversed a decision from the Southern District of New York finding that the Defendants were entitled to summary judgment with respect to the Plaintiff's claim that they had violated his First Amendment right to practice his religion when they denied him a religious meal tray during Eid al-Adha.*

Eid al-Adha is a four-day holiday celebrated by Muslims around the world.** The holiday is celebrated with a special prayer service, shared meals and other religious activities. In 2015, the first day of the holiday fell on September 24. On that day, at Sing C.F., there was a full day event that included a shared religious meal prepared by Muslim cooks which was served to Muslim incarcerated individuals. In addition, Muslim incarcerated individuals in keeplock or the hospital who could not attend the congregate meal were given meal trays with the special meal in their cells. There was also a special event on September 26 for Muslim incarcerated individuals and their guests from outside the facility.

Continued on Page 4 . . .

Also Inside . . .

This project is supported by a grant administered by the New York State Division of Criminal Justice Services (DCJS). Points of view in this document are those of the author and do not necessarily represent the official position of DCJS.

2024 Legislative Wrap-Up

A Message from the Executive Director, Karen L. Murtagh, Esq.

The recently concluded Legislative Session will likely grace the history books as much for what was as wasn't accomplished.

For example, hard-fought criminal justice reforms to bail, discovery and speedy trial and solitary confinement (HALT) were left largely intact (despite some efforts to roll them back).

Other justice reforms fell victim to what has been described as criminal justice "fatigue", especially in an election year with monumental and well-acknowledged political ramifications - national, state and local - at stake.

That said, offered below are some highlights that will be of interest to the readership.

Bills that Passed Both Houses and Will Be Delivered to the Governor For Her Signature:

Juror Disenfranchisement (A.1432C Aubry/S206B Cleare): In the last day of session, the legislature passed the so-called "Jury of our Peers" bill which would end New York's permanent ban on jury service for people with a past felony conviction, restoring the right after the completion of "all sentencing requirements." While the final version added carve-outs (like full payment of court fees and restitution prior to restoration of jury eligibility), the passage of this bill (if signed by the Governor) will restore jury service rights to hundreds of thousands of New Yorkers. At last count, there are over 965,000 New Yorkers with one or more felony convictions, and approximately 18,000 New Yorkers receive a felony conviction each year.

Notarization Fix (S.9032 Ryan/A.9478 McMahon): This bill clarifies the intent of 2023 changes to the notarization law by allowing any person to submit an affirmation under penalty of perjury in lieu of an affidavit in an administrative proceeding. The bill also clarifies that verifications may be made under penalty of perjury and no longer must be sworn to and witnessed by a notary public. This bill (if signed by the Governor) will remove a significant barrier to justice.

Funding Provided to Increase "Gate Money" : Commissioner Martuscello recommended that Governor Hochul increase the amount of gate money provided to released individuals from $40 to $200. The Governor provided for that increase in her proposed Executive Budget. This increase became effective on May 1, 2024, moving New York from one of the lowest in the nation with respect to the provision of gate money to one of the highest.

Immigration Legal Services Funding: As in past years, there was a push during this year's State Budget negotiations to include both a guarantee for state-funded representation for New Yorkers in removal proceedings (ARA) and an increase in existing funding for immigration legal services

to approximately $150 million. Neither goal was fully achieved, with the total amount provided by NYS for immigration legal services reflecting a slight increase over last year's amount of $63 million (to $64.2 million).

Establishes a Uniform Electronic Medical Records System for Correctional Facilities (S5214 Harckham/A5902 Kelles): This bill (if signed by the Governor) directs the Commissioner of Corrections and Community Supervision, in consultation with the Commissioner of Health and the Commissioner of Mental Health, to develop a uniform electronic medical records system to be utilized by all correctional facilities in the state.

Bills That Failed to Pass Both Houses:

Pregnant and Parenting Incarcerated People: A bill to improve care and conditions for people who are incarcerated while pregnant and parenting, including expanded nursery program access, passed the Senate last week but stalled in the Assembly.

Prison Labor: For the second year in a row, the Senate passed—and the Assembly refused to move—a bill to prohibit people in New York correctional institutions from being forced to work, including by threat of punishment.

Health Care Coverage for Immigrant New Yorkers: Coverage for All—a bill that would have expanded access to the state's Essential Plan to low-income individuals who reside in New York, regardless of immigration status—passed the Senate, but was not considered by the Assembly.

Cameras in Court: A bill that would have allowed televised proceedings in every court in NY state passed the Senate, but died in the Assembly. Opponents raised concerns regarding the right to a fair trial, due process and participant and court staff privacy.

Raising Wages for Incarcerated Individuals: This bill would have mandated that incarcerated individuals be compensated at a base rate of $1.20 to $10 per day and be given biannual raises for adequate performance. The bill would have also mandated that incarcerated individuals not participating in a work or program assignment due to age or frailty be paid $1.00 per day an amount that, had the bill passed, would have been adjusted every 5 years for cost of living.

Provides a Monthly Stipend for Incarcerated Individuals Upon Release from State Prison: This bill would have increased the amount given to people upon release from incarceration from $40 to $2,550 over six months. The cost of the program would be $25 million, per the bill memo.

Rights Behind Bars Bill: This bill would have expanded protections surrounding the rights of people in prisons, jails and forensic facilities including, among other things, limiting the use of cell or segregated confinement, granting broad access to technology including tablets, improving conditions relating to food, meals, programming, visitation, mail, packages, and commissary and addressing other problematic areas including excessive and unjustified uses of force by staff, misuse of segregated confinement and due process rights in general.

. . .Continued from Page 1

In September 2015, Chamma Brandon, an observant Muslim and an incarcerated individual in the custody of the Department of Corrections and Community Supervision (DOCCS), was assigned to Sing Sing C.F. He attended the communal Eid al-Adha meal on September 24.

According to Mr. Brandon, on September 25, Imam Young told the Muslim incarcerated individuals who were planning to attend the special event the next day, that 11 individuals who had signed up for the event would not be able to attend because the space could not accommodate the number of people who had signed up as well as their guests (who were not incarcerated). Mr. Brandon and one of his witnesses, Jerry Johnson, maintain that Iman Young told them that the Defendants had agreed that if 11 people voluntarily withdrew from attending, all the invited guests could attend and 11 people who had voluntarily withdrawn would receive the special meal on a tray in their cells. Based on these representations, Mr. Brandon agreed to withdraw from attending the meal.

As with the September 24 event, the people organizing the September 26 event generated a list of incarcerated individuals who would receive meal trays in their cells. On September 26, there were 24 people on the list to receive an in-cell special meal. Mr. Brandon was on the list. He did not receive a meal tray. Although the list was in the form of a memo from "Immam" Young to the mess hall supervisor, in a sworn declaration, Imam Young denied having generated the list.

In his declaration, Imam Young also stated that not only had he not asked any incarcerated individuals to withdraw voluntarily from the September 26 meal in exchange for receiving the special meal in their cells, he had informed them after Friday prayers for at least eight weeks prior to the event and during Ramadan that there would be no meal trays on September 26, and that he had told the Plaintiff that he was not entitled to a meal tray on that date.

John McClellan, an incarcerated individual who is a practicing Muslim, declared that around noon on the 26th, Iman Young had directed him and other incarcerated helpers to prepare the meal trays for delivery to the people on the list. However, while Mr. McClellan was preparing the trays, Defendant Lieutenant John Werlau ordered that they discard the meal trays.

The Defendants contest this version of events, arguing that the September 26 event was not a religious event and was not even related to Eid al-Adha. Rather, the Defendants claim, it was a family event open to Muslim incarcerated individuals and their guests.

On the issue of whether the event was religious, the paperwork is unclear and inconsistent. The Special Events Package for the September 26 Event, on a page dated September 23, states the Category of Event is "Religious," and Imam Young is responsible for the program.

Another page of the Special Event Packet, dated September 4, provides the menu for the September 26 event and lists the names and housing locations of incarcerated individuals who are assigned cooks. This page has a handwritten note signed by Defendant Royce

and dated September 8, 2015, stating: "No Facility Prepared food will leave the Event Area. Any Extra food will be Disposed of at the end of the Event."

The Defendants deny having approved, or instructed Imam Young to offer meal trays to people in their cells in exchange for their withdrawal from attending the September 26 event. They also deny that they were aware of any list providing for Muslim incarcerated individuals to receive the special meal in their cells or that anyone on the Executive Team authorized that arrangement.

Defendant Werlau stated in a sworn declaration that he had reviewed the special events package and it did not state that food could be taken out of the mess hall and taken to the housing units. In fact, he stated, "the special events package specifically provided that no facility prepared food would leave the event area, and extra food would be disposed of at the end of the event."

The District Court Decision

The lower court dismissed the Plaintiff's First Amendment claim before the trial, holding that, "the defendants were entitled to summary judgment on [Brandon's] free exercise claim because they had a legitimate penological interest in preventing food from being transported to the housing blocks[.]" These interests were:

- Security
    - Inmates could secrete contraband in the food;
    - Meal trays can be bartered, sold, and used for extortion and bribery;
- Health and Safety
    - If the food is not consumed for several days it could become unsafe to eat;
    - Having meal trays in the cells may attract rodents and could lead to rotting food.

The district court also granted summary judgment to the Defendants because, it found, Mr. Brandon had an alternative means of exercising his right: he could have attended the special event and he would have received the meal at issue in the lawsuit.

Appellate Court's Analysis

Review of Summary Judgment Decisions

The Second Circuit first laid out the standard for granting summary judgment: "Summary Judgment is appropriate only where there is no genuine dispute as to any material fact and the **movant** [the party seeking summary judgment] is entitled to judgment as a matter of law." *Brandon*, at *11. In making this assessment, the Court may only rely on evidence in the record. *Id.* That is, the parties cannot introduce evidence on appeal that was not in the record when the district court made its decision. *Id.*

Further, in determining whether there are "genuine issues of disputed fact," the appellate court must resolve all ambiguities – instances where the facts could support either party's argument – and draw all possible inferences in the favor of the party against whom the judgment is sought. *Id.*

The First Amendment

The First Amendment provides that "no law shall prohibit the free exercise of religion." Incarcerated individuals do not lose this right when they enter prison. *See, O'Lone v. Est. of*

Shabazz, 482 U.S. 342, 348 (1987). In proving their claims, incarcerated individuals in DOCCS custody do not have to show that DOCCS substantially burdened their right to practice their religion. *Brandon*, at *12. Rather, an incarcerated individual need only show that DOCCS has burdened their "sincere religious practice" when enforcing a policy that is neither neutral nor generally applicable. *Id*.

Assuming that the incarcerated plaintiff meets the standard set forth in the preceding paragraph, the DOCCS Defendants may still prevail on a motion for summary judgment if they can show that the policy which burdens an incarcerated individual's right to practice their religion has "a reasonable relationship to a legitimate penological goal." This is a much lower standard than is applied to state actors who are employed by state agencies other than a department of correction. To win a motion for summary judgment a state actor who is not employed by a department of corrections must show that the policy at issue is "the least restrictive alternative" to accomplish the policy's goal.

To determine whether a challenged policy is reasonable, a DOCCS defendant in a §1983 suit brought by an incarcerated individual must show that:

- The challenged action has a valid rational connection to a legitimate penological objective;
- Incarcerated individuals have an alternative means of exercising the burdened right;
- The impact that accommodating the right will have on officers, other incarcerated individuals and prison resources;
- The existence of alternative means for enabling exercise of the right that has only a ***de minimus*** [something so minor as to be disregarded] adverse effect on valid penological goals.

See, Salahuddin v. Goord, 467 F.3d 263, 272 (2d Cir. 2006).

Applying the Law to the Facts

First the Court found that there were three disputed issues of fact which, because this was the Defendants' motion for summary judgment, had to be resolved in the Plaintiff's favor:

- **Whether the special event was a religious event**
  - The district court did not make a finding on this issue.
  - The Plaintiff, and his witness, Jerry Johnson, an incarcerated individual serving as the Administrative Chaplain Clerk, declared that the September 26 event was organized to commemorate Eid al-Adha by means of a shared religious meal with incarcerated individuals and their invited guests. In addition, some of the Special Event paperwork characterized the event as religious.
  - The Defendant's argued the event on September 26 was a family, not a religious, event.

The Appellate Court, as it was required to do, resolved the issue in the Plaintiff's favor, finding that for the purposes of the motion, the special event was a religious event.

- **Whether Plaintiff Brandon had an alternative means of receiving the September 26 meal**
  - According to Plaintiff Brandon and his witness, the deal approved by the defendants was that individuals who withdrew from attending the event would receive a meal tray.
  - The Defendants contend this never happened.
  - The district court found that Plaintiff Brandon did have an alternative; he could have attended the event.

Resolving the disputed fact in the Plaintiff's favor, the Appellate Court found that the Plaintiff did not have an alternative.

- **Whether the Defendants' authorized meal trays on September 26**.
  - John McClellan, an incarcerated individual, declared that Imam Young had directed him and another incarcerated helped to prepare meal trays for people on the list.
  - The Defendants and Imam Young state they did not authorize the preparation of meal trays.

Resolving the factual dispute in the Plaintiff's favor, the Appellate Court, found that the Defendants had authorized the use of meal trays on September 26.

Did the Prohibition on Meal Trays Have a Rational Relationship to a Legitimate Penological Goal?

While the Defendants argued meal trays from the special event would create health and safety and security issues, the Court disagreed. First, meal trays were allowed on September 24. If they were not a threat to safety and security on September 24, why were they a problem on September 26? In the district court, the Defendants did not state a reason that the trays were not problematic on September 24 but were problematic on the September 26.

Before the Appellate Court, the Defendants for the first time stated that the difference was that civilians at the September 26 event might introduce contraband into the prison. However, the Appellate Court noted, "there is nothing in the record to suggest, for example, that civilian visitors would have access to the meal trays." Nor did the Defendants submissions in support of their motion to summary judgment mention any risks that civilian visitors might pose. In fact, the Court wrote, "the district court understood the defendants' concerns to be that [incarcerated individuals] could secrete contraband in the food."

Thus, the Court found, "there is no **unambiguous** [clear-cut] record support for the defendants' claim that they denied [the Plaintiff] a meal tray on September 26 because the presence of outside guests increased the risk that contraband could be hidden in the food.

In conclusion, the Court found that the penological concerns relied upon by the lower court and raised on appeal cannot at this juncture support summary judgment in favor of the defendants.

* Plaintiff Brandon also raised a claim that his Eighth Amendment rights were violated by the lighting in his cell. The Court's disposition of that claim is not discussed in this article.

** The facts in this article are taken from the decision in *Chamma Brandon v. Mark Royce, Deputy Superintendent of Security, et al.*, 2024 WL 2163942 (2d Cir. May 15, 2024). We note in the article when facts are disputed.

Alessandra DeBlasio, Pro Bono Counsel, New York, New York, represented Chamma Brandon in this appeal to the Second Circuit.

NEWS & NOTES

Noteworthy Verdict!

In 2019, Nicholas Magalios filed a §1983 action in federal court, alleging that in 2017, in violation of the Eighth Amendment, Defendants Peralta and Baker, along with other correction officers had used excessive force on him and that Defendants Peralta, Baker and Blount observed the other officers assaulting him and failed to intervene to stop the assault despite having the opportunity to do so. As a result of the assault, Mr. Magalios alleged, he suffered serious injuries, including a shoulder injury that required surgery.

In 2021, the case was tried before a jury which returned a verdict in favor of the plaintiff, holding the Defendants liable for $50,000.00 in compensatory damages and imposing punitive damages of $950,000.00 – $350,00.00 against Defendant Peralta, $350,000.00 against Defendant Bailey, and $250,000.00 against Defendant Blount. The Court reduced the punitive damages to $200,000.00 each for Defendants Peralta and Bailey and to $100,000.00 for Defendant Blount. After the reduction, the Plaintiff was entitled to $50,000.00 in compensatory damages and $500,000.00 in punitive damages.

On appeal, the Second Circuit affirmed the District Court's reduction of the punitive damages. *Magalios v. Peralt*a, 2023 WL 4618349 (2d Cir. July 19, 2023).

In April 2024, the district court awarded the Plaintiff's lawyers $379,192.14 in attorneys' fees and $6,764.85 in costs. *Magalios v. Peralta*, 2024 WL 1856303 (S.D.N.Y. April 26, 2024).

PREP SPOTLIGHT

Jill Marie Nolan

PLS' PREP program is a therapy-based pre-release and re-entry program. Our primary purpose is to help individuals conduct the personal work necessary to avoid returning to prison, achieve true independence, and reach their maximum potential. Participants graduate from PREP three years after they return home. You are eligible to apply to PREP if you are within 6-18 months of your maximum release date, do not require post-release supervision, are not required to register as a sex offender, and are returning to one of the five (5) boroughs of New York City or to one of the following counties: Dutchess, Erie, Genesee, Monroe, Niagara, Orange, Orleans, Putnam, Rockland, Sullivan, Ulster, Westchester or Wyoming. Participants must be motivated to do the work necessary to be

their best self, achieve their goals, and be a positive member of their community. 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 Family Support Unit of the Alliance of Families for Justice. This initiative is designed to foster a sense of community and healing for individuals and families across New York State who have been affected by mass incarceration. The Family Support Unit offers weekly support groups for families of incarcerated individuals on Zoom every Tuesday from 6-8 PM. These virtual spaces provide a platform for families to connect, share resources, and exchange helpful tools for coping with the emotional toll of incarceration. These healing circles are also open to formerly incarcerated individuals, offering a supportive environment for their reintegration. For more information, your family members can visit https://afj-ny.org/family-support-unit or call the Family Support Unit at 917-830-8585.

PRO SE VICTORIES!

***Matter of Joseph Wilson v. Daniel Martuscello*, Index No. 10105-23, Sup.Ct. Albany Co.** Having been found guilty of possessing contraband, smuggling, making a false statement, being out of place, a movement violation and a facility visiting violation, Joseph Wilson filed an Article 78 action seeking reversal of the hearing. The bases for the challenge were, among other claims, that:

- the hearing officer failed to call several witnesses requested by Mr. Wilson;
- the hearing officer failed to produce documentary evidence Mr. Wilson had requested;
- the hearing officer's wrongfully excluded Mr. Wilson from the hearing; and
- the determination of guilt relating to several of the charges were not supported by substantial evidence.

Rather than answer the Petition, the Respondent reversed the hearing and expunged all references to it from Mr. Wilson's records.

***Matter of Jessie J. Barnes v. Michael Ranieri, FOIL Appeals Officer, et al.*, Index No. CA2023-000835, Sup. Ct., Oneida Co.** While in the Step-Down Program at Midstate C.F., on December 15, 2022, Jessie Barnes made a FOIL request for:

1. The negative information report filed by a correction officer on Jessie Barnes on 12/212/2022

2. A document showing the names and titles of all persons who were part of the Program Management Team that met on 12/14/2022.

He received a response from DOCCS' Central Office, advising him that the requested documents "were specifically exempted from disclosure by State or Federal statute. *See*, Public Officers Law (POL) §87(2)(a). Mr.

Barnes appealed administratively. The appeal decision affirmed the denial, asserting the same exemption.

After Mr. Barnes received the initial denial of his request, on January 26, 2023, Mr. Barnes made a second FOIL request for the following documents:

1. 1/23/2023 information wrote on Mr. Barnes
2. 12/12/2022 information wrote on Mr. Barnes
3. All persons assigned to PMT on 12/14/2022
4. All persons assigned to PMT on 1/25/2023

The request was denied on the same basis that the first request was denied. Petitioner's timely appeal was denied for the same reason. Having exhausted his administrative remedies with respect to both FOIL requests, Mr. Barnes filed an Article 78 challenge to the determinations.

The Respondents answered, defending their decision to withhold the records, and attached a copy of the records to the answer filed with the Court for its review only. Called an "in camera" review, the "for the court's eyes only" review allows the court to see the documents at issue so that it can determine whether they fall within the claimed exemption. The records consisted of Program Management Team Meeting Minutes for December 14 and January 25, both of which, the Court noted, had an informational report concerning Mr. Barnes.

The Respondents argued Public Officers Law §95(6)(c) allows DOCCS to withhold the requested records. In pertinent part, this section of the law provides that an agency is not required to give access to "personal information pertaining to the incarceration of an incarcerated individual at a state correctional facility which is evaluative in nature … unless such access is otherwise permitted by law or court order."

In its analysis of the parties' arguments, the Court first focused on the definition of "evaluative." Because the definition section within the statute did not define "evaluative," the Court used the dictionary definition, writing "The Merriam-Webster Dictionary defines the term 'evaluate' to mean 'to determine or fix the value of' or 'to determine the significance, worth, or condition of usually by careful appraisal and study."

Next, the Court looked at the PMT Minutes of December 14 and January 25. In pertinent part, the Court described the notes as setting forth:

- The names of those attending;
- Petitioner's name and DIN;
- The nature of the outcome of the reported incident;
- The stated reason for any disciplinary action; and
- The discipline imposed.

The reason for discipline included in each report, the Court noted, was "simply a description of Petitioner's conduct leading to the disciplinary action; no other persons are mentioned by name." What is missing, the Court wrote, is any indication of who reported the conduct, a theory or theories about why the conduct might have occurred, an explanation of why the particular discipline was imposed and any hypothesis as to how the conduct might be prevented in the future. "In other words," the Court

concluded, "the reports are devoid of any evaluative descriptors; they instead are a sterile recitation of conduct leading to discipline."

In analyzing whether the Respondents' submissions showed that the records fell within the claimed exemption because they set forth "personal information pertaining to the incarceration of an incarcerated individual at a state correctional facility which is evaluative in nature …" the Court asked the Assistant Attorney General at oral argument whether the Respondents were concerned about Petitioner learning the names of the members of the PMT. The AAG responded that this was not a concern; rather the Respondents were concerned that Petitioner might learn who **"articulated sentiments"** (expressed feelings) at the meeting.

The Court rejected this as a basis for withholding the records. "Since the reports however, contain no details as to what was said or by whom at the meetings, Respondents have not articulated a legitimate basis for withholding these reports from Petitioner." Thus, the Court granted the petition and ordered the records be delivered to Mr. Barnes within 14 days.

AG Agrees to the Reversal of Twelve Disciplinary Hearings

Matter of Kouriockien Vann v. William Keyser, 213 A.D.3d 1068 (3d Dep't 2023)
Matter of Mark Dublino v. Stewart Eckert, 214 A.D.3d 1360 (4th Dep't 2023)
Matter of Nayshawn Perkins v. Anthony J. Annucci, 216 A.D.3d 1388 (3d Dep't 2023)
Matter of Ernest Iverson v. Anthony J. Annucci, 215 A.D.3d 1145 (3d Dep't 2023)
Matter of Leonardo Valdez-Cruz v. Jaifa Collado, 219 AD3d 1652 (3d Dep't 2023)
Matter of Domingo Espiritu v. Anthony J. Annucci, 222 A.D.3d 1153 (3d Dep't 2023)
Matter of Patrick Shevlin v. Anthony Annucci, 222 A.D.3d 1369 (4th Dep't 2023)
Matter of Kenneth Windley v. Anthony Rodriguez, 224 A.D.3d 983 (3d Dep't 2024)
Matter of Steven Jude v. Anthony Rodriguez, 224 A.D.3d 1034 (3rd Dep't 2024)
Matter of Alonzo Ross v. Anthony Rodriguez, 225 A.D.3d 1051 (3d Dep't 2024)
Matter of Amin Booker v. Anthony Rodriguez, 227 A.D.3d 1251(3rd Dep't 2024)
Matter of Anthony Davis v. Anthony J. Annucci, 227 A.D.3d 1313(3rd Dep't 2024)

Pro Se Victories! *features summaries of successful pro se administrative advocacy and unreported pro se litigation and. In this way, we recognize the contribution of pro se jail house 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 Annuls Tier III Determination of Guilt

After an officer allegedly observed Rodney Pierre take something from his pocket and throw it on the ground, another officer found a ceramic scalpel blade at the location. Charged with possessing a weapon and smuggling, Mr. Pierre denied his guilt. The hearing officer found him guilty of the charges. The determination was reversed upon administrative appeal. At the rehearing, the hearing officer again found Mr. Pierre guilty of the charges.

Mr. Pierre challenged the determination of guilt in an Article 78 proceeding, arguing that the hearing officer had wrongfully denied his request for a witness. Because the case raised an issue of substantial evidence, the Supreme Court, Oneida County, transferred the matter to the Third Department of the Appellate Division.

In *Matter of Rodney Pierre v. Anthony J. Annucci*, 226 AD3d 1272 (3rd Dep't 2024), the Third Department found that the "inaudible gaps in the hearing transcript preclude [prevent] meaningful review of this issue," and annulled the determination of guilt.

The Court then addressed the issue of whether it should order a re-hearing or expungement of the determination. It found that while this type of error typically results in a re-hearing, because Mr. Pierre had been released to parole, remittal for a re-hearing was not **feasible** [would not work]. For this reason, the Court ordered DOCCS to expunge all references to the determination from the Petitioner's institutional records.

Rodney Pierre represented himself in this Article 78 proceeding.

Parole

Court Orders Reconsideration of Parole Discharge "Deferral"

In 1991, Elias Beltran was convicted of murder in the second degree and was sentenced to 25 years to life. Entering prison when he was 19 years old, Mr. Beltran committed to bettering himself by pursuing an education.***** He graduated from the Bard Prison Initiative in 2017, was released to parole supervision in 2018, and shortly thereafter, entered a **doctoral** (PhD or Doctor of Philosophy) program at Cornell University in Ithaca, New York. At this point, he began reporting to the Elmira-area parole office.

In his role as a doctoral student at Cornell, Mr. Beltran had full time teaching and research responsibilities. Further complicating his schedule, Mr. Beltran volunteered as a writing instructor at Tompkins County Community College. Nonetheless, his new parole officer changed his reporting schedule from once every four months to every other week and imposed an 8:00 pm curfew which

prevented him from taking evening courses and using the library after 8:00.

There were also geographic restrictions imposed by Parole that prevented Mr. Beltran from research opportunities in the Dominican Republic. Further, his parole officer would not permit Mr. Beltran to apply for a passport.
In 2022, Cornell University offered Mr. Beltran a position designing and teaching a literature class in a state prison as part of the Cornell Prison Education Program. Mr. Beltran's parole officer refused to consent to Mr. Beltran taking the position. When Mr. Beltran was offered a similar position through the Bard Prison Initiative, the parole officer again refused to allow him to take the position, however this time, his superiors directed the parole officer to allow Mr. Beltran to apply for the job. The parole officer let Mr. Beltran know that he was angry that Mr. Beltran had gone over his head.

In August 2023, Mr. Beltran had successfully completed three years on parole and was eligible for a discharge from parole supervision. He provided letters of recommendations and asked his parole officer to be discharge him from parole supervision. According to Mr. Beltran, on October 4, his parole officer told him that the request had been denied, although the parole officer did not give Mr. Beltran a written decision.

Mr. Beltran submitted an appeal to the Board of Parole, arguing that the decision was arbitrary, capricious and unlawful. Attached to the appeal was a letter of support from his attorney. Not having received a response, in January 2024, Mr. Beltran challenged the decision in an Article 78 proceeding.

The Respondent, the chairman of the Parole Board, answered by stating that Mr. Beltran's request to be discharged from parole had been deferred for 12 months rather than denied. Directive 9235 §(IV)(e)(2) allows the Board to defer a decision on a request to be discharged from parole supervision. Citing *People ex rel. Allah v. N.Y. State Bd of Parole*, 158 A.D.2d 328, 329 (1st Dep't 1990), Mr. Beltran also argued that "Executive Law §259-j affords the Parole Board complete discretion to discharge a person from parole if it is satisfied such discharge is in the best interests of society".

In his Reply, Mr. Beltran argued that as a practical matter, there is no difference between a deferral and a denial. Further, noting that in his case the deferral was based only on the seriousness of the offense that he had been convicted of committing, he argued that the rationale "is not a legally cognizable basis for denying discharge from parole supervision under Executive Law §259-j(1)[,]" as this section of the law does not mention the seriousness of the underlying crime as a factor to consider in determining whether to discharge an individual from parole supervision. And yet, Mr. Beltran continued, "the deferral determination recites that further supervision is warranted considering the seriousness of the offense." This, Mr. Beltran argued, shows that the determination was "affected by an error of law as an incorrect standard was utilized."

Mr. Beltran also argued that the determination was arbitrary and capricious because the Board did not consider the letters of recommendation Mr. Beltran submitted.

The Court, in *Matter of Elias Beltran v. Daryl C. Towns, NYS Board of Parole*, Index No. 901061-24 (Sup. Ct. Albany Co. March 8, 2024), began its analysis by noting that the decision of whether to defer or deny a discharge from

parole supervision is a judicial function that cannot be reviewed if it is made in accordance with the law. "Judicial intervention," the Court continued, is warranted only when there is a showing of irrationality bordering on impropriety."

The Court went on to state that "[a] discretionary determination to deny or defer discharge from parole supervision is considered a 'judicial function' and is not reviewable by a court if it is made in accordance with law, as provided in Executive Law §259-i(5). Under Executive Law §259-j, the Court continued, a parole discharge determination requires the Parole Board to be satisfied that absolute discharge is in the best interests of society.

First, the Court found, while the Respondent conceded that the Board did not consider the 13 letters Mr. Beltran submitted in support of his discharge, several of which stated that discharge would be in the best interests of society, he argued that he was under no statutory obligation to do so. Thus, the Court commented, the Board failed to consider essential input from members of society personally familiar with Mr. Beltran's *present* character and "continued remarkable efforts at rehabilitation."

These letters, the Court stated, speak to Mr. Beltran's "exemplary character, sincere efforts to establish a career in teaching, a devotion to community involvement, and his desire to continue leading a law-abiding life." The Respondent's failure to consider "such indispensable input bearing on the issue of whether the best interests of society will be served by his discharge from parole is irrational." Thus, the Court ruled, Mr. Beltran had demonstrated convincingly that the Respondent's deferral of discharge was not made in accordance with the law.

The Court granted the petition, annulled the Respondent's determination, and remitted the matter to the Parole Board for a new determination that takes into account the letters that Mr. Beltran submitted.

***** With the exception of Elias Beltran's age when he entered prison – which was determined from information on the DOCCS Incarcerated Lookup page on the DOCCS website – the facts in this article are from the court's decision.

Scott H. Henney, Eric Corngold, and Angela Garcia, of Friedman Kaplan Seiler Adelman & Robbins, LLP, represented Elias Beltran in this Article 78 proceeding.

Court of Claims

Court Orders Production of Officers' Disciplinary Records

After he was assaulted by another incarcerated individual, Richard Burrell filed a Claim alleging that five correction officers had negligently failed to prevent the attack, protect him from the assailant, intervene to stop the attack, take adequate safety measures and have officers at their assigned posts. The assault occurred at Shawangunk C.F. in January 2023.

In the course of discovery, the Claimant requested "the disclosure of personal confidential information in [the relevant officers'] personnel and disciplinary records." The Defendant argued that disclosure of such records would "constitute an unwarranted invasion of privacy pursuant to Public Officers Law (POL) §96(1)(c) which prohibits disclosure of information which would constitute an unwarranted invasion of privacy as defined in [POL §89(2)(a)]. To enable the court to asses this argument, the Defendant gave the contested records to the Court to review.

The Court began its analysis by noting that Civil Rights Law (CRL) §50-a was repealed, and POL §§86, 87, and 89 were amended, in June 2020. Section 50-a, the Court reminds us, "had previously *prohibited* the disclosure of police personnel and disciplinary records in litigation or pursuant to the state Freedom of Information Law." According to the Court, "[t]he defined scope of the repeal and the statutory amendments includes the personnel and disciplinary records of corrections officers."

POL §86 defines the terms relevant to the amendments, the Court noted, "and §§86 and 89, respectively, define the personnel and disciplinary records subject to FOIL disclosure." POL §87(4-a) provides that a law enforcement agency – like DOCCS – responding to a FOIL request for the disciplinary records of agency employees – such as correction officers – **must redact** the records in accordance with POL §89(2-b). The information that must be redacted, as stated in POL §89(2-b):

> (a) The employee's medical history, excluding records obtained during the course of the agency's investigation of the employee's misconduct that are relevant to the disposition of the investigation;
>
> (b) The home address, personal telephone and cell phone numbers, personal email addresses of an agency's employee, any of the employee's family members, a complainant or any other person named in the employee's disciplinary file;
>
> (c) any social security number; or
>
> (d) the use of an employee assistance program, mental health service, or substance abuse assistance service unless such use if mandated by a law enforcement disciplinary proceeding

POL §87(4-b) provides that a law enforcement agency – such as DOCCS – responding to a FOIL request for the disciplinary records of agency employees – such as correction officers – **may redact** the records as stated in POL §89(2-c), that is, disciplinary records pertinent to technical **infractions** [rule violations].

Having reviewed the FOIL law, the Court turned to the issue of whether discovery, which is controlled by the Court in accordance with CPLR 3101, is impacted by the FOIL restrictions on disclosure. Not surprisingly, the Court found it is not.

CPLR 3101 provides that "full disclosure of all matter material and necessary in the prosecution or defense of an action." "Unlike

a FOIL request," the Court wrote, "a party seeking discovery must satisfy the threshold requirement that the request is reasonably calculated to yield information that is material and necessary – i.e. relevant." The Court also noted, citing *Lowrance v. State of New York*, 185 A.D.2d 268, 269 (2d Dep't 1992), that "security within a correctional facility is a proper basis for denial of access to sensitive or confidential records."

After reviewing the records that the Defendant had submitted, the Court considered, in context, the repeal of Civil Rights Law §50-a, the amendment of POL §§86, 87 and 89 and the Court's role in supervising disclosure, including whether the Defendant's need to protect its methods and manner of insuring the privacy, safety and security of inmates, correction officers and the public outweighed the Petitioner's right to disclosure of information potentially relevant and material to the claim.

In making its decision with respect to the records at issue in this case, the Court noted that there is a distinction between "policies encouraging broad disclosure of records and the task of assessing admissibility of evidence at trial," and found that there was information potentially relevant to the issues raised in the claims in the records at issue. For this reason, the Court ordered the disclosure of:

- the entire personnel file of one correction officer "with all appropriate personal privacy redactions" including but not limited to birth date, telephone numbers, addresses, and social security, contact, motor vehicle, and medical treatment information; and
- a letter to a Sergeant discussing the Attorney General's representation of him in an unrelated case.

Ilyssa Fuch, Cohen and Fitch, LLP, represented Richard Burrell in this Court of Claims action.

Miscellaneous

A Housing Unit in a Prison May Satisfy the Definition of an RTF

In 2015, PLS began working with the Legal Aid Society and Wilkie, Farr & Gallagher on *Richard Alcantara v Anthony J. Annucci*, a challenge to the legitimacy of Fishkill RTF. That case was appealed to the New York Court of Appeals, which recently issued a final decision on the issue. See, *Richard Alcantara, et al., v. Anthony J. Annucci, et al.,* 2024 WL 1773175 (April 25, 2024).

The underlying problem that led to the *Alcantara* case is New York's Sexual Assault Reform Act (SARA). This law applies to people who are serving a sentence, including the parole or post-release supervision (PRS) portion of a sentence, for a sex offense where the victim was under age 18, or who are level 3 sex offenders. Individuals covered by SARA are prohibited from residing within 1,000 feet of any school. A 2014 report showed that New York City homeless shelters, including the main men's intake shelter, were less than 1,000 feet from a school. At that point, DOCCS and New York City reached an agreement in which the City agreed to accept

ten SARA restricted sex offenders a month in SARA-compliant shelter slots. But, more than ten people were reaching release dates each month.

Since Parole could not approve residences that were within 1,000 feet of a school, and approvable residences were not available, DOCCS began to hold people beyond their maximum release dates (ME dates). Starting in 2014, when sex offenders were held beyond the ME date of a determinate sentence, they would go through a release process in which they were told they were on post-release supervision (PRS) and that their approved residence was a prison that was also designated as a residential treatment facility (RTF). Sex offenders held beyond their ME dates have been held in RTF status at several RTF's that are located within correctional facilities, but the largest in terms of the number of people held has been Fishkill C.F. (Fishkill) Residential Treatment Facility (RTF).

The issue in Alcantara is whether the Fishkill RTF complies with statutory provisions pertaining to RTFs. One critical statute is Correction Law §2(6), which defines an RTF as:

> A correctional facility consisting of a community based residence in or near a community where employment, educational and training opportunities are readily available for persons who are on parole or conditional release and for persons who are or who will soon be eligible for release on parole who intend to reside in or near that community when released.

The state made a motion for summary judgment, and in deciding that motion, the state supreme court distinguished between RTF programs that are conducted inside Fishkill, and the complete lack of access that RTF residents had to programs in the community outside the prison. The court found that the RTF program that is conducted inside Fishkill was "minimally adequate" but that the complete lack of access to therapeutic programs in the outside community was inconsistent with the statutory definition, and therefore unlawful.

The case was then appealed to the Appellate Division, Third Department. The Third Department found that the entire RTF program – both the portion of the program that is conducted within the facility and the portion that is conducted outside of the facility – was lawful. The Third Department held that Correction Law §2(6) only addresses the location of an RTF, and does not specifically require that RTF residents be given the opportunity to participate in therapeutic programs outside the prison.

The case was then appealed to the Court of Appeals, the highest court in the New York State court system. The Court of Appeals viewed the case as the lower courts had done; that is, the Court distinguished between the RTF program that is conducted within Fishkill, on the one hand, and the complete inability of RTF residents to participate in therapeutic programs conducted in the outside community, on the other. With respect to the RTF program inside Fishkill, the Court of Appeals agreed with the lower courts that the program is "minimally adequate." The only statutory requirement for the program is that a "specific program" "directed toward the rehabilitation and total reintegration into the community" must be

provided for each RTF resident. The Court held that the details of that program "fall entirely within the discretion of DOCCS."

The State argued that the RTF statutes permit, but do not require, DOCCS to permit RTF residents to leave the grounds of the prison and the RTF, to participate in programs in the community. The fundamental question of whether RTF residents may leave the facility to participate in programs in the community, the State continued, is within DOCCS' discretion.

In addition, the State argued that DOCCS cannot ensure that RTF residents will be able to participate in community programs, because agencies in the outside community might choose not to work with DOCCS, and DOCCS cannot compel agencies in the outside community to make their programs available to RTF residents. The State acknowledged, however, that DOCCS has made no attempt to reach out to community agencies, to identify community programs that might be available to RTF residents; DOCCS has structured the Fishkill RTF program so that RTF residents have no access to programs in the surrounding community.

The Court of Appeals recognized that, at its core, the statutory definition of an RTF requires that therapeutic programs in the surrounding community must be "readily available" to the residents of an RTF. The Court was concerned about what "readily available" means. The Court concluded that each RTF resident does not have an individual right to participate in community programs, in part because Correction Law §73(1) states that an incarcerated individual held in an RTF "may" "be allowed to go outside the facility to engage in any activity reasonably related to his or her rehabilitation."

The Plaintiffs argued that, unlike "incarcerated individuals" who are still serving sentences in DOCCS' custody, people who have already been released to community supervision, and remain confined in an RTF, have a statutory right to leave the RTF to participate in programs in the community. However, the Court found that the issue of whether Plaintiffs were being treated properly in light of their status as people already released to community supervision, rather than as incarcerated individuals, was not preserved for review, and therefore declined to address that issue.

The Court of Appeals weighed these issues and concluded that "DOCCS cannot categorically refuse to attempt to secure community-based opportunities for RTF residents." The Court held that at a minimum DOCCS must "undertake reasonable efforts to secure community-based opportunities for RTF residents." Four of the Court's seven judges joined the majority decision.

Three of the judges joined two dissenting opinions. Among other things, the dissenting judges found that the majority decision will lead to uncertainty and further litigation over what reasonable efforts DOCCS must take in attempting to secure program opportunities in the outside community for RTF residents.

We do not yet know what, if any, changes will be made to Fishkill RTF in light of the Court's decision.

Prisoners' Legal Services of New York, The Legal Aid Society and Wilkie, Farr & Gallagher, represented Richard Alcantara in this Article 78 proceeding.

IMMIGRATION MATTERS

Nicholas Phillips

This issue's column focuses on *Matter of M-N-I-*, 28 I. & N. Dec. 803 (BIA 2024), a precedential decision of the Board of Immigration Appeals ("the Board") which concerns the question of which law applies in detained removal proceedings (often referred to as deportation proceedings). As a general matter, immigration law is a creature of federal rather than state law, and so for most immigration cases, the law is the same no matter where the noncitizen lives in the United States. In some cases, however, immigration law can vary between geographical regions within the United States. This is so because of the structure of the immigration court system, which provides that removal proceedings are initially conducted before an immigration judge ("IJ") located in a specific immigration court within the United States. If the noncitizen is ordered removed by an IJ, the noncitizen can appeal to the Board, which has jurisdiction over all immigration courts in the United States.

If the noncitizen loses before the Board, the noncitizen can then appeal directly to the federal circuit of appeal with jurisdiction over the immigration court which heard the case. The federal circuit courts of appeal were created by Congress to hear appeals from federal trial courts, with each circuit court assigned a specific geographical region over which it would preside. Currently, there are thirteen federal circuit courts in the United States, with most hearing appeals arising from several different states. Thus, for example, the Second Circuit Court of Appeals, which is located in downtown New York City, hears appeals from Connecticut, New York, and Vermont, while the Third Circuit Court of Appeals in Philadelphia hears cases from Delaware, New Jersey, and Pennsylvania. Decisions of each court of appeal are binding within their jurisdiction only, so that a decision from the Second Circuit would be binding over courts in New York but would not have precedential value in New Jersey.

Because immigration court cases can be appealed to different circuit courts, differences in the law can arise between different circuit court jurisdictions. In many cases these differences are trivial, but in some situations the differences can be very significant. For example, the Second Circuit has stated that a conviction which is pending on direct appeal is not final for immigration purposes and therefore may not be used as a basis for deportation. *See Brathwaite v. Garland*, 3 F.4th 542 (2d Cir. 2021). However, the Tenth Circuit—which has jurisdiction over cases in Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming—has ruled that a conviction is final for immigration purposes as soon as judgment is entered by a trial court, and so the conviction can be used as a predicate for deportation even if the noncitizen is challenging that conviction on direct appeal. *See United States v. Saenz-Gomez*, 472 F.3d 791 (10th Cir. 2007). Accordingly, a noncitizen in New York who is appealing a conviction would avoid deportation proceedings, while if the same noncitizen relocated to Colorado, he or she would potentially be subject to deportation based on the same appealed conviction.

With this background in mind, we turn to *Matter of M-N-I-*. In that case, a noncitizen was placed in removal proceedings while detained in the Moshannon Valley Processing Center in Philipsburg, Pennsylvania, under the jurisdiction of the Third Circuit. At the time, the Cleveland Immigration Court in Ohio, under the jurisdiction of the Sixth Circuit, was assigned "administrative control" over hearings in Moshannon, and so the Department of Homeland Security initiated removal proceedings by filing a charging document in the Cleveland Immigration Court. The Cleveland Immigration Court thereafter issued several hearing notices in early 2023, but the actual removal proceedings were conducted via video before an IJ located at the Richmond Immigration Adjudication Center in Richmond, Virginia, under the jurisdiction of the Fourth Circuit.

On August 12, 2023, the Executive Office for Immigration Review ("EOIR")—the federal agency charged with operating the immigration court system—reassigned administrative control of the case to the Elizabeth Immigration Court in New Jersey, under the jurisdiction of the Third Circuit, without providing notice to the parties that the case had been administratively transferred. The noncitizen thereafter received a hearing notice from the Elizabeth Immigration Court, but the notice listed the address of the Cleveland Immigration Court as the hearing location. At the final hearing, the IJ applied Third Circuit law to the noncitizen's application, while the noncitizen argued that Sixth Circuit law should apply because the case had originally been docketed in Cleveland.

After the IJ denied relief, the noncitizen appealed to the Board, which agreed that the IJ erred by denying Third Circuit law. In so holding, the Board first observed that under the Board's precedent, "the controlling circuit law in Immigration Court proceedings for choice of law purposes is the law governing the geographic location of the Immigration Court where venue lies, namely where jurisdiction vests and proceedings commence upon the filing of a charging document, and will *only* change if an Immigration Judge subsequently grants a change of venue to another Immigration Court." *Matter of Garcia*, 28 I. & N. Dec. 693, 703 (BIA 2023) (emphasis in original).

In *Garcia*, the Board instructed that IJs should determine the venue for a removal case by "identifying the Immigration Court where jurisdiction vested," which will "presumptively [be] at the Immigration Court where the charging document [wa]s filed." *Id.* at 703, 705. The Board observed that while venue is not static and may change over the course of removal proceedings, federal regulations provide that an IJ can only change venue upon a motion to change venue filed by one of the parties, and an IJ may not *sua sponte* change venue without motion from a party. *See* 8 C.F.R. §1003.20(b).

The Board differentiated venue from the "administrative control court" designation. Under 8 C.F.R. §1003.11, an administrative control court "is one that creates and maintains Records of Proceedings for Immigration Courts within an assigned geographical area." In contrast to venue, federal regulations allow EOIR to change the administrative control court for internal administrative reasons without requiring a motion from a party and without providing written notice to the parties. But "[e]ven if the agency's administrative control designation over a record of proceedings changes during the removal proceedings, the agency may not effectuate a venue change unilaterally from the Immigration Court where jurisdiction

vested to a newly designated Immigration Court." 28 I. & N. Dec. at 805.

Consequently, the Board reasoned, "since choice of law is dependent upon venue in Immigration Court proceedings, the controlling circuit law is not affected by a change in the administrative control court and will only change upon the granting of a motion to change venue." *Id.* at 806. The Board observed that such a rule "offers the benefit of predictability" because "linking choice of law with venue gives the parties notice of the law to be applied and an opportunity to mount a challenge when a change affecting the applicable law is proposed." *Id.* Applying that rule, the Board concluded that the IJ erred by applying Third Circuit law to the noncitizen's removal proceedings because the parties never moved to change venue from the Cleveland Immigration Court, and so venue, as well as the applicable law, remained under the jurisdiction of the Sixth Circuit.

WHAT DID YOU LEARN?
Brad Rudin

1. According to the Second Circuit in the *Brandon v. Royce*, the party seeking summary judgment is entitled to this relief if a genuine issue of material fact:

a. is apparent from the paperwork submitted by the parties.
b. has been raised and resolved at trial.
c. does not exist based on evidence in the record.
d. is presented on appeal based on evidence not in the record.

2. When considering whether a party is entitled to summary judgment, *Chamma Brandon* held that ambiguities about the facts should be resolved in favor of:

a. *pro se* litigants.
b. the party who would have the most to lose.
c. the party against whom the judgment is sought.
d. a non-party whose *amicus* brief demonstrated standing to come before the court.

3. In a freedom of religion case, DOCCS may prevail in a motion for summary judgment where it can show that prison policy:

a. constitutes the least restrictive way of achieving a legitimate correctional goal.
b. does not burden freedom of religion at all.
c. only burdens freedom of religion in a minimal way that society would regard as "reasonable."
d. has a reasonable relationship to a legitimate penological goal.

4. In the case of *Magalios v. Peralta*, the court awarded the plaintiff:

a. compensatory and punitive damages.
b. punitive damages only.
c. attorney's fees only.
d. compensatory damages only.

5. In the case of *Joseph Wilson v. Daniel Martuscello*, the incarcerated person prevailed in the Article 78 because DOCCS:

a. presented only minimal evidence in support of its reply to the plaintiff's paper.
b. did not answer the petition and reversed the disciplinary action.
c. failed to present live testimony during the hearing.
d. filed its papers in an untimely fashion.

6. In *Matter of Jessie J. Barnes v. Michael Ranieri,* the court granted the FOIL request made by Mr. Barnes on the grounds that DOCCS failed to show the minutes of the Program Management Team Meeting could be described as:

a. "evaluative."
b. "legitimate."
c. "sterile."
d. "exempted."

7. An administrative request for documents maintained by DOCCS should be based on:

a. The First Amendment of the Constitution.
b. The constitutional prohibition of "cruel and unusual punishment."
c. The Second Circuit ruling in *Chamma Brandon v. Mark Royce.*
d. The Public Officers Law.

8. The Article 78 court in *Matter of Rodney Pierre v. Anthony J. Annucci* annulled the determination of guilt because DOCCS failed to:

a. present sufficient evidence of guilt.
b. create an audible record of the hearing.
c. conduct a re-hearing in a timely manner.
d. preserve the physical evidence related to the misbehavior report.

9. In the discharge from parole supervision case involving Elias Beltran, the Article 78 court directed the Parole Board to:

a. cause the parolee's release from parole supervision within one year.
b. defer for one-year action on the parolee's application for discharge from parole.
c. conduct a hearing on the seriousness of the underling crime.
d. consider letters in support of the parolee's application for discharge from parole.

10. When an incarcerated person sues New York State officials, which New York State statute offers access to relevant information possessed by the State?

a. CPLR 3101.
b. Public Officer's Law 89[2-b].
c. Civil Rights Law 50-a.
d. Public Officer's Law 96[1][c].

Answers

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

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 – Education 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 OPFFICE: 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

Pro Se Staff
EDITORS: BETSY HUTCHINGS, ESQ., KAREN L. MURTAGH, ESQ.
WRITERS: BRAD RUDIN, ESQ., NICHOLAS PHILLIPS, ESQ.
JILL MARIE NOLAN, LCSW
GUEST WRITER: JIM BOGIN, ESQ.
COPY EDITING AND PRODUCTION: ALETA ALBERT