Pro Se

Vol. 34 No 6 November 2024 **Published by Prisoners' Legal Services of New York**

Court Restores Family's Visitation Rights

According to the facts set forth in *Matter of Monique Caine, et al. v. NYS DOCCS*, Index No. 904890-23 (Sup.Ct. Albany Co. Aug. 1, 2024), in December 2022, when three family members of an individual incarcerated at Auburn C.F. – his mother and two brothers – arrived for a visit, they were told that because they "smelled like weed," they would not be permitted to enter the facility. At that point, DOCCS personnel allege, two of the family members confronted the staff. One allegedly accused an officer of being a racist and tried to block the officer's path as she was walking away. The other allegedly tried to open a door to the facility that an officer was attempting to pull closed.

As the family members were leaving, they overheard a woman in line behind them tell security staff that it was she who smelled of marijuana, not the people who were being ejected, and she did not want them to lose their visits because of her conduct.

Two weeks later, when the family returned to Auburn C.F., prison staff handed them a letter advising them their right to visit DOCCS facilities had been indefinitely suspended as a

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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.

Exciting Expansion of Our Pre-Release and Re-entry Program (PREP)

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

We are thrilled to announce an important expansion of our Pre-Release and Re-entry Program (PREP). PREP now accepts individuals who will be paroled, provided they have served at least one prior prison term and are returning to one of the counties in our catchment area. This expansion is a significant step in our mission to support individuals during their transition back into their communities.

Please note that while we are expanding our services to include people who are being paroled, we continue to prioritize individuals who are maxing out for program admission.

What is PREP?

PREP is a holistic therapeutic program staffed by licensed social workers who specialize in working with incarcerated individuals who are preparing for re-entry. Historically, PREP focused on people who were released on their maximum expiration dates because they face the unique challenge of having no safety net upon release. With no parole or post-release supervision, individuals who max out are left to navigate the complexities of reintegration alone.

However, thanks to the success we've experienced with our original clients, we recognized the need to extend our services to those individuals who are being released to parole supervision. We believe that every individual deserves support during their re-entry journey, regardless of their legal status.

How PREP Works

Our dedicated PREP social workers collaborate with their clients to develop comprehensive re-entry plans tailored to their specific needs. These plans are dynamic and can be modified as necessary to ensure they remain relevant and effective. They serve as a guiding framework for goal-setting and fostering personal accountability.

Once released, clients continue to work with their assigned social workers for a period of three years. This extended support provides therapeutic guidance and helps identify and address various biopsychosocial barriers to successful reintegration. Our social workers are committed to empowering clients, helping them build the psychological and practical skills necessary for a successful transition back into society.

We Serve
PREP currently accepts applications from individuals returning to the following counties:

- Bronx
- Dutchess
- Erie
- Genesee
- Kings
- Monroe
- New York
- Niagara
- Orange
- Orleans
- Putnam
- Queens
- Richmond
- Rockland
- Sullivan
- Ulster
- Westchester

Why Choose PREP?
Our program is completely voluntary and free of charge, providing counseling and re-entry planning guidance for individuals returning to specific New York counties. We are dedicated to serving those who are interested in personal growth and committed to avoiding future involvement in the criminal legal system. Our unique approach includes individualized re-entry planning services by licensed mental health professionals, followed by three years of continued support and advocacy.

For more information or to request an application, please write to:

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

At PREP, we are committed to helping those who are committed to helping themselves. We believe that with the right support, every individual has the potential to succeed. Together, we can create pathways to success and a brighter future for all.

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result of their conduct. The letter said that supporting documentation was attached, but in fact, no documentation was attached.

The family members, who are the Petitioners in *Matter of Monique Kaine*, requested a hearing and disclosure of evidence, including surveillance camera video of the alleged incident. The request for disclosure was treated as a FOIL request to be handled by the Records Access Officer.

Six months after the request for a hearing, the hearing was held. The family members were given the evidence upon which DOCCS would rely, but were not given the records that they had requested. Shortly before the hearing commenced, the family members were told that the videotapes had been destroyed because the incident was not a significant security incident. They were also told that the name of the woman who they had overheard saying she was the person who smelled like marijuana was exempt from FOIL disclosure for privacy reasons.

The family members, taking the position that their conduct did not justify an indefinite suspension of visits and that because less severe sanctions would have already expired, exhaustion of administrative remedies would therefore be futile, filed an Article 78 challenge. In the petition, they alleged Respondents' determination was:

- arbitrary;
- violated its own rules and procedures; and

violated Petitioner's rights under the United States and New York constitutions. More specifically, Petitioners argued that Respondents failed to follow their own regulations and procedures and acted beyond their authority by imposing an indefinite suspension of their visitation rights.

The Respondents filed an answer denying that they had violated the Petitioners' rights in any way.*

<u>Court Finds DOCCS Did Not Follow Visiting Regulations and Directives</u>

The Court first reviewed the DOCCS regulations and Directives that control the indefinite suspension of visits. Seven NYCRR §201.4(c) states:

> "A superintendent may . . . indefinitely suspend a visitor's visitation privileges . . . for misconduct that represents a serious threat to the safety, security and good order of the facility as specified in subdivision (e) of this section."

The authority to impose penalties is not, however, absolute, the Court warned. First, the penalties permitted for various types of behavior are set forth in 7 NYCRR §201(e)(3). Second, where the penalty is suspension of visits for 6 months or longer, a visitor subject to the penalty is entitled to a hearing. See, 7 NYCRR §201(e)(3).

Visitors receiving a suspension of 6 months or longer are entitled to a hearing upon request. 7 NYCRR §201.4(c); §201.5. If a visitor requests a hearing, DOCCS is required to give them written notice setting forth the reasons for the penalty and copies of all charges and reports of misconduct relating to the charges. 7 NYCRR §202.4(c)(1).

In the Petitioners' case, the Court found that the Respondents did not give the Petitioners any reports related to the misconduct until

months after issuing the suspension letter, even though the family had requested the materials in their hearing request and by FOIL. Thus, the Court found, the Respondents had failed to follow their own procedures.

Second, by scheduling the hearing more than five months after the Petitioners requested it, the Respondents rendered Petitioners' rights to a hearing meaningless. Delaying the hearing for five months or longer, the Court noted, "is equivalent to imposing a six month or longer suspension without affording a visitor a hearing because the hearing officer has an additional 60 days to issue their decision. While the delay in scheduling did not violate DOCCS regulations, the **protracted** (longer than necessary) delay in scheduling the hearing, the Court found, deprived the Petitioners of their protected liberty interest without meaningful due process. See *Kozlowski v. Coughlin*, 539 F. Supp. 852, 857 (S.D.N.Y. 1982) (holding that "the State of New York, by judicial decision, administrative regulation and departmental directive has granted its prisoners a protected liberty interest in receiving visits from persons of their choice.").

Finally, the Court found that the Respondents' determination to indefinitely suspend Petitioners' visiting rights was arbitrary and capricious and an abuse of discretion. Even assuming that the Respondents' version of the events was true, the Court found, the conduct described in the incident reports did not provide a rational basis for an indefinite suspension of visiting rights.**

Because the Petitioners were not accused of attempting to smuggle drugs into the prison, they at most smelled of marijuana. Being under the influence of drugs or alcohol merits at most a denial of the visit. See 7 NYCRR §201(e)(3). And acting belligerently but not engaging in assault would at most be a failure to follow the instructions of staff and rules. The maximum penalty for this conduct is a three-month suspension. *Id.*

Based on this analysis, the Court concluded that the imposition of an indefinite suspension of visiting privileges was irrational, unsupported by the facts and exceeded the authorized penalties for the alleged misconduct.

*Prior to filing their answer, the Respondents moved to dismiss the petition for failure to exhaust administrative remedies. The Court denied the motion, finding that exhaustion of administrative remedies would have been futile and denied the motion.

**In reaching this conclusion, the Court noted that the Petitioners denied both smelling of marijuana and acting belligerently.

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For information about the suspension and termination of visitation, write to the PLS office that provides legal services to individuals incarcerated at the prison from which you are writing and request the memo: "Termination and Suspension of Visiting Privileges."

Marc A. Cannan, Esq. of Beldock Levine & Hoffman, L.L.P. represented the family members in this Article 78 proceeding.

NEWS & NOTES

Fields v. Martuscello: Frequently Asked Questions

Current as of August 28, 2024

What is the *Fields v. Martuscello* lawsuit about?

- This lawsuit is against DOCCS for putting people in segregated confinement or other types of disciplinary confinement (known as "k(ii) confinement") in violation of the HALT Act.

- Under the HALT Act, DOCCS cannot put anyone in k(ii) confinement unless it makes special findings that both:

    (1) a person committed one of seven actions described in the HALT Act; **AND**

    (2) the action was very dangerous or destructive.

Prisoners' Legal Services and the New York Civil Liberties Union filed this lawsuit because DOCCS has been violating the HALT Act by putting people in k(ii) confinement without making these findings.

What is "k(ii) confinement"?

- "k(ii) confinement" is named after Correction Law §137(6)(k)(ii), which is the section of the HALT Act that limits placement in segregation or other types of disciplinary confinement.

- "k(ii) confinement" includes any of the following:
    - Special Housing Unit placement for *more than three days*
    - Residential Rehabilitation Unit placement for *any* duration
    - *Disciplinary* placement in Residential Mental Health Treatment Units and some other specialized housing settings for *any duration*.

Am I part of the *Fields* lawsuit? How do I know if I'm a member of the *Fields* class?

- *Fields* is a class-action lawsuit. This means the plaintiffs in the lawsuit represent other people with the same legal issue.

- You are a member of the *Fields* class and part of the lawsuit if any of the following apply to you.
    - You were placed in k(ii) confinement at any time since March 31, 2022
    - You are currently in k(ii) confinement
    - You are placed in k(ii) confinement in the future.
- You do not need to take any action to join the lawsuit. If you are in the class, you are automatically part of the lawsuit.

What is the status of the lawsuit?

- On June 18, 2024, the court decided that the plaintiffs (the incarcerated people who sued DOCCS) won the lawsuit.

- DOCCS did not appeal the court's decision, which means the decision is final and DOCCS must follow the court's ruling.

What does the Court's June 18, 2024 decision say?

- The court ruled that DOCCS violated the law by putting people in k(ii) confinement without making the special findings required by the HALT Act.

- The court ordered DOCCS to comply with the HALT Act by making the special findings that the law requires before putting anyone in k(ii) confinement.

- The court invalidated any decision by DOCCS to place people in k(ii) confinement without making the special findings required by HALT.

What does the Court's June 18, 2024 decision mean for me?

- If you were *previously* in k(ii) confinement: DOCCS must remove records of this confinement from your disciplinary history unless DOCCS can show that it made the special findings required by the HALT Act.

- If you are *currently* in k(ii) confinement: DOCCS's decision to put you in k(ii) confinement is valid *only* if DOCCS made the special findings required by the HALT Act in writing. If DOCCS did not make those special findings in writing, DOCCS's decision to put you in k(ii) confinement is invalidated, and DOCCS can only keep you in k(ii) confinement by conducting a new disciplinary hearing and making those special findings.

- If you are *not* currently in k(ii) confinement: DOCCS cannot place you in k(ii) confinement without making the special findings required by the HALT Act.

Can I receive money from this lawsuit?

- No. This lawsuit did not seek money damages.

I believe DOCCS is holding me in k(ii) confinement in violation of the HALT Act. What should I do?

- If you believe DOCCS is violating the court's order and holding you in k(ii) confinement in violation of the HALT Act, please get in contact with our team. You can contact us at:

Fields Case Team
c/o Prisoners' Legal Services of New York
41 State Street, Suite M112
Albany, NY 12207

I have a different HALT violation to report. What should I do?

- If you are experiencing an ongoing HALT violation and wish to request possible legal assistance, you can write to Prisoners' Legal Services of New York and/or the Prisoners' Right Project at the Legal Aid Society.

- You can also report violations of HALT to the NYS Justice Center for the Protection of People with Special Needs at 161 Delaware Avenue, Delmar, New York 12054-1310.

I want to appeal my Tier III hearing disposition. What should I do?

- You have thirty days after the conclusion of your Tier III Hearing to appeal the hearing disposition. You should address your appeal to Commissioner Martuscello or Anthony Rodriguez, Director, Special Housing/Incarcerated Individual Disciplinary Programs.

My question about the *Fields* case is not addressed above. What should I do?

If you have other questions about the *Fields* case, you may contact us in writing at:

Fields Case Team
c/o Prisoners' Legal Services of New York
41 State Street, Suite M112
Albany, NY 12207

PREP SPOTLIGHT
Jill Marie Nolan

This month, the PREP Spotlight shines on the expansion of the PLS PREP Program. As Executive Director Murtagh described in her message, PREP is our unique, voluntary, and free initiative that provides counseling and re-entry planning guidance for individuals within 6-18 months of their release date and returning to specified NY counties. Our mission is to assist those interested in personal growth and committed to avoiding future involvement in the criminal legal system. We are dedicated to helping those who are committed to helping themselves.

The PREP program is designed for individuals seeking a 'hand-up, not a hand-out,' meaning we provide the tools and support to make positive changes in your life, but the effort and commitment must come from you. You'll identify your short- and long-term goals through counseling and personalized case management with your licensed social worker and develop action plans to achieve them. Your social worker will help identify immediate release needs, such as medical or psychiatric care and shelter placement, and guide you through the necessary steps to meet these needs. Participants work with their social worker for three years after coming home. This ongoing support is designed to give you the reassurance and support you need to reintegrate into society successfully. You will then graduate from the program equipped with the tools and confidence to thrive in your life beyond the bars.

Individuals serving their maximum sentence should automatically receive an application by legal mail. Individuals who will be on parole are eligible only if they have served at least one prior prison sentence and must write to request an application. Individuals convicted of sexual crimes and those on the sex offender registry are ineligible.

The PREP application process involves completing a paper application and participating in an admission interview. Admission and continued enrollment are reserved for applicants committed to participating in counseling, therapeutic programming, goal-setting, and avoiding future involvement in the criminal legal system. Participants who do not demonstrate this commitment are disenrolled. Please note that PREP does not generally provide parole support letters. Applicants should ensure they meet eligibility requirements before applying and recognize that serious commitment is required for the program. PREP is for people ready to make changes and committed to personal growth and future success.

PRO SE VICTORIES!

***Matter of John Hogan v. Daniel Martuscello*, Index No. 1191-23 (Sup. Ct. Albany Co. July 3, 2024).** Following a Tier III hearing, John Hogan was found guilty of violating the prison disciplinary rules during an incident that occurred on August 7, 2023. After Mr. Hogan's administrative appeal was denied, he filed an Article 78 challenge to the hearing.

Rather than dispute Mr. Hogan's arguments that the hearing should be reversed, the Respondent annulled the hearing, expunged all references the charges and asked the court to dismiss the proceeding. Mr. Hogan did not object to the dismissal, but asked the Court to award the costs of filing the proceeding: filing fees in the amount of $50.00, hearing charges in the amount of $5.00, and postage in the amount of $.87. The Court agreed that the proceeding should be dismissed and ordered the Respondent to pay Mr. Hogan $55.87.

***Matter of Robert Youngs v. Thomas McGuinness*, Index No. 2023-2047 (Sup. Ct. Ulster Co. July 3, 2024).** In this action, Robert Young challenged a determination of guilt made at a Tier I hearing on June 22, 2023. The Respondent opposed the petition, arguing that because the records of Tier I hearings are destroyed 14 days after the hearings take place, there is no record of the incident nor is it noted in Mr. Young's disciplinary history, and thus the proceeding is moot.

In his petition, Mr. Youngs argued that Correction Law §138(7) requires that before disciplinary charges may be lodged, DOCCS staff must first engage in de-escalation, intervention, informational reports and the withdrawal of incentives.

The Court noted that neither Mr. Youngs nor the Respondent described the nature of the charges or provided a transcript of the hearing. Nonetheless, the Court continued, the Respondent "assert[ed] that the violation hearing officer utilized their discretion in determining whether the Petitioner's behavior required the imposition of a loss of recreation penalty." Further, Respondent's counsel asserted that "the determination was reached in compliance with Directive 4932 "Standards Behavior & Allowances" and was not arbitrary and capricious.

The Respondent referred the Court to "the annexed record as the best and most accurate version of the misbehavior report, his appeal and Petitioner's recreation privileges." However, the response also acknowledged that no such records exist, "because DOCCS has a policy of destroying all such records 14 days after the hearing is concluded."

In deciding the case, the Court noted that when responding to an Article 78 petition, Civil Practice Law and Rules (CPLR) §7804(e) requires that the agency "file with the answer a certified transcript of the proceedings under consideration" and "affidavits or other written proof showing such evidentiary facts as shall entitle the respondent to a trial of any issue of fact." Where the **deficiencies** (short-comings) in the record **preclude** (make impossible) meaningful review of the petitioner's contentions, the matter must be remitted for a new determination.

Finding that the Respondent had failed to give the Court the materials which the CPLR requires them to produce, the Court could not meaningfully review the hearing. For this reason, the Court **remitted** (sent back to DOCCS) the matter for a new hearing.

Pro Se Victories! *features summaries of successful pro se administrative advocacy and unreported pro se litigation. 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 Allows Respondent to File a Late Answer

In *Matter of Dakota Smith v. Anthony Annucci*, 229 A.D.3d 1372 (4th Dep't 2024), the Fourth Department considered whether the lower court had correctly denied the Petitioner's motion for summary judgment in his Article 78 proceeding. The proceeding challenged a Tier III hearing. In this case, the Respondent failed to file an Answer within the time permitted by Civil Practice Law and Rules (CPLR) §7804(c). This section states that unless an order to show cause (OSC) is issued permitting service at a time and in a manner specified in the OSC, the respondent must file an answer (and supporting affidavits, if any) five days before the return date.

When the Respondent failed to file a timely answer, the Petitioner moved for summary judgment. In response, the Respondent filed an answer. The Court denied the Petitioner's motion, and after considering the arguments made by the parties, denied the petition. The Petitioner appealed both the decision to allow the filing of the answer and the decision to dismiss the petition on the merits.

With respect to the lower court's decision to allow the Respondent to file a late answer, the Fourth Department first noted that CPLR §7804(e) provides that "should the respondent body or officer … fail either to file and serve an answer or to move to dismiss, *the court may either issue a judgment in favor of the petitioner* ***or order that an answer be submitted.***" Further, the Court continued, because "it is the established policy of this State that disputes be resolved on their merits … a proceeding to annul a determination by an administrative agency should not be concluded in the petitioner's favor merely [because the respondent failed] to answer the petition on the return date thereof, unless it appears that such a failure to plead was intentional and that the administrative body has no intention to have the controversy decided on the merits."

Here, the Fourth Department found, the Respondent "demonstrated an intention to have the subject controversy determined on the merits" when he submitted an answer in response to the Petitioner's motion for summary judgment. For this reason, the Court concluded, "the petition should be decided on the merits."

However, the Court went on, because the petition raised an issue of whether the determination was supported by substantial evidence, the lower court should not have decided the petition on the merits. Rather, the Court should have transferred the proceeding to the Appellate Division to determine its merits. Because of the lower court's error in deciding the case, the appellate court treated

the petition as if it had been properly transferred. That is, it did not consider the lower court's opinion on the merits.

With respect to the Petitioner's claim that the determination of guilt had to be reversed because the Respondent had not allowed him to observe the search of his cell, the Court held that the supervising officer's testimony was substantial evidence that Petitioner's presence during the search presented a danger to the safety and security of the facility. Thus, the Court concluded, Petitioner's removal from the area during the search of his cell was permitted by DOCCS Directive 4910(VI)(D)(1). In reaching this result, the Court noted that "to the extent that other witness testimony or exhibits conflicted with the supervising officer's testimony," such evidence created a credibility contest which the hearing officer had the discretion to resolve.

Finally, the Court held that the record did not establish that the hearing officer was biased or that the Petitioner was denied his right to present a defense.

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For information about the litigating Article 78 proceedings, write to the PLS office that provides legal services to individuals incarcerated at the prison from which you are writing and request the memo: "Drafting and Filing an Article 78".

Todd G. Monahan, Esq., Schenectady, New York, represented Dakota Smith in this Article 78 proceeding.

COURT OF CLAIMS

Motion to File a Late Claim Based on HALT Act Violation

In June 2022, following a disciplinary hearing, Jimmy Delgado was placed in the Special Housing Unit. In January 2023, the hearing was administratively reversed and Mr. Delgado was released from SHU. Having missed the 90-day deadline for filing a claim or notice of claim, Mr. Delgado filed a motion for permission to file a late claim.

Mr. Delgado's claim is for wrongful confinement. Among his arguments was a claim that the term of segregated confinement was unlawful because DOCCS failed to comply with the HALT Act. The HALT Act says that DOCCS cannot put an incarcerated individual in segregated (or several other types of) confinement unless it makes findings that the person committed one of seven acts of misconduct described in the HALT Act *and* the act was very dangerous or destructive. Mr. Delgado's claim alleged that in spite of the absence of such findings, he was in segregated confinement – SHU – for 180 days.

The State opposed Mr. Delgado's motion, and with respect to the merits of the proposed claim, argued that because the hearing officer had followed DOCCS' regulations in finding Mr. Delgado guilty, the State was **immune from liability** (could not be sued). The statute allowing people injured by the State's negligent or intentional acts removes certain

kinds of conduct from the acts for which the State can be sued. The State is said to be immune from suit with respect to such acts.

The Court, in *Jimmy Delgado v. State of New York*, 82 Misc.3d 307 (Ct. Clms. Nov. 22, 2023), began its analysis by setting forth the six factors that it must consider to decide whether an untimely claim may be filed:

1. Was the delay excusable?
2. Did the State have notice of the essential facts of the claim?
3. Did the State have an opportunity to investigate?
4. Does the claim appear to have merit?
5. Did failing to timely serve the claim or notice of intention substantially prejudice the State?
6. Does the claimant have another remedy? That is, is there another type of lawsuit the claimant could file or could a suit be filed in a different court?

The Court also noted the factors are not equally important and the most important factor is the **merit** (strength) of the claim.

The Court first found that Mr. Delgado's excuse for not filing in a timely manner – a transfer to another prison and not having access his property – was not an **adequate** (good enough) excuse. But the Court added, the **absence** (lack) of a reasonable excuse did not **foreclose** (prevent) granting the motion.

With respect to notice, the absence of prejudice and the opportunity to investigate, the Court found that in the absence of opposition from the State as to these factors, the Court was persuaded by Mr. Delgado's arguments. Those arguments were that where state employees were involved in two hearings and two administrative appeals and had assessed the 180-day penalty, the State had notice. Further, the Court found, the State will not be prejudiced by the late filing because it had reviewed the proceedings and the penalty twice and had opportunity to investigate. The State did not disagree.

The State argued that the claimant could file his claim in federal court. Mr. Delgado argued he had no other state court options. The Court found that both statements were true, but ruled in favor of the State with respect to this factor.

With respect to the merits of the claim, the State argued it was immune because the administrative appeal had resulted in a reversal, due to the decision to reverse the hearing based on the hearing officer's failure to properly assess the reliability and credibility of the confidential information. The Court noted however, that this argument did not apply to Mr. Delgado's argument that placing him in SHU for 180 days violated the HALT Act. That alleged violation, the Court found, "is the crux [the heart] of the proposed claim and the harm for which [Mr. Delgado] seeks damages, a fact the State avoids mentioning."

The HALT Act has specific limits and regulations that must be followed before an incarcerated individual may be placed in segregated confinement. It defines segregated confinement as housing where the incarcerated individual has less than 7 hours a day out of cell programming or activities and limits the amount of time an individual may be placed in such housing. One hundred and eighty days is well beyond the Halt Act limits on segregated confinement which the Court says is 15

consecutive days and 20 days in any 60-day period. "Had the State followed the law," the Court wrote, "[the Claimant] would not have been confined for that length of time."

Noting that the State did not refute that Mr. Delgado had spent 180 days in segregated confinement, the Court "accepted that fact as true and found that immunity does not attach for the purposes of evaluation of the merits of the claim." Balancing the six factors the Court found that the factors weighed in favor of Mr. Delgado and granted his motion to file a late claim.

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For information about lawsuits in the New York State Court of Claims, write to the PLS office that provides legal services to individuals incarcerated at the prison from which you are writing and request the memos: "Lawsuits in the NYS Court of Claims" and "Requesting Permission to File a Late Claim in the Court of Claims."

Jimmy Delgado represented himself in this Court of Claims action.

Second Judge Grants Motion to File a Late Claim Relating to the HALT Act

Applying much the same reasoning used in *Jimmy Delgado v. State of New York*, the Court in *Amin Booker v. State of New York*, 2024 WL 3710830 (Ct. Clms. April 11, 2024), granted Mr. Booker's motion to file a late claim. Mr. Booker's claim, like that of Jimmy Delgado's, asserted that when DOCCS placed him in segregated confinement for 60 days, it violated the HALT Act and thus the confinement was wrongful.

Like the *Delgado* Court, the *Booker* Court began its analysis of the motion to file a late claim with consideration of the six factors set forth in the preceding article. And like the *Delgado* Court, the *Booker* Court found that the delay was not excusable, there was an available alternative remedy, and that the State had notice of the facts that gave rise to the claim, had the ability to investigate the claim and would not be prejudiced by the late filing. (The State did not contest Mr. Booker's argument with respect to notice, opportunity to investigate or absence of prejudice).

The Court next considered merits of Mr. Booker's claim that being in segregated confinement for 60 days without the required findings to support extended segregated confinement constitutes wrongful confinement. The *Booker* Court agreed with the *Delgado* Court that the merits of the claim was the most significant factor in deciding the motion. With respect to this factor, the *Booker* Court's analysis was more detailed.

The Court first noted that in the prison context, conducting disciplinary proceedings, including issuing misbehavior reports, and conducting hearings, is "discretionary conduct of a quasi-judicial nature for which the State has absolute immunity where [the correction employees engaged in the disciplinary process] act under the authority of and in full compliance with the governing statutes and regulations." Thus, the Court continued, "not all rule violations will overcome the immunity typically afforded to the State in conducting disciplinary proceedings." "The absolute veil of immunity," the Court wrote, "may only be pierced where there has been a violation of the constitutionally required minimal due process safeguards to which incarcerated individuals are entitled, such as a written notice of the charges . . ." Other constitutional rights include the right to call

witnesses and to present documentary evidence.

Even if the claimant can show the violation of a constitutional due process right, they cannot prevail on their wrongful confinement claim unless the outcome of the hearing would have been different if their right had not been violated. The Court then found that none of the claimant's procedural due process claims were meritorious.

The Court went on to consider the wrongful confinement claim that the State had exceeded the scope of its authority by imposing a period of segregated confinement longer than what was permissible under the Halt Act. The HALT Act, the Court wrote, prohibits the confinement of any incarcerated person in any form of cell confinement for longer than 3 days in a row or 6 days in any 30-day period, See Correction Law(CL) §137(6)(k)(i), unless:

- the person committed 1 of 7 offenses listed in CL §137(6)(k)(ii)(A-G); and
- DOCCS makes certain findings, "based on specific objective criteria," that the acts are so **heinous** (evil) or destructive that placement in general confinement would create a significant risk of imminent serious physical injury to staff or other incarcerated persons and creates an unreasonable risk to the security of the prison. CL §137(6)(k)(ii).

Finally, the Court noted, even where such findings are made, individuals may not be held in segregated confinement for longer than 15 days in a row or 20 days in a 60 days period. Confinement beyond the 3/6 and 15/20 day limits must be in a Residential Rehabilitation Unit.

Thus, the Court found, Mr. Booker's proposed claim that he was wrongfully confined when DOCCS put him in segregated confinement for 60 days where he was confined for 22 hours a day appears to be meritorious as the penalty appears to be impermissible under the HALT Act.

Based on this analysis, the Court granted Mr. Booker's motion to file a late claim.

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For information about lawsuits in the New York State Court of Claims, write to the PLS office that provides legal services to individuals incarcerated at the prison from which you are writing and request the memos: "Lawsuits in the NYS Court of Claims" and "Requesting Permission to File a Late Claim in the Court of Claims."

Amin Booker represented himself in this Court of Claims action.

Pro Se Claimant Wins Property Claim at Trial

In July 2019, Stanny Vargas filed a prison claim relating to lost property. The property that he lost included a Clear Tech Radio, a chess board, headphones, an immersion heater, a hot pot, 35 pounds of food and 10 packs of cigarettes. When the claim was denied, he appealed to the Superintendent, who also denied it. Having exhausted his administrative remedies, Mr. Vargas filed a claim in the Court of Claims.

On June 12, 2024, the case was tried remotely, that is by means of Microsoft Teams. Mr. Vargas testified that after he was released from the Special Housing Unit and his

property was returned to him, he noticed that the above-mentioned items were missing. He also presented receipts for all of these items except the hot pot and the food. The State did not call any witnesses.

In *Stanny Vargas v. State of New York*, 2024 WL 3382696 (Ct. Clm. June 12, 2024), before deciding the claim, the Court noted that the State, as a bailee of an incarcerated individual's personal property, owes a common law duty to **secure** (take care of) the property of another that is in its possession. The Court cited to *Pollard v. State of New York*, 173 A.D.2d 906 (3d Dep't 1991) in support of this principle. A bailee is an entity which temporarily is given possession, but not ownership, of another's property. The bailee is responsible for the property's safekeeping and return of the goods.

Further, the Court continued, when an incarcerated person shows that they deposited property with DOCCS and the property is not returned, there is a rebuttable presumption that the defendant lost the property as a result of its negligence. A rebuttable presumption is a presumption that a party may defeat with evidence that is to the contrary. The Court then noted that DOCCS Directive 2733 is consistent with these legal principles.

In this case, the Defendant did not come forward with any evidence to show either that it had not taken possession of the property or that it had not negligently lost or destroyed the property.
Finally, with respect to deciding the value of the lost property, the Court noted, the burden is on the claimant to establish the value of each piece of property for which they seek damages. The starting place for establishing value is a receipt. Without receipts, uncontradicted testimony about replacement value is also acceptable. Depreciation – reduction in value over time due to usage – may also be taken into account.

In Mr. Vargas's case, the Court held that Mr. Vargas's testimony regarding his property was credible and established that the items of property were given to the State and not returned when he was released from SHU to general population. Further the Court held, the receipts he produced for every item, except for the food and hot pot, established the value of the property. The Court therefore ordered the State to pay Mr. Vargas $198.40 with interest from June 24, 2019.

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For information about litigating property claims in the New York State Court of Claims, write to the PLS office that provides legal services to individuals incarcerated at the prison from which you are writing and request the memos: "Property Claims Against the DOCCS" and "Requesting Permission to File a Late Claim in the Court of Claims."

Stanny Vargas represented himself in this Court of Claims action.

MISCELLANEOUS

Court Orders Production of Personnel Records for Security Staff

During discovery, the Claimant in *Nyjee Boyd v. State of New York*, 2024 WL 3869926 (Ct. Clms. Aug. 8, 2024), requested that the State produce certain DOCCS personnel records.

Pursuant to a So-Ordered Stipulation – an agreement between the parties that the court endorses – the State gave the records to the Court for *in camera* review. An "*in camera* review" is a review of discovery by the court to determine whether, in this case, the claimant should have access to the records. If the records are "privileged" – that is there are public policy reasons that **preclude** (prevent) revealing them to the party asking to see them – the court will deny their disclosure.

In this case, the State submitted the following records for the Court's review:

- Labor Relations files prior to March 29, 2022 for two correction officers;
- Personnel files prior to March 29, 2022 for three corrections officers and a sergeant; and
- Training records for three correction officers and a sergeant

The Court then ordered production of 42 pages from these records.

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For information about lawsuits in the New York State Court of Claims, write to the PLS office that provides legal services to individuals incarcerated at the prison from which you are writing and request the memos: "Lawsuits in the NYS Court of Claims."

FOIL Request for Records Used in Tier III Denied

In 2021, Daniel Barletta was found guilty of engaging in gang activities. These charges arose following a cell search that led to the recovery of a letter setting forth the history of a gang called the Double 9 Gang, an affiliate of the Bloods Gang. This letter is known as the "Bloods" letter.

In 2022, Mr. Barletta was found guilty of harassing an employee, threats, and stalking based on a letter he had written to a female correction officer and materials found in his cell after the officer received the letter. This letter is known as the "Dearest Peggy" letter.

More recently, Mr. Barletta made a FOIL request for the Dearest Peggy and Bloods letters. The request was denied. The FOIL access officer determined that the letters were exempt from productions under Public Officers Law §87(2)(f). This section of the law exempts from production records that would endanger the life or safety of another person.

In addition, DOCCS explained, the letters were contraband, and as such, their possession by an incarcerated individual is prohibited. Finally, DOCCS argued, the letters were part of the administrative record of a Tier III hearing and therefore are not subject to FOIL.

After exhausting his administrative remedies, Mr. Barletta filed an Article 78 petition challenging the claimed exemptions. In *Matter of Daniel Barletta v. Daniel F. Martuscello, III*, Index No. 1988-24 (Sup. Ct. Albany Co. July 1, 2024), the Court denied the petition, holding that because confiscated contraband used as evidence at a disciplinary hearing is comparable to physical evidence used at a criminal trial, it is therefore not subject to FOIL.

Moreover, the Court continued, allowing incarcerated individuals to obtain confiscated contraband by means of FOIL is "not in line with the legislative purpose of FOIL."

Finally, the Court held, even if the letters were records for the purposes of FOIL, their production could endanger the life or safety of another person. The Dearest Peggy letter, the Court wrote, would permit Mr. Barletta to re-traumatize the employee to whom it was sent. The Bloods letter, the Court found, could jeopardize prison security as well as the health and safety of the staff and other individuals in and out of prison as "it is not uncommon for incarcerated gang members to orchestrate gang activity in the community at large."

For information about the NYS Freedom of Information Law and other ways to access records, write to the PLS office that provides legal services to individuals incarcerated at the prison from which you are writing and request the memo: "Access to Records."

Daniel Barletta represented himself in this Article 78 proceeding.

Name Change Granted Over District Attorney's Objection

In 1998, the Petitioner in *Matter of D.A.,* 2024 WL 3545732 (Sup. Ct. Putnam Co. July 24, 2024), was convicted of murder in the first degree. She was released to parole supervision after 25 years incarceration and was granted a certificate of relief from disabilities. After her release, the Petitioner moved for a change of name to "escape the stigma and mental pain associated with her present name and to facilitate her post-incarceration search for employment."

The Court began its consideration of the petition by noting that "Under the common law, a person may change her name at will so long as there is no fraud, misrepresentation or interference with the rights of others." The Court then noted that under the statutory provisions for name changes, the petitioner must state whether she has been convicted of a crime, and if she has been convicted of a violent felony offense and is under parole supervision, must give notice to the district attorney and the Court in any county where she was convicted of the time and place when and where the petition will be presented.

Where the petitioner has properly filed and given notice as required by Article 6 of the Civil Rights Law (CRL) and there is no reasonable objection to the proposed name change, CRL §63 provides that the Court **shall** (must) make an order authorizing the name change.

Here the Petitioner served notice of the petition on the Schoharie County District Attorney and the Schoharie County Court. The District Attorney objected to the name change application, arguing that "allowing the [Petitioner] to completely change her name would potentially put the public in harm's way and would cause grave problems for DOCCS, namely parole, as well as the court system." According to the District Attorney, the individuals and agencies that need to know the Petitioner's current name include:

- The Parole Board
- The court system
- County clerks
- The Board of Elections

- The Department of Motor Vehicles
- Potential employers
- Potential spouses

The Court found that the District Attorney's objection that the name change would cause grave problems for DOCCS, namely parole, as well as the court system was "insufficiently particularized" to support a denial on that ground. With respect to the county clerks, Board of Elections, Department of Motor Vehicles, potential employers and spouses, the Court, noting the observation in *Matter of Golden*, 56 A.D.3d 1109, 1110 (3rd Dep't 2008), that "confusion is a normal **concomitant** [something that necessarily happens when a particular act is taken] of any name change," found that the District Attorney's generalized allusion to potential confusion was "equally unavailing" as to these individuals and entities.

Having found the District Attorney's objections to be an unreasonable basis for denying the application, the Court found that "the proposed name change will benefit Petitioner as she seeks to become a productive member of society."

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For information about changing your name and gender designation, write to the PLS office that provides legal services to individuals incarcerated at the prison from which you are writing and request the memo: "Changing Your Name and/or Gender Designation."

Patrick J. Smith, and Charlotte P. Tenorio, Clark Smith Villazor LLP, New York. New York, represented D.A.

FEDERAL COURT DECISIONS

Update: Unlawfully Imposed PRS

In the May 2024 (Vol. 34, No. 3) issue of *Pro Se*, we discussed a decision in *Betances v. Fischer*, 2024 WL 182044 (S.D.N.Y. Jan. 17, 2024), the class action law suit seeking damages for DOCCS' unlawful imposition of post-release supervision (PRS). Filed in 2011, the *Betances* Plaintiffs are asking the Court to award damages to a class of individuals whose sentences did not include a term of post-release supervision, but who, due to DOCCS' (at the time DOCS) unlawful imposition of PRS, were wrongfully placed on parole and, if they violated the conditions, sometimes were returned to prison. In 2015, the Court held that several of the Defendants were financially responsible for wrongfully imposing PRS.

In January 2024, the district court before which *Betances* was pending issued an order finding that after the 2008 Second Circuit decision in *Early v. Murray* holding that any period of PRS imposed by DOCCS was a nullity, that is, had no legal effect, the *Betances* Defendants had complete authority to excise (cut) unlawful PRS. The Court also found that the date on which the Defendants' liability started could be no sooner than four to six weeks after the 2008 decision in *Earley v. Murray*.

Further, the decision continued, there were other factors that needed to be resolved with respect to the start date of an individual class member's eligibility for damages, such as whether, with respect to those individuals

whose sentence and commitment orders did not include a term of PRS, their sentencing minutes reflected that PRS had actually been imposed at sentencing.*

Because the Court found that there was no single start date for eligibility for damages, and a number of factors that might need to be considered to determine the start date for eligibility for each class member, the Court held that it could not determine "a daily value of … general damages for loss of liberty" until individual trials were held to resolve the date upon which each class member became eligible for damages. To put this in perspective, there are 4,382 class members.

The upshot of the January 2024 decision was that 1) the Court would not conduct a trial to determine a general daily amount of damages for loss of liberty and 2) the Court would conduct an individual trial for each class member to determine the date upon which they became eligible for damages.

On August 16, in response to the Plaintiffs' motion to reconsider the January 2024 decision, the *Betances* Court issued a decision granting in part and denying in part the Plaintiffs' motion to reconsider.

The record in the *Betances* case, the Court found, showed that of the 4,382 people whose sentence and commitment orders did not include a term of PRS, DOCCS also possessed the sentencing minutes for at least 1,578 individuals indicating that no term of PRS had been imposed. Thus 36% of the class members can show eligibility for damages either 6 weeks from the *Earley* decision, or if they were released more than 6 weeks from the issuance of that decision, immediately upon their release. It is possible, the Court commented, that an additional 1,382 class members potentially fall within this group because DOCCS had their sentencing minutes, leading potentially to a total of 67.5% of the class members in the group of individuals with respect to whom DOCCS could easily ascertain whether the sentencing minutes showed that sentencing courts had imposed PRS.

Based on these percentages, the Court created a subclass of plaintiffs known as Sentencing Minutes Members whose sentence and commitment orders and sentencing minutes were in DOCCS' possession and showed that PRS had not been imposed.

The Court then granted partial summary judgment to the Plaintiffs, finding that there were no legal or practical impediments to release [from unlawful PRS] of Sentencing Minute Members beyond the initial six-week period it would have taken for Defendants to review each individual's sentencing and commitment orders and sentencing minutes that were already in DOCCS' possession.

With respect to the Plaintiffs' argument that the Court should conduct a trial to determine the issue of general damages for loss of liberty for the class as a whole, the Court agreed with the Plaintiffs that at this time, with respect to the Sentencing Minutes Members 1) there are no individualized issues that eliminate the predominance of common issues and 2) proceeding as a class action with respect to the question of determining general damages for loss of liberty was superior to individualized trials. The Court therefore reversed its January 2024 decision to decertify the class.

*While the Court in its January 2024 decision referred to "other factors" that made individual trials a necessity, in its August 2024 decision it dismissed the other factors and focused solely on whether there was a need for individual trials to determine the date each class member became eligible for damages.

Matthew D. Brinckerhoff, Emery Celli Brinckerhoff Abady Ward & Maazel LLP, represented the Plaintiffs in this Section 1983 action.

IMMIGRATION MATTERS

Nicholas Phillips

This issue's column focuses on *Delligatti v. United States*, a case now pending before the United States Supreme Court, Docket No. 23-825. The decision in *Delligatti* may significantly impact the immigration consequences of certain criminal offenses. Certiorari was granted in *Delligatti* on June 3, 2024, and the case is now fully briefed, with oral argument scheduled for November 12, 2024.

The central question in *Delligatti* is whether an *omission*—that is, a failure to take physical action—can constitute the use of force necessary to be a "crime of violence." For conduct to constitute a crime of violence, it must include "the use, attempted use, or threatened use of physical force against the person of another." 18 U.S.C. § 924(c)(3)(A). *Delligatti* originates in the federal criminal context, but the "crime of violence" definition is important for immigration law also. The Immigration and Nationality Act—the statute which governs immigration cases—defines a variety of "aggravated felony" offenses which have very serious immigration consequences, including barring a noncitizen from almost all forms of relief in deportation proceedings. One such aggravated felony is a "crime of violence" as defined by 18 U.S.C. §16(a). That statute is identically worded to 18 U.S.C. §924(c)(3)(A), and so *Delligatti*'s ruling would also affect immigration cases which involve aggravated felony crimes of violence.

So how exactly can a crime be committed by omission? This unusual scenario is perhaps best illustrated by the conviction at issue in *Delligatti*, which concerns the criminal proceedings of defendant Salvatore Delligatti ("Mr. Delligatti"). In March 2018, a jury in the federal court for the Southern District of New York convicted Mr. Delligatti of various crimes, including racketeering, conspiracy to commit murder in aid of racketeering, attempted murder in aid of racketeering, conspiracy to commit murder for hire, and operating an illegal gambling business. Of relevance here, one of the crimes of which Mr. Delligatti was convicted was the possession of a firearm in furtherance of a crime of violence under 18 U.S.C. §924(c)(3)(A). As the underlying predicate offense for this offense, the federal government argued that Mr. Delligatti

possessed a firearm to commit attempted second-degree murder in violation of New York Penal Law ("NYPL") §125.25(1). That statute provides in relevant part that a person is guilty when "[w]ith intent to cause the death of another person, he causes the death of such person or of a third person."

Before the federal district court, Mr. Delligatti challenged the firearms possession conviction on the grounds that NYPL §125.25(1) is not a crime of violence because it can be committed by omission. As support, Mr. Delligatti cited to a line of New York State cases which hold that a person can be convicted of second-degree murder by the "failure to perform a legally imposed duty," such as "withholding medical care" from a sick dependent. *People v. Steinberg*, 79 N.Y.2d 673, 681, 595 N.E.2d 845, 847–48 (N.Y. Ct. App. 1992). In such cases, asserted Mr. Delligatti, the intentional failure to intervene will amount to a crime even though no physical force has been exerted on the dependent's body. Under the categorical approach, then, which considers only the essential elements of the underlying statute of conviction, Mr. Delligatti argued that NYPL § 125.25(1) can be violated by failing to take any physical action whatsoever, and thus cannot be a crime of violence.

The federal district court disagreed and sustained Mr. Delligatti's conviction. Mr. Delligatti appealed to the Second Circuit Court of Appeals, but by the time his appeal was ready to be heard, the Second Circuit had considered and rejected the same argument in its *en banc* decision in *United States v. Scott*, 990 F.3d 94 (2d Cir. 2021). *Scott* considered the question of whether first-degree manslaughter in violation of NYPL §125.20(1)—which applies when "with intent to cause serious physical injury to another person, he causes the death of such person or of a third person"—was a crime of violence. As in *Delligatti*, the defendant in *Scott* argued that NYPL § 125.20(1) is not a crime of violence because it can be committed by omission, for example, by "failing to seek emergency medical aid for a seriously injured child." *People v. Wong*, 81 N.Y.2d 600, 608, 619 N.E.2d 377 (N.Y. Ct. App. 1993). In a divided 9-5 ruling, the *Scott* Court concluded that an omission constitutes the "use" of force because "when a defendant causes death by breaching a legal duty to check or redress violent force *because* he intends thereby for that force to cause serious physical injury, what he is doing is making that force his own injurious instrument." *Id.* at 101 (emphasis in original). The *Scott* decision included two dissenting opinions by Judge Leval and Judge Pooler, which would have found that the petitioner's convictions are not crimes of violence, as well as two concurring opinions, one of which noting "the absurdity of the exercise we have now completed" and expressing frustration at how the categorical approach "perverts the will of Congress, leads to inconsistent results, wastes judicial resources, and undermines confidence in the administration of justice." *Id.* at 126.

While *Scott* was being decided, the Third Circuit was considering a similar issue in *United States v. Harris*, 68 F.4th 140 (3d Cir. 2023). In that case, the Third Circuit considered whether Pennsylvania first-degree aggravated assault is a crime of violence for federal sentencing purposes. As in *Delligatti* and *Scott*, the defendant argued that first-degree aggravated assault cannot be a crime of violence because it can be violated by a failure to act, such as a mother's failure to provide nutrition to her child. *See, e.g., Commonwealth v. Thomas*, 867 A.2d 594, 597 (Pa. Super. Ct. 2005). In contrast to *Scott*, the Third Circuit agreed that a conviction based on an omission does not constitute a crime of violence, concluding that "[i]f a crime satisfied by the slightest offensive touch does not qualify as a violent offense . . ., it necessarily follows that a crime satisfied without physical force cannot constitute a predicate offense." 68 F.4th at 147.

Variations of the same issue have arisen across the United States, resulting in what is called a circuit split—that is, a legal question which is decided differently in different circuits around the United States. Eight circuits adopted the *Scott* Court's view, and so in the First, Second, Fourth, Sixth, Seventh, Eighth, Tenth, and Eleventh Circuits, a conviction predicated on an omission can still be a crime of violence. In contrast, two circuits rejected this view, and so in the Third and Fifth Circuits, crimes predicated on omissions are not crimes of violence.

Given this circuit split, it is perhaps unsurprising that the Supreme Court granted certiorari in *Delligatti*, since a central function of the Supreme Court is to clarify federal law to promote uniformity across the United States. *See, e.g., Dep't of State v. Munoz*, 144 S. Ct. 1812, 1820 n.3 (2024) (noting that certiorari was granted "to resolve a longstanding circuit split" in light of "the Government's need for uniformity in the administration of immigration law and the importance of this issue to national security"). With oral argument scheduled in *Delligatti* next month, and a decision almost certainly to be issued before the end of this term, it remains to be seen how the Supreme Court will resolve this surprisingly complex legal question.

WHAT DID YOU LEARN?

Brad Rudin

1. **The earliest date upon which members of the class recognized by the *Betances* Court can show eligibility for damages is four to six weeks:**
   a. after issuance of the *Earley* decision.
   b. before the issuance of the *Early decision.*
   c. from the start of the filing of the complaint in *Early.*
   d. after the decision of the court in *Betances.*

2. **Under the HALT Act, DOCCS is prohibitede from placing a person in segregated confinement unless it**

finds that the person committed one of the seven kinds of misconduct described in the Act and the person:

a. committed the misconduct outside of their cell.
b. engaged in misconduct that was very dangerous or destructive.
c. had a substantial history of Tier III disciplinary determinations.
d. was found to be dangerously mentally ill.

3. **In the *Matter of John Hogan*, the Article 78 Court held that John Hogan, whose disciplinary hearing was annulled, was entitled to:**
   a. damages for the time in segregated confinement.
   b. a reduction in sentence.
   c. transfer to a prison nearer to his home.
   d. costs associated with the Tier III hearing and filing the Article 78.

4. **In *Matter of Robert Youngs, the* Supreme Court, Albany County, remitted the Tier I matter for a new determination because DOCCS failed to:**
   a. present substantial evidence of guilt.
   b. conduct a hearing in which the charged individual was given sufficient notice of the offense alleged.
   c. file papers allowing the court to conduct a meaningful review of the Petitioner's contentions.
   d. file any response at all to the Article 78 petition presented by the charged individual.

5. **In *Matter of Dakota Smith,* the Fourth Department declined to grant the Petitioner's request for summary judgment because the Respondent (DOCCS):**
   a. cured its earlier failure to file an answer within the time permitted by filing an answer after the petitioner moved for summary judgment.
   b. correctly relied on the CPLR statute excusing the respondent in an Article 78 proceeding from filing an answer unless the date of trial has been set.
   c. established at trial that the petitioner was not entitled to the relief requested.
   d. demonstrated that the Petitioner had failed to prepare an Order to Show Cause in a timely manner.

6. **In *Matter of Dakota Smith*, the Fourth Department upheld the determination of guilt because the hearing officer:**
   a. found that officers in fact had allowed the Petitioner to observe the search of his cell.
   b. correctly concluded that there had been no search of the Petitioner's cell.
   c. relied on substantial evidence showing that the Petitioner presented a danger to officers during the cell search.
   d. possessed a reasonable basis for concluding that the Petitioner intentionally presented false information to the court.

7. **The Court of Claims in *Jimmy Delgado v. State of New York* allowed an untimely claim because the claimant:**
   a. presented the argument that he had been transferred to another prison and therefore was excused from the obligation of filing a claim in a timely manner.

b. possessed a strong claim based on the indisputable fact that he had spent 180 days in segregated confinement in violation of the HALT act.
c. experienced a serious physical injury while in segregated confinement.
d. successfully argued that doctrine of immunity had no place in cases involving segregated confinement.

8. As the *Booker* Court noted, the State enjoys absolute immunity when its employees:
a. commit any wrongful act during working hours.
b. show the necessity of their conduct.
c. possess a good-faith reason for violating prison rules.
d. act in compliance with statutes and regulations and there is no violation of constitutionally required due process safeguards.

9. According to the *Booker* Court, a claimant in the Court of Claims may pierce the State's defense of immunity by showing that the employee's conduct:
a. involved a violation of institution rules.
b. constituted a crime.
c. violated constitutional due process safeguards.
d. warranted termination or suspension of the employee.

10. The decision of the Court in *Matter of Barletta* suggests that a state agency may deny a FOIL request when the records sought:
a. disclose information about a state employee.
b. would endanger the safety of another person.
c. would prove embarrassing to state officials.
d. undermine the trial claims of the FOIL applicant.

Answers

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

Incarcerated Individuals at Albion and Bedford Hills Can Speak With a PLS Lawyer on the Phone

Once a week, PLS lawyers are available to speak on the phone with women at Albion and Bedford Hills Correctional Facilities about a variety of issues.

What is PLS?

- PLS is a non-profit legal services organization that provides civil legal services to incarcerated individuals in NY State correctional facilities in cases where no other counsel (lawyer) is available.
- We help incarcerated individuals in NY State prisons with issues that arise **during** their incarceration.
- PLS does not assist incarcerated individuals with criminal appeals or issues related to their criminal cases.

What kind of legal matters can PLS help me with?

- Disciplinary hearings
- Child visitation
- Prison conditions
- Housing and protective custody
- Health, mental health and dental care
- Jail time credit and sentence computation issues

What kind of help will PLS give me?

- In some cases our attorneys investigate a case and communicate with DOCCS to be sure that incarcerated individuals are getting the services or care that they need.
- In other cases we provide written materials to help incarcerated individuals advocate for themselves.
- In some cases PLS represents incarcerated individuals in lawsuits against the state.

How long can I talk about my problem?

- Phone calls are limited to 15 minutes each.

How do I arrange a call?

- At Bedford Hills, Offender Rehabilitation Coordinator Figueroa will help you arrange a call. Calls are made on Thursdays between 1:30-2:30 p.m.
- At Albion, Aide Kristine Hydock will help you arrange a call. Calls are made on Wednesdays between 1:00-3:00 p.m.

Calls may be subject to the number of individuals who signed up.

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

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