Pro Se

Vol. 35 No. 1 January 2025 **Published by Prisoners' Legal Services of New York**

DOCCS MUST OFFER THE SHOCK PROGRAM TO OTHERWISE QUALIFIED INDIVIDUALS WITH DISABILITIES

Created in 1987, the Shock Incarceration Program (Shock or SIP) is an early release program that allows non-violent offenders under the age of 50 who are within 3 years of parole eligibility or conditional release to be released to community supervision as much as 2½ years earlier than their parole eligibility or conditional release dates. In addition to the statutory eligibility criteria, see Correction Law §865(1), DOCCS has further restricted eligibility through medical and mental health screening.

As of 2020, DOCCS Directive 0086, for example, allowed DOCCS to exclude from Shock any incarcerated individual who has "a serious medical problem which automatically precludes [their] participation in the program." Directive 0086 also excluded from Shock participation any person with an Office of Mental Health (OMH) service level of 1, 2, or 3. These service levels include people who have been diagnosed with a serious mental health issue – regardless of their current psychiatric condition – and anyone who has been prescribed mental health medication.

. . . 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.

Season's Greetings and Happy New Year from PLS!
From the Executive Director, Karen L. Murtagh, Esq.

As we wrap up this year and look ahead, I wanted to take a moment to reflect on the incredible strides we've made together in 2024. It's been a year of significant accomplishments and meaningful change, thanks to the support of those who believe in the power of justice and fairness.

Highlights from 2024

PLS' 13th Annual Pro Bono Event: On October 17, PLS hosted our 13th Annual Pro Bono Event in partnership with the Albany Public Library. It was an inspiring exhibition showcasing over 45 pieces of artwork created by individuals incarcerated in New York State prisons. The Albany Public Library will continue to display the artwork through December 31, 2024. If you cannot attend in person, you can view the stunning artwork on our website at: Untitled: Art from Behind Bars. The event received tremendous public interest and was even featured on ABC News: Library Exhibit Features Artwork from People in Prison.

As part of our annual Pro Bono Event, we also celebrated our pro bono awardees, including:

- **Dori Lewis, Esq. & John Boston, Esq.** – John R. Dunne Champion of Justice Award
- **The Law Firm of McGuireWoods** – Hon. J. Clarence Herlihy Access to Justice Award
- **Marc A. Cannan, Esq.** – Paul J. Curran Award
- **Shauna Switzer** – Robert F. Bensing Award

PREP Graduation: This October marked a milestone for our **Pre-Release and Re-entry Program (PREP)**, as we celebrated our first PREP graduate, Manuel Figueroa. We congratulate Manny on his journey through PLS' PREP which has been a testament to the power of determination and resilience and a lesson in humility, gratitude, and service to others. In addition, Jason Dunn, one of our PREP participants, received the inaugural Manuel Figueroa PREP Award. The Award is given annually to the PREP participant who demonstrates growth in humility, gratitude, perseverance, and resilience. Mr. Dunn was given the award because he, like Manny, has freely offered his experience, strength, and hope for the benefit of others. The ceremony was very moving, and we are incredibly proud of the program's success, which boasts an impressive 4% recidivism rate. We are excited to continue this work with the support of Commissioner Martuscello and other Deputy Commissioners who attended the event.

Disciplinary Representation Unit: As many of you know, the Humane Alternatives to Long Term Confinement (HALT) Act became law on April 1, 2022 and most provisions are now codified in Corrections Law §137. One major provision of HALT allows a person facing a disciplinary hearing in prison to be represented at that hearing.

In line with the HALT Act, we've begun laying the groundwork for a pilot project to provide legal representation for individuals facing disciplinary hearings. This initiative is the first of its kind in the U.S., and it aims to ensure fairness and transparency in the prison disciplinary system. We are grateful for the continued collaboration with DOCCS as we work to make this vision a reality.

A Year of Advocacy and Change

In addition to these special events, our day-to-day work continues to protect the civil and constitutional rights of incarcerated individuals. In 2024, PLS responded to over **9,900 requests for assistance**, saving **21 years of solitary confinement time** and restoring **14 years of parole time**. We've also filed **34 new cases** and won **22**, with three cases having significant statewide impact.

Notable Legal Wins:

- In ***Fuquan Fields, et al. v. Martuscello***, PLS filed a putative class action (meaning an unnamed class of plaintiffs or a hypothetical group of people the named plaintiffs are seeking to represent), challenging DOCCS's noncompliance with the HALT Act. A court ruled that DOCCS's disciplinary confinement policies violated the HALT Act, ordered DOCCS to review any hearings made under the policy at issue, and found that all determinations made under the policy were null and void.

- In ***Raymond v. NYS DOCCS***, PLS filed a putative class action alleging that DOCCS' administration of the Shock program and its accompanying early release benefits violated the Americans with Disabilities Act and the Rehabilitation Act. The court granted PLS' partial motion for summary judgment and have ordered the parties to discuss a global settlement.

- ***Alcantara, et al. v. Annucci, et al.***, resulted in a ruling that DOCCS must make reasonable efforts to secure community-based opportunities for those held beyond their release dates in Residential Treatment Facilities.

Looking Forward

PLS remains steadfast in our mission to provide high-quality legal representation, advocate for humane conditions and ensure justice for all. As we enter the new year, our commitment to transparency, fairness and accountability in the corrections system will continue. We are excited about the work ahead and look forward to expanding our efforts to make real and lasting change.

On behalf of all of us at PLS, we wish you a peaceful and joyful holiday season. May the new year bring hope, strength and continued progress in our fight for justice.

Happy Holidays and a Bright New Year to All!

. . . Continued from Page 1

And in 2020, Health Services Policy 1.26 set forth a list of considerations that health care providers were to use to evaluate whether an applicant is medically suitable for Shock. One such consideration states that because the program requires great physical exertion and stamina, people who have conditions that may prevent participation must be identified and evaluated with this in mind.

As a result of these policies, between 2015 and 2020, DOCCS excluded 5,429 incarcerated individuals from Shock. One thousand five hundred fourteen people were excluded for medical reasons and 3,915 people for mental health reasons.

But not all otherwise eligible individuals were excluded from Shock as a result of their physical or mental health issues. With the enactment of the 2009 Drug Law Reform Act (DLRA), New York opened SIP to people convicted of drug felonies. Included in this statute is a requirement that DOCCS create an alternative SIP for court-ordered Shock participants who are excluded for medical or mental health reasons.

Rather than create a new program to accommodate individuals who had court orders for Shock, DOCCS placed these individuals in already existing programs. DOCCS offered court-ordered men Phase 1 of the CASAT program and offered court-ordered women the ASAT program. The 2009 Policy, identified as the Challenged Policy, is the policy at issue in the law suit discussed in this article.

Between 2009 and November 2021, only court-ordered individuals with medical and mental health conditions were placed in these alternative programs. Thus, pursuant to the Challenged Policy, otherwise eligible individuals with disqualifying medical and mental health issues who were not judicially ordered to participate in Shock were not included in the alternative programs.

Latoya Raymond has type 1 diabetes. Jan Garcia has severe lumbar disc disease. In 2019, Ms. Raymond was disqualified from Shock due to her medical condition and was not offered an alternative program. As a result, her release to community supervision was delayed roughly a year and a half. Similarly, Mr. Garcia was medically disqualified and was not offered an alternative program. Had Mr. Garcia successfully completed SIP, he could have been released roughly a year and a half earlier than his actual release date.

In 2020, Latoya Raymond and Jan Garcia brought a class action law suit in the federal District Court for the Northern District of New York. Known as *Raymond v. New York State Department of Corrections and Community Supervision* (NYS DOCCS), 9:20-CV-1380, the Plaintiffs allege that the Challenged Policy of only offering a SIP alternative to otherwise eligible individuals with medical or mental health disabilities whose sentencing judge ordered their participation in SIP violates the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Sec. 504).

After filing the complaint, the Plaintiffs moved to certify the class. In 2022, the Court granted the motion for the purpose of determining DOCCS's refusal to create an avenue for inmates protected by Title II of the ADA or by Section 504 of the Rehabilitation Act to volunteer for the opportunity to earn early release eligibility in six months amounts

to a denial of public benefits. The Court defined the class as all persons who:

1. Are currently incarcerated or who will be incarcerated in a NYS prison;
2. Are or will be disqualified and either excluded or removed from the SIP for medical or mental health reasons;
3. Are not judicially ordered to be in enrolled in the SIP by the sentencing court;
4. Are otherwise eligible to enroll in the SIP; and
5. Are denied an alternative six-month pathway to early release from prison.

Following the filing of the law suit, DOCCS changed Directive 0086. The Directive no longer excludes people classified as OMH service level 3. In addition, DOCCS issued a memorandum stating that an otherwise eligible person who is excluded from SIP due to a medical or mental health condition will be offered an Alternative Shock program regardless of whether Shock was court-ordered.

The parties then filed cross motions for summary judgment. In *Raymond v. New York State Department of Corrections and Community Supervision* (NYS DOCCS), 9:20-CV-1380, 2024 WL 4268385 (N.D.N.Y. Sept. 19, 2024), the Court reviewed the Plaintiffs' arguments first. The Plaintiffs sought summary judgment with respect to Defendants' liability for Plaintiffs' individual claims for money damages and the class claim for declaratory and injunctive relief.

Title II of the ADA and Section 504 of the Rehabilitation Act

In addressing the motions before it, the Court first discussed the statutes it was interpreting. Title II of the ADA, the Court noted, provides: "No qualified individual with a disability, shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132.

Section 504 of the Rehabilitation Act, the Court wrote, provides: "[n]o otherwise qualified individual with a disability … shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, be subjected discrimination under any program or activity receiving Federal financial assistance. 29 U.S.C. § 794(a).

Because the standards set forth in Title II of the ADA and Section 504 of the Rehabilitation Act (the Acts) are "generally the same," courts analyze claims under the two statutes identically. *See, Wright v. N.Y. State Department of Corrections and Community Supervision*, 831 F.3d 64, 72 (2d Cir. 2016). Thus, the criteria to be considered when an incarcerated plaintiff alleges that DOCCS has violated the Acts are:

1. Whether the plaintiff has a qualifying disability;
2. Whether DOCCS is subject to the Acts; and
3. Whether DOCCS has denied the plaintiff the benefit of a service, program or activity.

The Court discussed each of these criteria to determine whether the Plaintiffs or the Defendants were entitled to summary judgement.

Applying the Acts

Qualified Individual with a Disability

The Plaintiffs must prove that they are qualified individuals with a disability. The Acts define disability as a physical or mental impairment that substantially limits one or more major life activities of such an individual; 2) "a record of either a) such an impairment; or b) being regarded as having such an impairment. The Court found the named Plaintiffs had established that they are qualified individuals with a disability.

The Entity is Subject to the Acts
The Court found that it is "well established" that DOCCS is subject to Title II of the ADA and Section 504 of the Rehabilitation Act.

Denial of the Benefit of the Shock Program
The Court found that the record showed that DOCCS medically disqualified both Plaintiffs. "This unrebutted claim," the Court wrote, "establishes that the discrimination was sufficiently 'intentional' to support a claim for damages."

The Defendants' Argument
When faced with a claim under the Acts, defendants can defeat a claim where they can show that modifications necessary to accommodate the plaintiff's disability would fundamentally alter the nature of the SIP. In this case, the *Raymond* Court noted, the argument fails, because there is evidence in the record showing that DOCCS did sometimes modify portions of the SIP to accommodate some individuals and routinely placed court-ordered Shock participants in the Alternative Shock programs. Thus, the evidence showed that DOCCS could accommodate individuals with qualifying disabilities without fundamentally altering the nature of the Shock program. Based on this analysis, the Court found, the Plaintiffs Raymond and Garcia were entitled to summary judgment on liability.

Class Claims
The Plaintiffs did not seek damages for class members. Rather, with respect to the class, the Plaintiffs requested "non-monetary relief," that is, declaratory and injunctive relief. The Plaintiffs argued that "it is undisputed that the Challenged Policy operated as a rule that denies reasonable accommodations to individuals who have been medically disqualified from the SIP and that DOCCS's method of administering the Shock program has the effect of discriminating against individuals on the basis of their disability by denying them an equal opportunity to earn early release."

The Court found that the record established that the class is entitled to summary judgment. The Plaintiffs had shown that the Defendants violated the Acts in two ways. First, the ADA requires that public entities engage in an individualized inquiry before denying accommodation. The record showed, the Court wrote, that DOCCS had disqualified Ms. Raymond, Mr. Garcia and the class members without any individualized inquiry as to whether accommodations could be made so that they could participate in the SIP.

Second, the Court continued, DOCCS did not ask the medically disqualified individuals whether they wanted to participate in the Alternative Shock program that DOCCS offered to court-ordered Shock participants. This alternative, the Court concluded, was not unduly burdensome nor a fundamental alteration to the SIP. Thus, the Court held, the Class is entitled to summary judgment on "a failure to accommodate" theory.

The Court also held that the Class is entitled to summary judgment on a "disparate impact" theory. The ADA regulations prohibit "eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program or activity being offered." See, 28 Code of Federal Regulations (CFR) § 35.130(b)(8).

Plaintiffs' briefing, the Court found, showed that DOCCS' policy violates this body of law because, while outwardly neutral, it has a "significantly adverse or disproportionate impact on individuals with disabilities." Once a plaintiff establishes this, the Court continued, "the burden shifts to the defendant "to prove that its actions furthered, in theory and in practice, a legitimate, bona fide governmental interest and that no alternative would serve that interest with less discriminatory effect."

The Court found that while DOCCS's Shock program might have been intended to advance a legitimate correctional goal, "the record showed that a far less discriminatory alternative was available: DOCCS already had an ad hoc practice of modifying the SIP for some people with medical or mental health disabilities and a practice of putting people with medical or mental health disabilities who were court-ordered to Shock in alternative programs.

Finally, the Court found that the new policy requiring that all otherwise eligible individuals who suffer from medical or mental health disabilities be offered an Alternative Shock program did not render the Plaintiffs' claims moot. In order for voluntary discontinuance of claimed misconduct to moot a plaintiff's claims, the defendant must show:

1. It can be said with assurance that there is no reasonable expectation that the alleged violation will recur; and
2. Interim relief or events have completely and irrevocably eradicated the effects of the alleged violation.

Here, the Court found, the Defendants have failed to satisfy either prong. First, while the Defendant has issued a memo explaining the Alternative Shock programming, its policies – Directive 0086 and Health Services Policy 1.26 – have not been amended. And, the Court continued, Plaintiffs' submissions show that the informal changes to the Challenged Policy have continued to result in "some number" of non-court-ordered individuals being removed from Shock for medical or mental health reasons without being offered the Alternative to Shock program. Nor have the Shock program staff been re-trained, or new forms been created, that would tend to show that there is no reasonable expectation that the challenged violation will recur.

Based on this analysis the Court granted the Plaintiffs' motion for partial summary judgment, denied the Defendants' cross motion for summary judgment and directed the parties to set up a conference with the Magistrate to discuss a global settlement.

The Court's decision did not grant any specific relief to the Plaintiffs. What declaratory and injunctive relief should be issued by the Court on behalf of the Class will be decided later in the case.

For information about the rights of incarcerated people with disabilities, write to

the PLS office that provides legal services to individuals incarcerated at the prison from which you are writing and request the memo: "Rights of Incarcerated People with Disabilities Under the Americans with Disabilities Act."

Prisoners' Legal Services of New York represented the Plaintiffs in this class action ADA and Section 504 action.

NEWS & NOTES

Jury Finds Long Term Ad Seg Violated Plaintiff's Civil Rights

Wonder Williams entered DOCCS custody in January 2010 and was released to parole supervision in February 2021.* During the 11 years that he spent in DOCCS custody, Mr. Williams spent more than 7½ years in administrative segregation (Ad Seg). The basis of the Ad Seg confinement was Mr. Williams' alleged witness tampering while in local custody with respect to the charges that led to the 2010 incarceration.

While in Ad Seg, Mr. Williams was confined to cells from which he could not communicate with other incarcerated people. He had access to a rec pen the size of a parking space with visibility on one side. During his time in Ad Seg, Mr. Williams had 45 Ad Seg reviews signed by Defendant O'Gorman. The reviews always mentioned the allegation of witness tampering, frequently included positive descriptions of Mr. William's behavior, noting that it had improved, was satisfactory, appropriate, and acceptable. Occasionally the reviews noted anti-social behavior. For example, in 2012, Mr. Williams was found guilty of smuggling and disciplined for eating candy outside the area designated for eating. In 2019, he received 180 days SHU for a weapon infraction.

In 2017, Mr. Williams was transferred to a Step-Down Unit where the conditions were the same as SHU except that there were some group sessions where he interacted with other individuals.

In 2020, Mr. Williams filed a Section 1983 action alleging, among other claims, that the Defendants, by confining him to SHU, had violated his Eighth Amendment rights and seeking damages for the time he spent in Ad Seg.

In September 2024, the case went to trial. At the trial, the Plaintiff, the Plaintiff's correctional expert Stephen Sinclair – former State of Washington Secretary of the Department of Corrections, and the Plaintiff's medical expert, Dr. Stuart Grassian, testified. Dr. Grassian testified about the mental and psychological injuries resulting from spending 7½ years in SHU. The jury found former Clinton Superintendent O'Gorman and former Five Points Superintendent Colvin liable for compensatory and punitive damages.

The jury awarded nominal compensatory damages – $1.00 – against the two Defendants. Subsequent to the jury verdict, and before the hearing scheduled to determine punitive damages, Defendants O'Gorman and Colvin agreed to settle the punitive damages claim for $100,000.00.

Sidney Austin LLP, the law firm that represented Mr. Williams, believes that this is the first jury verdict finding that long term Ad Seg conditions in New York State prisons

violated the Eighth Amendment. It is one of a growing number of jury verdicts finding that incarcerated or formerly incarcerated plaintiffs are entitled to punitive damages for claims alleging unconstitutional conditions of confinement.

*The facts in this article were taken from the Court's decision in *Wonder Williams v. James O'Gorman*, 9:20-cv-1414 (BKS/TWD), 2024 WL 2208648 (N.D.N.Y. May 16, 2024), a decision related to cross motions for summary judgment (both the Plaintiff and the Defendants moved for summary judgment).

For information about drafting and filing Section 1983 actions or to help you determine in which court you want to decide your legal claim, write to the PLS office that provides legal services to individuals incarcerated at the prison from which you are writing and request the memos: "Section 1983 Civil Rights Actions" and/or "Court Systems in NYS: Choosing the Proper Court."

PREP SPOTLIGHT

PREP is PLS's unique, voluntary, and free initiative that provides counseling and re-entry planning guidance for individuals who are within 6-18 months of their release date and returning to one of the five (5) boroughs of New York City or one of the following counties: Dutchess, Erie, Genesee, Monroe, Niagara, Orange, Orleans, Putnam, Rockland, Sullivan, Ulster, Westchester or Wyoming. 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. Individuals convicted of sexual crimes and those on the sex offender registry are ineligible. Mail application requests to:

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

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!

***Jesus Fuentes v. State of New York*, Claim No. 130850, Motion No. M-99762 (Ct. Clms. Dec. 7, 2023).** In February 2017, DOCCS transferred Jesus Fuentes from Franklin C.F. to Fishkill C.F. According to Mr. Fuentes, his property arrived at Fishkill on March 15 and on March 29, he filed an administrative claim for lost property. DOCCS "disapproved" – as opposed to rejected – the claim as untimely because it had not been filed within 5 days of discovery of the loss. (According to DOCCS' submissions in the case, the DOCCS property claim process requires that untimely claims be "rejected").

Mr. Fuentes appealed the disapproved claim on April 17. According to DOCCS, the appeal was returned to Mr. Fuentes with a memo dated May 2 (May 2 Memo), stating that because he had not filed his claim within 5 days of the day that he learned his property had been lost, his claim was untimely. Further, the May 2 Memo continued, incarcerated individuals cannot appeal claims that are disapproved or rejected, and for this reason, untimely claims cannot be appealed.

According to Mr. Fuentes, he never received the May 2 Memo explaining why his complaint had been disapproved and explaining that no appeal can be filed with respect to a disapproved claim. Mr. Fuentes filed a claim for lost property in the Court of Claims on December 27, 2017.

Roughly 5½ years later, the Defendant moved to dismiss the claim, arguing that 1) Mr. Fuentes, by the untimely filing of his administrative property claim, had failed to exhaust his administrative remedies and 2) the Court lacked **jurisdiction** (authority) to hear the claim because it had not been filed within 120 days of exhaustion.

Mr. Fuentes argued that the motion to dismiss should be denied because:

- his administrative claim should not have been considered untimely;
- the Fifth and Sixth defenses in Defendant's answer were not raised with particularity; and
- by waiting more than 5½ years to file the motion, Defendant had waived these defenses.

The Court first reviewed the Court of Claims Act (CCA) §10(9) which provides that to pursue a lost property claim in the Court of Claims, an incarcerated individual must first exhaust the DOCCS personal property claims administrative remedy process. Further, CCA §10(9) continues, such claims must be filed and served within 120 days after the date

upon which the individual exhausts administrative remedies.

The Court then noted that DOCCS has a two-step process for exhausting administrative property claims. Both must be completed at the time the claim is filed in court. The first step is submitting the claim. If the claim is denied, the second step is filing an administrative appeal.

According to the Mr. Fuentes, the Court continued, he received the disapproval of his claim on April 10 but never received any response to his appeal. Thus, according to Mr. Fuentes, when he filed his claim with the Court, he had not received a response to his appeal. The Defendant, the Court noted, offered no evidence to show that Mr. Fuentes had in fact received a response to his appeal.

The Court then addressed several issues raised by an affirmation submitted by a Supervising Budgeting Analyst (Analyst) explaining the property claim review process set forth in Directive 2733. The affirmation stated that rejected or disapproved claims cannot be appealed. However, the Court noted neither the Directive nor 7 NYCRR Part 1700 state that rejected or disapproved claims cannot be appealed and will be not be processed or investigated. Further, the Court stated, the Defendant had failed to provide any other authority for its position.

The Analyst's affirmation also states that a search of the relevant records did not reveal that any appeal had been submitted by Mr. Fuentes. With respect to this assertion, the Court stated that in deciding a motion to dismiss in the Court of Claims, all assertions in the claim will be taken as true. (This is because the basis of a motion to dismiss is that even if the claimant can prove the allegations in the complaint, the claimant would not be entitled to a judgment in their favor). Mr. Fuentes' claim alleged that he had submitted an appeal on April 17, 2017. Further, had Mr. Fuentes not submitted an appeal – as the Defendant maintained he had not – why did DOCCS send him the May 2 Memo advising him that he was not entitled to submit an appeal?

Turning to the law, the Court noted, citing *Paladino v. State of New York,* UID No. 2005-036-102 (Ct. Clms. Sept. 15, 2005), that some cases have held that the mere failure of prison authorities to meet regulatory deadlines does not automatically mean that administrative remedies should be deemed exhausted. Other decisions, the Court continued, like *Amaker v. State of New York*, UID No. 20211-049-019 (Ct. Clms. Dec. 19, 2011), have noted that there are some circumstances in which an incarcerated individual may claim that exhaustion has occurred due to Defendant's failure to address the claim in a timely manner.

Here the Court found in the circumstances presented by this case, Mr. Fuentes had established that "his administrative remedies should be deemed exhausted." The facts supporting this decision were the following:

- The delay in determining the administrative claim was more than 6 months;
- The Claimant asserts that he submitted an appeal and received no response from DOCCS;
- The Defendant failed to **controvert** (submit evidence to the contrary) Claimant's assertion that he did not receive the May 2 Memo;
- The Defendant failed to show that Claimant's administrative claim was

disapproved in error or that he could not appeal his claim; and
- The Defendant's assertion that DOCCS has no record of any correspondence regarding the Claimant's administrative appeal appears to be contradicted by the May 2 Memo.

Based on the law and the facts presented, the Court found that the Defendant had failed to establish that dismissal of the claim was warranted for failure to exhaust administrative remedies. The Court therefor denied the Defendant's motion to dismiss.

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

Court of Claims

Court Agrees to Treat NOI As Timely Filed Claim

Within 90 days of the day on which Jason Johnson was allegedly stabbed in the left eye by another incarcerated individual at Green Haven C.F., Mr. Johnson (Claimant) served a notice of intention to file a claim (NOI) on the New York State Attorney General's (AG) Office. The parties agree that this submission was timely and properly made. However, Mr. Johnson failed to file an actual claim within the time period required by the Court of Claims Act (CCA).

In an Order to Show Cause (OSC), the Court ordered the parties to submit evidence and affidavits relating the service of the claim by June 16, 2021. The Claimant cross moved to treat the NOI as a claim, or, in the alternative, for leave to file a late claim. The Court denied the Claimant's cross motion and ordered the claim dismissed.

The Claimant appealed, and in *Jason Johnson v. State of New York*, 2024 WL 4446841 (3rd Dep't Oct. 9, 2024), the Appellate Division agreed that the lower court should have granted the Claimant's cross motion to treat the NOI as a claim.

In reaching this result, the Court first reviewed the law. Court of Claims Act §10(8)(a), the Court began, states that a court may grant a motion to treat an NOI as a claim if:
- The NOI was timely served;
- The NOI contains facts sufficient to state a claim; and
- Granting the motion would not prejudice the defendant.

Court of Claims Act §11(b), the Court continued, requires that a claim include:

- The nature of the claim;
- The time the claim arose;
- The place the claim arose;

- The items of damage or injuries claimed; and
- The total sum the claimant is requesting.

The purpose of these requirements, the Appellate Court reminded, is to determine whether the State is able to investigate the claim promptly and ascertain its liability.

In the *Johnson* decision, the Court found that Mr. Johnson had provided sufficient details in his NOI to meet the requirement of CCA §11(b). Thus, the Court ruled, the lower court should have granted Mr. Johnson's cross motion to treat the NOI as a claim.

For information about drafting and filing claims in the New York Court of Claims or to help you determine in which court you want to decide your legal claim, 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/or "Court Systems in NYS: Choosing the Proper Court."

David J. Hernandez, Mark A. Longo, of counsel, represented Jason Johnson in this Court of Claims action.

Court Finds State Liable in Negligent Supervision Claim

In 2024, the Court of Claims held a trial in the case known as *Jose Perez v. State of New York*. The claim in this case was that due to DOCCS negligent supervision, an incarcerated individual attacked Jose Perez resulting in back and leg injuries. Mr. Perez filed a timely claim seeking $8,000.00 in damages. At the close of the trial, the Court found the Defendant liable but awarded no damages. Below is a summary of the Court's decision in *Jose Perez v. State of New York*, 2024 WL 3353426 (Ct. Clm. June 14, 2024) which both determines the facts and applies the law.

The Court found that Mr. Perez's testimony as to the following events was credible. In 2020, while Jose Perez was at Southport C.F., another incarcerated person read a transcript from Mr. Perez's trial transcript which ***erroneously*** identified Mr. Perez as a "sex offender." In fact, the transcript should have identified him as a "second offender." (The error may have resulted from the use of the abbreviation "s.o.") As a result of this error, Mr. Perez began to be threatened by other incarcerated people.

On April 3, 2020, a client advocate from the Center for Appellate Litigation wrote to Southport, with a copy to then Acting Commissioner Annucci, requesting that Mr. Perez be placed in Protective Custody (PC) and, that upon an anticipated transfer from Southport, due to Mr. Perez's fear for his bodily well-being, he be placed in PC at the next prison to which he was assigned. The letter specifically identified an individual at Southport (Person 1) who had threatened Mr. Perez while he was at Southport.

Both Mr. Perez and Person 1 were transferred from Southport C.F. on the same bus and delivered to Auburn C.F. When they arrived, they were placed, in restraints, in the same bullpen. While there, Mr. Perez informed an officer that he was in danger from Person 1. After their restraints had been removed, Mr. Perez and Person 1 were then placed together in a second bullpen. Shortly thereafter, there was an interaction between the two men, at the end of which Mr. Perez had a twisted ankle, red knuckles from defending himself and a hurt back.

After the incident, Mr. Perez was placed in PC and then sent to Wende C.F. where he had no safety concerns.

The Court then applied the law to these facts. With respect to the law of negligent supervision, the Court began, citing *Sanchez v. State of New York*, 99 N.Y.2d 247, 252 (2002), the State, having assumed physical custody of incarcerated individuals who cannot protect and defend themselves as individuals at liberty can, owes a duty of care to safeguard incarcerated individuals even from attacks by fellow incarcerated individuals. Defendant's duty, the Court continued, "is limited to providing reasonable care to protect incarcerated individuals from risks of harm that are reasonably foreseeable …" Reasonably foreseeable risks of harm are those risks about which the defendant knew or should have known.

To succeed in a negligent supervision case, the claimant must "show that the defendant's negligence was a substantial cause of the events that produced the injury."

Reviewing decisions, the Court noted three situations where the injury was found to have been reasonably foreseeable: In these situations:

- The defendant knew or should have known that the claimant was at risk of assault, yet failed to provide reasonable protection;
- The defendant knew or should have known that the assailant was prone to engage in an attack, yet failed to take precautionary measures; and
- The defendant failed to intervene or act when it knew, or should have known that the situation was likely to cause an attack or make an attack easier.

Applying this law to "credible testimony and documentary evidence," the Court found that the Claimant had met his burden by a preponderance of the evidence.* It was "undisputed," the Court wrote, "that Southport and DOCCS were made aware that Person 1 had been threatening Claimant with physical harm and that Claimant specifically requested PC at Southport and [the facility to which he would be transferred]."

The Court found it incomprehensible that 1) the Claimant would be transferred on the same day, to the same facility as Person 1, and 2) be placed in the same bullpen without restraints when Southport and DOCCS had actual notice of the Claimant's safety concerns. DOCCS's failure to keep the Claimant away from Person 1 at all times after receiving actual written notice was a breach of the duty by the Defendant.

The Court found that the State was 100% liable for the Claimant's injuries. However, the Court awarded no damages because the Claimant failed to prove his injuries with competent evidence. The Court did order that any filing fee paid by the Claimant may be recovered as set forth in CCA §11-a(2).

* To win their cases, in the Court of Claims, claimant's must prove their cases by a preponderance of the evidence. This is called the burden of proof. Different types of cases have different burdens of proof. For example, in a criminal prosecution, the State must prove its case "beyond a reasonable doubt."

For information about drafting and filing Claims in the New York Court of Claims actions or to help you determine in which court you want to decide your legal claim, 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/or "Court Systems in NYS: Choosing the Proper Court."

Jose Perez represented himself in this Court of Claims action.

Dismissal of Sexual Assault Claim Reversed

In 2014, R.S., a transgender woman, brought a negligent supervision case against the State of New York, alleging that due to the State's negligence, she was sexually assaulted at Clinton C.F. *See*, *R.S. v. State of New York*, 231 AD3d 1376 (3d Dep't 2024). The case went to trial, following which the trial court ruled that the Claimant had failed to prove that the assault was reasonably foreseeable and dismissed the claim.

On appeal, the Appellate Division first noted that the trial court found that the Claimant had been sexually assaulted in her dormitory cube and that the correction officer assigned to the area was asleep when the assault took place. The Court then reviewed the issue of whether the assault was reasonably foreseeable. In doing so, the Court relied on the *Sanchez* decision (as did the trial court in *Jose Perez v. State of New York*, discussed in the preceding article). To this analysis the *R.S.* Court added, "Foreseeability is defined in terms of both actual and constructive notice, that is, anything the State was aware of or should have been aware of. "Constructive notice," the Court continued, citing *McDevitt v. State of New York*, 197 A.D.3d 852 (4th Dep't 2021), "includes whatever information the State reasonably should have known from its knowledge of the risks to the class of incarcerated individuals based on its institutional expertise, its prior experience, and its policies and practices."

The Court then turned to the facts of the case. At the time of the assault, Claimant was assigned to Clinton C.F. where she lived in a general population dorm consisting of cubes separated by four-foot high wall dividers. No one is locked into their cube; they all have complete access to the sleeping areas used by other individuals in the dorm.

There is one officer assigned to the unit. The officer's station is immediately outside the dorm. In response to R.S.'s general safety concerns, she was in the cube closest to the officer, which is 10 feet from the officer's station and from which she can be observed by the officer. The cube nearest the officer's assigned location is known as the PREA (Prison Rape Elimination Act) cube. Claimant was assaulted when another incarcerated individual who lived in the dorm exited his cube, crawled into hers, held an object to her throat and demanded that she engage in oral sex.

The trial court found that at the time of the assault, the officer assigned to the dorm was asleep and was therefore unable to perform his duties. Defendant knew the Claimant was in a class of individuals at risk of sexual assault, as Claimant's undisputed testimony was that she was classified by DOCCS as high-risk security level after she submitted DOCCS sexual assault risk screening form in 2009.

Here, the Appellate Court concluded, there was a preponderance of evidence that the Defendant was aware that the Claimant was at risk of sexual assault through its own sexual victimization risks screening procedures and its

placement of her in the dorm's PREA cube. The designation of a specific cube as the PREA Cube, and its placement in close proximity to the officer in charge of the unit is a **tacit** (unspoken) acknowledgement incarcerated individuals who are assigned to such cubes must have more protection at night. "A sleeping [correction officer] negates this added protection at this critical time." Here, the Court concluded, "the slumbering CO breached [the] critical duty to protect claimant's safety."

Finally, the Court added, while "defendant is not an insurer of an incarcerated individual's safety, at a minimum it is reasonable to expect that in the course of their employment correction officers will be **sentient** [awake and conscious] in order to protect those who are vulnerable to sexual victimization."

The Court found the Defendant's "utter absence of surveillance" allowed the assault to occur thus rendering the State liable. Based on this analysis, the Court concluded that judgment should have been entered in favor of the claimant and remitted the case to the trial court to assess damages.

For information about drafting and filing Claims in the New York Court of Claims or to help you determine whether you have a failure to protect claim, 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/or "Failure to Protect."

Philip Hines, Held & Hines, LLP, represented R.S. in this appeal of a Court of Claims decision.

Court Requests Evidence On the Basis for SHU Confinement

On October 10, 2023, Orlando Alvarez left his cell at Eastern C.F. to go to his work program. While Mr. Alvarez was out of his cell, an unidentified officer making rounds on the gallery saw an icepick type weapon **protruding** (sticking up) from the bottom of the door frame of his cell. Officers escorted Mr. Alvarez from his work program – where he had been since he left his cell that morning – to SHU.

Mr. Alvarez was then charged with possessing a weapon, possessing an altered item, and possessing contraband. After the hearing had been commenced, adjourned and reconvened, on October 25, the charges were dismissed. As a result of the charges, Mr. Alvarez was in SHU from October 10 through October 25.

Mr. Alvarez then filed a claim alleging that he had been wrongfully and intentionally placed in SHU for 16 days in violation of his due process rights and DOCCS' own rules and regulations. In *Orlando Alvarez v. State of New York*, 2024 WL 4439478 (Ct. Clms. Sept. 20, 2024), the Court considered Mr. Alvarez's (the Claimant's) motion for summary judgment on liability and the Defendant's motion to dismiss.

In support of his motion, the Claimant's submissions included a copy of the Misbehavior Report, the Disposition Rendered and the SHU Custody Review. He also submitted his hearing testimony. Having reviewed these materials, the Court noted that the Hearing Officer's determination was based on the testimony of Officer Tullimero,

who escorted the Claimant from his cell to his work program, and the testimony of Officer Van Norman that he had observed the weapon "in plain [sight]" at 9:45. Officer Tullimero testified that if the weapon had been visible when he released the Claimant from his cell, he (the officer) "absolutely" would have seen it, and that the cell had been searched prior to the incident. The Hearing Officer therefore concluded that the weapon had been placed in the door frame by someone other than the Claimant, after the Claimant had left the cell.

The Defendant argued that the claim failed to state a cause of action in that the Claimant's SHU confinement was privileged because:

- The confinement was not in violation of any DOCCS rules, or regulations;
- The confinement did not violate the Claimant's due process rights; and
- The confinement involved discretionary acts of a quasi-judicial nature for which the state is accorded absolute immunity.

The Claimant argued that the motion to dismiss should be denied because the SHU confinement violated the Claimant's due process rights, DOCCS own rules and regulations and the HALT Act. According to the Claimant, where an incarcerated individual is in pre-hearing confinement, the hearing must be commenced within five days and completed within 15 days of the day upon which the individual is placed in SHU.

The Court's Analysis

The Court began its analysis by noting that summary judgment should only be granted when there are no issues of material fact and the moving party shows that they are entitled to judgment as a matter of law. In this case, the Court continued, the facts supporting the claim are uncontested; the critical issue is whether these facts establish a basis for the Court to find that the State is liable as a matter of law. Here, the Court concluded, to succeed, the Claimant must establish that the State either violated DOCCS rules or regulations or violated the Claimant's due process rights.

DOCCS Rules

Correction Law §137(6)(h) provides that with the exception of individuals suffering from serious mental health issues, "[n]o person may be placed in segregated confinement for longer than necessary and no more than fifteen days." Further, the statute continues, where a hearing does not occur prior to placement in segregated confinement," it shall occur as soon as reasonably practicable and at most within five days of placement unless the charged person seeks a postponement . . ." *See*, Correction Law §137(6)(l).

Applying the Rules to the Facts

The Court found that Claimant's confinement to SHU on October 10, the day the Misbehavior Report was written, was "in accordance with DOCCS rules and regulations." Thus, between October 10 and October 12 – the day the hearing commenced – the SHU confinement was in accordance with DOCCS regulations. However, the Court continued, by the end of the first session of the hearing, the two officers whose testimony was discussed above had testified and the Hearing Officer had the information upon which he ultimately relied in dismissing the charges. Nonetheless, the Hearing Officer adjourned the hearing rather than dismissing it on October 12. As a result of the adjournment, the Claimant was held in segregated confinement until the hearing resumed on October 25.

With respect to the period October 12 through October 25, the Court concluded that the record did not have any evidence showing the basis for the adjournment. Without that information, the Court could not determine whether the adjournment resulting in an additional 13 days of segregated confinement was authorized by DOCCS rules.
If the Claimant requested the adjournment, the law permits the additional confinement in SHU. Due to the absence of evidence on this issue, the Court granted the Defendant's motion to dismiss as to the period October 10 through October 12 and denied the motion as to the period October 12 through 25.

The Court also denied the Claimant's motion for summary judgment. The Court asked the parties to address the legal and factual issues relating to the Claimant's continued confinement in SHU from October 12 through October 25.

For information about drafting and filing Section 1983 actions or to help you determine in which court you want to decide your legal claim, write to the PLS office that provides legal services to individuals incarcerated at the prison from which you are writing and request the memos: "Section 1983 Civil Rights Actions" and/or "Court Systems in NYS: Choosing the Proper Court."

Orlando Alvarez represented himself in this Court of Claims action.

IMMIGRATION MATTERS

Nicholas Phillips

This column focuses on *Farhane v. United States*, 121 F4th 353 (2d Cir. 2024), a precedential decision issued by the Second Circuit Court of Appeals. *Farhane* was decided *en banc*, which means that the case was heard by all of the Second Circuit judges instead of a three-judge panel. Pursuant to the Second Circuit's local rules, *en banc* decisions can be issued in only two circumstances: first, where a three-judge panel's decision conflicts with prior Second Circuit or Supreme Court precedent; and second, where the case involves one or more questions of "exceptional importance." *See* 2d Cir. L.R. 35(a), (b).

Farhane concerns an application of the Supreme Court's seminal decision in *Padilla v. Kentucky*, 559 U.S. 356 2010). In *Padilla*, the Supreme Court held that the Sixth Amendment of the United States Constitution requires criminal defense counsel to advise his or her client of a risk of deportation associated with a guilty plea to a criminal offense. This is so because the Sixth Amendment guarantees that a defendant receive "the effective assistance of competent counsel" before deciding whether to plead guilty. *McMann v. Richardson*, 397 U.S. 759, 771 (1970). Applying that rule to the immigration consequences of a conviction makes sense, reasoned the *Padilla* Court, because "deportation is a particularly severe penalty" which is "intimately related to the criminal process" given that "[o]ur law has enmeshed criminal convictions and the penalty of deportation for nearly a century[.]" *Padilla*, 559 U.S. at 365

(internal quotation marks and citation omitted).

Under *Padilla*, then, defendants who received the ineffective assistance of counsel with respect to the immigration consequences of their guilty plea could now seek to vacate their criminal judgments. To show that vacatur was warranted, a defendant must show:

(1) that counsel's representation fell below an objective standard of reasonableness, and

(2) that the defendant suffered prejudice from counsel's deficient representation, i.e., that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1988).

Farhane concerns an unusual scenario which arises from the criminal proceedings of Abderrahmane Farhane ("Mr. Farhane"). Mr. Farhane immigrated to the United States from Morocco in 1995. He, his wife, and their four children settled in Brooklyn, where Mr. Farhane ran a small bookstore. In March 2001, Mr. Farhane applied to become a United States citizen, a process known as naturalization.

In his naturalization application, Mr. Farhane answered "No" to a question asking, "Have you ever . . . knowingly committed any crime for which you have not been arrested?" About one year later, he was given a naturalization interview during which he was asked the same question and again answered in the negative. Then, on April 19, 2002, he was given the oath of citizenship, during which he attested to the truth of his application.

In 2005, however, Mr. Farhane was indicted in federal court of conspiring to provide material support for terrorism and of making false statements to law enforcement officers. On November 9, 2006, after extensive pre-trial proceedings, Mr. Farhane took the advice of his counsel and pleaded guilty to one count of conspiracy to commit money laundering, *see* 18 U.S.C. §371, and one count of making materially false statements involving international terrorism, *see id.* §1001(a)(2). During the plea hearing, Mr. Farhane stated amongst other things that he was guilty because he "agreed with others in the month[s] of November and December of 2001 to transfer money for mujahideen in Afghanistan and Chechnya." *Farhane*, above, 121 F.4th at 360.

Following his guilty plea, Mr. Farhane was incarcerated for eleven years. In July 2018, just over one year from his release from prison, the federal government advised him that it had begun a civil denaturalization action against him pursuant to 8 U.S.C. §1451, which allows the government to revoke a citizenship of naturalization "on the ground that such order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation[.]"

In its complaint, the government alleged that Mr. Farhane's criminal court plea admission that he committed a crime in 2001 proved that the answers he gave on his naturalization application, and during his citizenship interview, constituted a willful misrepresentation of a material fact. The government further alleged that his plea established that he could not show he had good moral character during the five-year period preceding his naturalization application, as required by federal immigration law.

Soon after the commencement of denaturalization proceedings, Mr. Farhane filed a motion pursuant to 28 U.S.C. §2255 to vacate his plea and sentence. In the motion, he averred that he would not have entered into his guilty plea if he had known he could lose his United States citizenship as a result.

The district court denied the motion on the grounds that *Padilla* was inapplicable because it dealt with deportation. On appeal, a divided three-judge panel of the Second Circuit affirmed, reasoning that civil denaturalization is a collateral and not a direct consequence of a conviction, and so the Sixth Amendment imposes no obligation on attorneys to warn of that risk. *See Farhane v. United States*, 77 F.4th 123, 126 (2d Cir. 2023).

After rehearing the case *en banc*, an eight-judge majority of the Court vacated the three-judge panel's decision and held that "criminal defense attorneys have a Sixth Amendment obligation to inquire into and advise a naturalized citizen client of any risk of deportation following denaturalization proceedings that accompany the client's guilty plea, just as they do for a deportation risk facing a noncitizen client." *Farhane*, above, 121 F.4th at 358. .

Writing for the majority, Judge Susan L. Carney first analyzed whether the Sixth Amendment applied to denaturalization proceedings, and concluded that it does for two reasons. First, while *Padilla* applied to the risk of *deportation*, Judge Carney noted that "a risk of denaturalization necessarily carries a risk of deportation" because "once his citizenship is revoked, Farhane will be subject to removal as a noncitizen convicted of an aggravated felony." *Id.* at 365. .

Second, Judge Carney rejected the district court's conclusion that denaturalization was a collateral consequence and so did not fall under the ambit of *Padilla*. To the contrary, noted Judge Carney, *Padilla* itself recognized that deportation is a "particularly severe penalty" which is "uniquely difficult to classify as either direct or collateral and thus ill-suited to categorization under the direct/collateral framework." *Id.* at *8 (internal quotation marks and citation omitted). The same applies here, reasoned Judge Carney, because denaturalization is just as severe; indeed, "[i]f Farhane loses his citizenship, he loses his home of over thirty years, his business, his life with his family; in addition, two of his children, who derived citizenship through him, stand to lose their citizenship here as well." *Id.*

Finally, Judge Carney addressed the government's argument that the court's review was precluded under *Teague v. Lane*, 489 U.S. 288 (1989). That case held that "new constitutional rules of criminal procedure will not be applicable to those cases which have become final before the new rules are announced," *id.* at 310, and since Mr. Farhane had exhausted the direct appeal of his conviction, the government argued that any new constitutional rule should not apply to his case. But the government had failed to make that argument before the district court, and so Judge Carney found that the argument had been forfeited and therefore would not be considered. The Court thus remanded the case to the district court to determine (1) whether Mr. Farhane's counsel's performance was objectively unreasonable, and (2) whether he was prejudiced by his counsel's performance.

The majority opinion drew several dissents, including a dissent authored by Judge John M. Walker, Jr. on behalf of himself and four

other judges, as well as separate dissenting opinions by Judges Michael H. Park and William J. Nardini. In all, *Farhane* represents a fascinating opinion and a notable expansion of the protections of *Padilla* into the denaturalization context.

WHAT DID YOU LEARN?

Brad Rudin

1. **The Shock program is an early release program open to incarcerated individuals who are:**
   a. classified as violent offenders and are over the age of 50.
   b. over the age of 50 and not eligible for parole or any other early release program.
   c. non-violent offenders under the age of 50 and eligible for parole within three years.
   d. eligible for parole irrespective of their age or status as a violent offender.

2. **As a result of the Drug Law Reform Act of 2009, DOCCS must:**
   a. exclude from Shock those incarcerated individuals who suffer from medical or mental health issues.
   b. create a Shock program open to incarcerated individuals who are classified as violent offenders.
   c. establish a Shock program open to incarcerated individuals who are otherwise ineligible for early release because of their status as violent offenders.
   d. create a Shock alternative for court-ordered Shock participants who have medical or mental health conditions.

3. **As a result of the case known as *Latoya Raymond v. New York State Department of Corrections and Community Supervision*, DOCCS changed Directive 0086 so that incarcerated individuals would be eligible for an early release program if they are classified as:**
   a. OMH service level 3.
   b. an OMH patient regardless of their service level.
   c. a violent offender participating in any OMH program.
   d. a person who has declined any mental health treatment.

4. **The Court in the *Latoya Raymond* case found that DOCCS had violated the Americans With Disabilities Act and the Rehabilitation Act by:**
   a. refusing to acknowledge the application of these laws to DOCCS facilities.
   b. failing to conduct an individualized inquiry as to whether accommodation could be made for incarcerated individuals with a disability.
   c. conducting an individualized inquiry about accommodation for certain disabilities but failing to find that any incarcerated individual in this category could participate in an early release program.
   d. denying an accommodation claim made by any person who had a history of treatment by OMH.

5. **Which is a correct statement concerning the new DOCCS policy with respect to eligibility for participation in the Shock program?**
   a. All otherwise eligible individuals who suffer from medical or mental health disabilities will be offered an Alternative Shock program.
   b. No incarcerated person suffering from a medical or mental health disability will be considered for an Alternative Shock program if classified as a violent offender.
   c. OMH is authorized to veto placement in an Alternative Shock program for any incarcerated person who needs, but declines, treatment.
   d. Early release is not an option for incarcerated individuals who are eligible for parole.

6. **The case of *Wonder Williams v. James O'Gorman* is noteworthy because it is believed to be the first case in which a jury found that:**
   a. compensatory damages should be imposed in any case involving segregated confinement.
   b. long-term Ad Seg confinement constituted an Eighth Amendment violation.
   c. DOCCS defendants should be immune from compensatory or punitive damages.
   d. an incarcerated individual in Ad Seg should be sanctioned for filing a frivolous lawsuit.

7. **In *Jesus Fuentes v. State of New York*, the Court of Claims found that the state had failed to:**
   a. establish the falsity of the claims made by Mr. Fuentes.
   b. contradict Mr. Fuentes' claim that DOCCS had been negligent in handing his property.
   c. show that dismissal of the claim was warranted on exhaustion grounds.
   d. establish the unconstitutionality of Directive 2733 or the relevance of 7 NYCRR Part 1700 as to an action filed in the Court of Claims.

8. **In the *Jesus Fuentes* case, the Court noted that to satisfy the exhaustion requirement for a property claim, the claimant must:**
   a. file a timely Notice of Claim with the clerk of the Court.
   b. notify DOCCS by mail about the loss of property and efforts made to locate the lost property.
   c. file an administrative appeal with a copy to the Court.
   d. submit the claim administratively and, if denied, file an administrative appeal.

9. **In *Jason Johnson v. State of New York*, the Court pointed out that a Notice of Intention to File a Claim:**
   a. never substitutes as a Claim.
   b. always substitutes as a Claim.
   c. substitutes as a Claim if the Court of Appeals grants permission at the time the Notice is filed and served on the Attorney General.
   d. substitutes as a Claim if it provides the State with enough information for it to assert a defense.

***10. Sanchez v. State of New York* holds that the State's duty of care extends to those risks that the State:**

a. knew or should have known about.
b. actually knew about.
c. knew about where knowledge is proven beyond a reasonable doubt.
d. might have known about if alerted to the risk by the claimant.

ANSWERS

1. c
2. d
3. a
4. b
5. a
6. b
7. c
8. d
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 • Greene • Hale Creek • Hudson • Marcy • Mid-State • Mohawk Otisville • Queensboro • Riverview • Shawangunk • 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.
COPY EDITING AND PRODUCTION: ALETA ALBERT