

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT

Matter of Edmonson v. Annucci

2021 NY Slip Op 06122 (N.Y. Ct. App. 2021) · No. 531563 · Decided November 10, 2021

SUMMARY

The Appellate Division, Third Department affirmed dismissal of a CPLR article 78 proceeding challenging the denial of an incarcerated person's application to participate in New York's Family Reunion Program. The court held that the denial was rationally based on the seriousness of the petitioner's crimes, extensive disciplinary history, and other factors, and upheld the requirement that he remain free of disciplinary infractions for two years before reapplying.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Clark, J.P.; Aarons, J.; Pritzker, J.; Reynolds Fitzgerald, J.; Colangelo, J.
JURISDICTION	New York
DECIDED	November 10, 2021
DOCKET	531563
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment of Supreme Court, Albany County, dismissing a CPLR article 78 petition challenging the denial of an incarcerated person's application to participate in the Family Reunion Program.
STANDARD OF REVIEW	Whether the administrative determination had a rational basis and was not arbitrary, capricious, unreasonable, or impermissible.
PRECEDENTIAL VALUE	Published opinion; precedential value under New York appellate practice.
PARTIES	Samuel Edmonson v. Anthony J. Annucci, as Acting Commissioner of Corrections and Community Supervision, et al.

TOPICS

judicial review of agency action

agency adjudication

administrative law

civil procedure

PRACTICE AREAS

administrative law

corrections law

civil procedure

QUESTIONS PRESENTED

1. Whether the denial of Edmonson's application to participate in the Family Reunion Program had a rational basis.
2. Whether the agency properly considered Edmonson's serious criminal history, extensive disciplinary record, and recent marriage in denying the application.
3. Whether the condition requiring Edmonson to remain free of disciplinary infractions for two years before reapplying was unreasonable or impermissible.

HOLDINGS

1. Participation in the Family Reunion Program is a privilege rather than a right, and the discretionary decision to deny participation will be upheld if it has a rational basis.
2. Prior participation in the Family Reunion Program does not guarantee approval of a later application because each application is subject to a new discretionary review.
3. The Director had a rational basis to deny the application based on Edmonson's violent criminal history, extensive and poor disciplinary record, and other relevant factors, including the recency of his marriage.
4. The condition that Edmonson remain free of disciplinary infractions for two years before reapplying was not unreasonable or impermissible.

KEY QUOTATIONS

*“Participation in the [FRP] is a privilege and not a right, and the decision whether an inmate may participate is heavily discretionary and, as such, will be upheld if it has a rational basis” (*1)*

*“prior participation in the [FRP] does not guarantee that a future application will be approved . . . as each application is subjected to a new discretionary review” (*1)*

*“a pattern of institutional adjustment” (*2)*

FACTUAL BACKGROUND

Edmonson was serving an aggregate sentence of 75 years to life for convictions arising from crimes committed while he was on parole. In 2019, he applied to participate in the Family Reunion Program with his spouse, whom he married in 2017. The application was denied after special review based on the seriousness of his crimes, including his involvement in a violent narcotics enterprise, and his extensive disciplinary record, which included 21 tier III and nine tier II violations, assaults, weapon possession, drug offenses, and violent conduct.

PROCEDURAL HISTORY

Edmonson applied to participate in the Family Reunion Program with his spouse. The Director of Ministerial, Family and Volunteer Services denied the application after special review based principally on Edmonson's serious criminal history and extensive disciplinary record, and Supreme Court dismissed his article 78 petition after finding a rational basis for the denial. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Edmonson, 300 AD2d 317 (2002), lv denied 99 NY2d 614 (2003)
- Matter of Stevenson v. Smith, 175 AD3d 1680, 1681 (2019), appeal dismissed and lv denied 34 NY3d 1198 (2020)
- Matter of Marshall v. New York State Dept. of Corr. & Community Supervision, 167 AD3d 1115, 1116 (2018), lv denied 33 NY3d 901 (2019)
- Matter of Loucks v. Annucci, 175 AD3d 775, 776-777 (2019)
- Matter of Gordon v. Morris, 144 AD3d 1338, 1339 (2016), lv denied 28 NY3d 914 (2017)
- Matter of Campbell v. Morris, 139 AD3d 1278, 1279 (2016)
- Matter of Shapard v. Annucci, 177 AD3d 1048, 1051 (2019)

OPINION

PER CURIAM.

Matter of Edmonson v Annucci (2021 NY Slip Op 06122) Matter of Edmonson v Annucci 2021 NY Slip Op 06122 Decided on November 10, 2021 Appellate Division, Third Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: November 10, 2021 531563 [*1] In the Matter of Samuel Edmonson, Appellant, v Anthony J. Annucci, as Acting Commissioner of Corrections and Community Supervision, et al., Respondents.

Calendar Date: October 8, 2021 Before: Clark, J.P., Aarons, Pritzker, Reynolds Fitzgerald and Colangelo, JJ. Samuel Edmonson, Dannemora, appellant pro se. Letitia James, Attorney General, Albany (Allyson B. Levine of counsel), for respondents. Appeal from a judgment of the Supreme Court (Kowee, J.), entered July 10, 2020 in Albany County, which dismissed petitioner's application, in a proceeding pursuant to CPLR article 78, to review a determination of respondent Director of Ministerial, Family and Volunteer Services denying petitioner's request to participate in the family reunion program.

Petitioner is serving an aggregate prison sentence of 75 years to life upon his 1990 convictions for murder in the second degree, attempted murder in the second degree, enterprise corruption and a

weapon offense (*People v Edmonson*, 300 AD2d 317 [2002], lv denied 99 NY2d 614 [2003]). Those crimes were committed between 1987 and 1989 while petitioner was on parole for a burglary and a sex offense.

In 2019, petitioner applied to participate in the family reunion program (hereinafter FRP) with his spouse, whom he married in 2017. Petitioner's application was subject to special review and was forwarded to the Central Office (see 7 NYCRR 220.4 [c] [1]), which denied the application based upon his criminal history and extensive disciplinary record. Upon administrative appeal, after further special review, respondent Acting Director of Ministerial, Family and Volunteer Services (hereinafter the Director) denied the application.

The Director acknowledged that petitioner had completed therapeutic programming and previously participated in the FRP with a former wife, but upheld the denial of his application based upon, among other factors, the serious nature of his crimes and his poor disciplinary record, which included guilty findings in 21 tier III offenses and nine tier II offenses.

Petitioner commenced this CPLR article 78 proceeding challenging the denial of his application. Supreme Court dismissed the petition, finding that there was a rational basis for the denial of the application, and petitioner appeals.[FN1] We affirm. "Participation in the [FRP] is a privilege and not a right, and the decision whether an inmate may participate is heavily discretionary and, as such, will be upheld if it has a rational basis" (*Matter of Stevenson v Smith*, 175 AD3d 1680, 1681 [2019] [internal quotation marks, brackets and citations omitted], appeal dismissed and lv denied 34 NY3d 1198 [2020]).

Moreover, "prior participation in the [FRP] does not guarantee that a future application will be approved... as each application is subjected to a new discretionary review" (*Matter of Marshall v New York State Dept. of Corr. & Community Supervision*, 167 AD3d 1115, 1116 [2018] [internal quotation marks and citations omitted], lv denied 33 NY3d 901 [2019]).

In denying petitioner's application, the Director conducted a special review in accordance with the governing regulations and the FRP directive, and properly considered the seriousness of petitioner's crimes, noting that he "ran an illegal narcotics enterprise that used violence and murder to maintain the sale of crack-cocaine" (see 7 NYCRR 220.4 [c] [1]; Dept of [*2]Corr & Community Supervision Directive No. 4500 [IV] [c]; *Matter of Loucks v Annucci*, 175 AD3d 775, 776-777 [2019]; *Matter of Gordon v Morris*, 144 AD3d 1338, 1339 [2016], lv denied 28 NY3d 914 [2017]).

In addition, the Director rightfully considered petitioner's significant and poor disciplinary record, which included assaults on staff and an incarcerated individual, weapon possession, lewd conduct, drug use and possession, fighting and violent conduct, and rationally concluded that such

behaviors put at risk the safety of other incarcerated individuals, staff and visitors (see 7 NYCRR 220.4 [a] [2]).

Contrary to petitioner's argument, the recency of his marriage, 27 years into his prison term, was properly taken into account, "as it did not further the program goal of preserving, enhancing and strengthening family ties that have been disrupted due to incarceration" (Matter of Gordon v Morris, 144 AD3d at 1339, citing Dept of Corr & Community Supervision Directive No. 4500 § I; see 7 NYCRR 220.1; Matter of Campbell v Morris, 139 AD3d 1278, 1279 [2016]).

Accordingly, reliance on petitioner's violent criminal history and extensive disciplinary history, among other factors, provides a rational basis to deny his application (see Matter of Shapard v Annucci, 177 AD3d 1048, 1051 [2019]; Matter of Stevenson v Smith, 175 AD3d at 1681).

We likewise discern nothing unreasonable or impermissible in the condition that he remain free of disciplinary infractions for two years before reapplying, to demonstrate "a pattern of institutional adjustment" (7 NYCRR 220.4 [a] [2]).^[FN2] We have considered petitioner's remaining contentions, to the extent that they are preserved for our review, and find that none has merit.

Clark, J.P., Aarons, Pritzker, Reynolds Fitzgerald and Colangelo, JJ., concur. ORDERED that the judgment is affirmed, without costs. Footnotes Footnote 1: Although the Director's decision permitted petitioner to reapply to the FRP after May 13, 2021, the Attorney General has advised that petitioner has not applied. Footnote 2: We note that, subsequent to the determination here, a rule was adopted providing that, where incarcerated individuals are denied participation in the FRP, they may not reapply "for a minimum period of two years" (7 NYCRR 220.2 [eff.

Aug. 4, 2021]).