Pro Se

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Excessive Confinement Claim Survives Defendants' Summary Judgment Motion

In September 2006, the County Court of Wyoming County imposed an indeterminate sentence of 1½ to 3 years on Bryan Francis. The court ordered the sentence to run concurrently with a federal sentence that had not yet been imposed. In November 2006, the federal court imposed a sentence of 10 years and 5 years supervised release. Had the sentences been calculated as running concurrently, the state sentence would have merged with the federal sentence and the terms of the federal sentence would have controlled the duration of Mr. Francis's confinement. It is clear that this was the state court's intent; given the length of the federal sentence, a shorter state sentence running concurrently to the federal sentence would have had no effect on Mr. Francis's maximum expiration date.

DOCCS, however, took the position that the state court could not impose a sentence to run concurrently with a federal sentence that had not been imposed at the time that the state court judge imposed the state sentence. For this reason, the Department concluded, the state sentence was necessarily consecutive, to be served after completion of the federal sentence. To effectuate that result, after Mr. Francis was placed in federal custody, DOCCS lodged a detainer with the federal facility. The detainer prevented Mr. Francis from being released to a halfway house at the completion of his federal term and created the conditions that would lead to Mr. Francis's transfer from federal custody to state custody when his federal term of incarceration ended.

In September 2012, the federal term of incarceration ended and DOCCS caused Mr. Francis to be transferred to the custody of New York State and required that he begin to serve the

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CLASS ACTION LAWSUIT FILED AGAINST NYS PAROLE BOARD

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

On March 20, 2018, a ground breaking lawsuit was filed alleging that the New York State parole board is violating the constitutional rights of hundreds of incarcerated individuals who are in prison for crimes they committed as teenagers. Filed in the Southern District of New York, *Flores, et al. v. Stanford, et al.,* seeks class-action status and alleges that the parole board's repeated denials of release to parole supervision, in cases where the accused were sentenced as adolescents, violates the constitutional rights of people who were juveniles when they committed the offense that led to their incarceration. An article in the May 14, 2018 issue of the Village Voice states that "approximately 630 people in New York State are currently serving life sentences for crimes they committed between the ages of 13 and 17." The lawsuit asserts that many of these individuals, while technically eligible for parole, are effectively serving life sentences because the parole board routinely denies them parole. This is problematic, lawyers for the plaintiffs argue, because in a series of decisions issued between 2012 and 2016, the U.S. Supreme Court ruled that it was unconstitutional to sentence a child to life without parole unless the child has exhibited such irretrievable depravity that rehabilitation would be impossible.

In 2012, PLS settled the *Cookhorne v. Fischer* lawsuit. In *Cookhorne,* we argued that it was unconstitutional to place a person under the age of 18 in long term solitary confinement. In making this argument, we relied on the U.S. Supreme Court's decisions in *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 567 U.S. 460 (2012). These decisions mandate that adolescent offenders be treated differently than adult offenders. The decisions in these cases relied on scientific research specifically relating to brain science to find that adolescents cannot be held to the same level of culpability as fully grown adults because they do not act with the same level of maturity, responsibility or impulse control as adults.

In *Roper*, the Court held that adolescents under the age of eighteen at the time of their crimes are categorically prohibited from receiving the death penalty. *Roper,* 543 U.S. at 570-75. In *Graham*, the Court expanded this categorical rule to prohibit sentencing juveniles to life without parole for non-homicide offenses. *Graham*, 560 U.S. at 74. In *Miller*, the Court further affirmed its position on the mitigating force of youth, holding that mandatory life imprisonment without the possibility of parole for juveniles convicted of homicide offenses violates the Eighth Amendment's prohibition on cruel and unusual punishment. *Miller,* 567 U.S. at 479.

Since the decisions in *Graham*, *Miller* and *Roper*, a New York State Appellate Division has weighed in on the issue of whether, when a person who committed his or her offense when s/he was an adolescent, should get special consideration when s/he goes before the parole board. In *Matter of Hawkins v. NYS DOCCS,* 30 N.Y.S.3d 397 (3d Dep't 2016), the court recognized that "as a person serving a sentence for a crime committed as a juvenile, petitioner had a substantive

constitutional right not to be punished with a life sentence if the crime reflected transient immaturity." The court went on to hold that "for those persons – like petitioner – convicted of crimes committed as juveniles who but for a favorable parole determination will be punished by life in prison, the parole board must provide a meaningful opportunity for release by considering youth and its attendant characteristics in relationship to the commission of the crime at issue before making a parole determination."

In support of its allegation against the parole board, *Flores* relies on *Roper, Graham, Miller and Hawkins,* as well as M*ontgomery v. Louisiana*, 136 S.Ct. 718 (2016) – a more recent Supreme Court case holding that the *Miller* decision is retroactive – which also relied on brain research to find that adolescent brains are not fully developed, specifically with respect to impulse control, future planning and risk avoidance.

While there is no guarantee that the *Flores* lawsuit will be successful, there is strong case law support for the proposition that adolescents must be treated differently than adults, not only because lack of full brain development impacts culpability, but because that same characteristic also enhances a juvenile's ability to rehabilitate. *Roper*, 543 U.S. at 570. In fact, a juvenile's capacity to change is exactly why the courts have found that rehabilitation should be the primary goal of punishment for minors. *Graham*, 560 U.S. at 74.

The Supreme Court paved the way for the settlement in the *Cookhorne* case, a case that dramatically improved the way adolescents are treated in New York State prisons. I am hopeful that the same will be true for the *Flores* case. In light of the impact this case could have on hundreds of incarcerated New Yorkers, we will be following this case closely and will keep you apprised of any significant developments.

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New York State sentence. When the sentencing court was informed that Mr. Francis was being required to serve additional time in state prison for the sentence it had imposed to run concurrently to the federal sentence, the state court amended its sentence to effectuate its intent that Mr. Francis serve no time beyond that imposed by the federal court. As a result, in July 2013, plaintiff was released from prison.

Section 1983 Action Related to Claims of Excessive Confinement

After his release from prison, Mr. Francis brought a §1983 action seeking damages for unconstitutional confinement beyond the expiration date of the properly computed New York State and federal sentences. Among other claims, his complaint alleged that by failing to compute his state and federal sentences as running concurrently, the defendants violated his 14th Amendment right not to be deprived of liberty without due process of law and his 8th Amendment right to be free from cruel and unusual punishment.

Motion to Dismiss for Failure to State a Claim

The defendants first moved to dismiss the complaint for failure to state a claim for violation of the plaintiff's right to due process of law. This is known as a [Federal Rules of Civil Procedure] 12(b)(6) motion. To win such a motion, the

defendants must convince the court that even if the plaintiff can prove the facts alleged in his complaint, those facts would not establish a violation of the plaintiff's right to due process of law. In 2016, in *Francis v. Fiacco*, 2016 WL 3448617, at *10-11 (N.D.N.Y. June 20, 2016), the district court made short shrift of this argument.

In order to state a valid Section 1983 claim for violating the due process clause of the 14th Amendment, a plaintiff must allege he or she was deprived of life, liberty, or property without due process of law. In this case, the court had to determine 1) whether the plaintiff had a protected liberty interest in being released from custody at the end of his term of imprisonment, and, 2) whether the deprivation of that liberty interest occurred without due process of law. With respect to the first issue, the court, citing *Calhoun v. New York State Div. of Parole Officers*, 999 F.2d 647, 653 (2d Cir. 1993), found that the plaintiff had a liberty interest in being released upon the expiration of his maximum term of imprisonment.

The court then turned to the second issue: did the defendants provide the plaintiff with due process before depriving him of his liberty interest when they, without affording plaintiff an opportunity to be heard, issued a detainer preventing plaintiff's state sentence from being served concurrently with his federal sentence and, in turn, preventing his release upon expiration of his sentence. Relying on *Earley v. Murray*, 451 F.3d 71, 75 (2d Cir. 2006), the court rejected the defendants' argument that state law prohibited the two sentences from being served concurrently. As the Second Circuit wrote in *Earley*, the only cognizable sentence is the one imposed by the judge. Any alteration to that sentence, unless made by a judge in a subsequent proceeding, is of no effect. The *Earley* court then rejected the argument, also advanced by the defendants in *Francis*, that sentence terms are controlled by operation of New York law, finding that although a judge might impose a sentence that is other than the sentence mandated by state law, the sentence so imposed remains the sentence to be served unless it is lawfully modified. Thus, the *Francis* court held, if the defendants thought that the state sentence was unlawful, they could move to have it vacated and the plaintiff resentenced. They could not however, "correct" the sentence imposed by the court. Based on this analysis, the court found that the plaintiff had stated a claim for a violation of the Due Process Clause of the Fourteenth Amendment.

Defendants' Motion for Summary Judgment

The defendants then moved for summary judgment. To win a motion for summary judgment, the moving party must show that there are no disputed issues of material fact and that applying the law to the undisputed facts, the moving party is entitled to judgment in its favor. The primary difference between a motion to dismiss and a motion for summary judgment is that the motion to dismiss asserts that the allegations in the complaint, even if proven, would not be sufficient to establish the violation of a constitutional right. A motion for summary judgment is based on the actual evidence – as opposed to allegations. The moving party asserts that the facts upon which the parties agree, as supported by the evidence submitted with the motion, show that party making the motion is entitled to judgment in its favor.

Using the 14th Amendment analysis that it used in its 2016 decision, the court concluded – and the defendants agreed – that the plaintiff had a constitutional right to release at the expiration of his maximum term. Thus the only question before the court was whether the defendants deprived the plaintiff of his 14th Amendment right to liberty *without due process of law*.

Where an individual has been deprived of a liberty interest as a result of an agency's established procedures, the court uses the analysis set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), to determine whether there was adequate process before the defendants deprived the plaintiff of his or her liberty. The defendants argued that the plaintiff could have sought relief via a state court Article 70 or Article 78 action and thus there was a process available to him to prevent the wrongful denial before he had actually begun the wrongful confinement.

Under *Mathews v. Eldridge*, the factors to be considered in determining whether the plaintiff

received adequate process prior to the deprivation are as follows:

1. The private interest affected by the official action;

2. The risk of an erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards; and

3. The government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.

The court found that the plaintiff's interest – release from prison on his actual maximum expiration date – is at the core of the interests protected by the due process clause. This factor, the court found, weighed heavily in the plaintiff's favor.

Turning to the second factor, the court found that the risk of erroneous deprivation of the plaintiff's liberty interest – his right to a timely release from prison – also weighed in the plaintiff's favor. The only sentence that a defendant must serve is the sentence that the court actually imposed. Here that was a sentence of 1 to 3 years, to be served concurrently with a 10 year federal determinate term. "While it might be true," the court wrote, "that plaintiff could have challenged the manner in which the defendants chose to compute that sentence through an Article 78 or Article 70, the availability of those options does not resolve the question of whether the process the plaintiff received was adequate. The basis for this conclusion was that the plaintiff sought the counsel of the state court sentencing judge and of personnel in the Sentencing Review Unit of DOCCS Counsel's Office and filed a 440.20 motion to set aside the state sentence. None of these efforts bore fruit. Even though he could have filed an Article 70 or 78 action to remedy the problem, the court wrote, he was provided with conflicting instructions and repeatedly told that he could not seek the relief he needed until he was returned to state custody. Thus, the court held, it was clear that the procedures used created a risk of erroneous deprivations of liberty and that additional or alternative procedural safeguards would be of considerable value.

With respect to the third factor, the court found that additional or substitute procedural requirements would not be substantial: when inmates are admitted to DOCCS custody, the personnel who now review their sentencing information would need to be instructed that the oral sentence imposed by the court is the only sentence recognized by law, regardless of whether the personnel believe that the sentencing court had the authority to impose that sentence.

Based on this analysis, the court denied the defendants' motion for summary judgment and found that the defendants were not entitled to summary judgment with respect to plaintiff's 14th Amendment procedural due process claim. *Francis v. Fiacco*, 2018 WL 1384499 (N.D.N.Y. Mar. 16, 2018).

8th Amendment Claim

The plaintiff also alleged that due to the defendants' failure to compute the sentence as it was imposed by the court, in violation of his 8th Amendment right to be free from cruel and unusual punishment, he was held for 9½ months beyond his maximum expiration date. The defendants argue that even if their understanding of the law was incorrect, this misunderstanding is insufficient to show deliberate indifference. The plaintiff argues that liability is established by his showing that the defendants continued to rely on policies and procedures to change his concurrent sentences into consecutives sentences despite court decisions that such policies were impermissible.

Citing *Sudler v. City of New York*, 689 F.3d 159, 169, n.11 (2d Cir. 2012) and *Calhoun v. New York State Div. of Parole Officers*, 999 F.2d 647, 653 (2d Cir. 1993), the court first found that the right to be free from cruel and unusual punishment is implicated where a plaintiff is held in custody beyond his or sentence. The court then turned to the second issue: whether the defendants had shown deliberate indifference to whether Plaintiff would suffer an unjustified deprivation of his liberty. There are two prongs to this issue:

1. Objectively speaking, was the alleged deprivation sufficiently serious?

2. Did the defendant act with a sufficiently culpable state of mind?

With respect to the first prong, the court found that 9½ months of excess confinement was sufficiently serious.

With respect to the second prong, the court noted that to have a sufficiently culpable state of mind, the defendant must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists and he or she must draw that inference. Here, the court found that the evidence showed that the plaintiff had repeatedly drawn the defendants' attention to the fact that he was likely to be held past his maximum expiration date because of the defendants' interpretation of the NYS law and contrary to the express terms of the sentence imposed by the state court, which, is the only sentence recognized by the law. Further, the court noted, New York State has a statutory mechanism through which DOCCS can bring to the attention of a state court if they have reason to believe that a sentence is imposed in violation of the law; inexplicably, the defendants in this case failed to take such action despite the plaintiff's persistent efforts to motivate them to do so. Based on these findings, the court concluded that the defendants were not entitled to summary judgment on the plaintiff's 8th Amendment claim.

Appeal

On April 10, 2018, the defendants filed an appeal of the district court's decision in the Second Circuit Court of Appeals.

William Ryan, Jr, of Tabner, Ryan & Keniry, LLP, represented Bryan Francis in this Section 1983 action.

News and Notes

Governor Restores Voting Rights to Parolees!

On April 18, 2018, Governor Cuomo issued an Executive Order conditionally restoring the voting rights of parolees. The order was effective immediately and applied to everyone who is currently on parole or post-release supervision as well as people who are released to parole or post-release supervision after April 18. The order requires DOCCS to forward to the Governor the names of people on parole or post-release supervision as of the date of the order and, as they are released, the names of all individuals who are released to parole or post-release supervision after the date of signing. The governor's office will then consider each of these individuals for a conditional pardon only for the purpose of restoring voting rights. **The "pardons" granted pursuant to the Executive Order only restore voting rights.** These pardons:

1. **Do not restore** the rights to receive transport or possess firearms or to hold public office;

2. **Do not** relieve people released to parole or post-release supervision their responsibilities for unpaid restitution, fines, or other financial obligations resulting from convictions; and

3. **Do not** cause the underlying conviction to be sealed.

As Pro Se was going to print, the Governor announced that on May 23, he restored the voting rights of 24,086 people under community supervision.

PRO SE VICTORIES!

People v. Shane Hyatt, **Indictment No. I-2-02017 (County Court, Franklin Co. May 17, 2017). After being indicted for promoting prison contraband in the first degree, the defendant successfully moved to dismiss the indictment due to the passage of 24 months between the alleged criminal conduct and the indictment.** The defendant alleged that the delay was excessive and violated his rights to due process of law and to a speedy trial. The People argued that the delay was not unreasonable. The People's explanation for the delay was that the District Attorney's Office was unusually busy: the office was involved in the search for an escaped prisoner and a new District Attorney was elected resulting in some staff turnover. The court noted neither of the reasons related to issues connected to the investigation of the defendant's alleged conduct or to the presentation of his case to the grand jury. The court found that the excuses were not a reasonable basis for failing to indict the case more quickly and the case itself was not of such complexity that the District Attorney needed an unusual amount of time to prepare for the grand jury presentation. Based on these circumstances, the court found that the pre-indictment delay was **protracted** (drawn out), there was no good faith excuse for the delay and that the delay worked to deny the defendant due process. For these reasons, the court dismissed the indictment.

Matter of Jessie J. Barnes v. Doe Carrigan, **Index No. 2017-175 (Sup.Ct. Franklin Co. Oct. 18, 2017). Finding that contrary to the respondent's argument, petitioner had exhausted his administrative remedies, the court denied respondents' motion to dismiss the petition.** In September 2016, petitioner made a written request to the IRC at Upstate C.F. to remove all references to the February 8, 2016 use of force from all DOCCS records. He sent a copy of this record to Acting Commissioner Annucci. The IRC denied the request, saying that she was not the custodian of those records. The petitioner appealed the denial to Acting Commissioner Annucci and to the Upstate Superintendent and Deputy Superintendent of Security. In October 2016, petitioner brought the problems that he was having getting the records corrected to the attention of the DOCCS Records Access Officer and the Department's Inspector General's Office. Not having received a response from either, in March 2017, the petitioner filed an Article 78 challenge to the Department's failure to correct its records.

In June 2017, the Records Access Officer responded that the Office of Special Investigations is not empowered to remove or correct information in an Unusual Incident Report (UIR) and advised petitioner to address his request to the Office of Special Operations. As he had already filed the Article 78 challenge, petitioner did not ask the Office of Special Operations to correct the records. The failure to do so, the respondents argued, meant that the petitioner had failed to exhaust his administrative remedies and required dismissal of the petition.

The court disagreed. It found that Part 5 of Title 7 of NYCRR controls the process of administratively challenging the accuracy of DOCCS records. This process is set in motion by making a request to the custodian of the records. Appeals of decisions by the records access officer are made to the Inspector General's Office which must respond within 30 days. The court found that the petitioner had made his request to two Records Access Officers (the IRC and a Central Office Records Access office) and that his appeal to the Inspector General's Office was not decided within 30 days. Thus, the court held, petitioner had exhausted his administrative remedies when he filed his Article 78.

Anthony Medina v. Jason J. Barrett, **Index No. 14-CV-6377 (FPG) (W.D.N.Y. March 9, 2018), ECF # 62. Claim that in order to conceal their violation of the plaintiff's 8th Amendment rights, defendants wrote a false misbehavior report alleging that they used force in response to plaintiff's failure to comply with an order to stop fighting, survives motion to dismiss.** In reaching this result, the court first looked to *Franco v. Kelly*, 854 F.2d 584 (2d Cir. 1988), which held that while prison officials have wide latitude in disciplining inmates, that latitude does not include engaging in conduct that infringes on an inmate's substantive constitutional rights. In *Franco*, the

Second Circuit ruled that filing false disciplinary charges against an inmate in retaliation for the inmate's exercise of his 1st Amendment rights to access the courts and petition for redress of grievances violated the 8th Amendment. The court also noted that in *Winston v. Coughlin*, 789 F.Supp. 118, 121 (W.D.N.Y. 1992), the court had previously held that an inmate had stated a claim under *Franco* and Section 1983 when he alleged that prison officials filed false misbehavior reports against him to conceal a violation of his Eighth Amendment rights. Thus, the court held, in this case, the plaintiff had stated a claim when he alleged that Defendant Barrett had used excessive force against him in violation of his 8th Amendment rights and that Defendants Barrett and McKeel later conspired to conceal the violation by filing false misbehavior reports against the plaintiff.

***Matter of Shane Hyatt v. D. Venettozzi*, Index No. 17-1593 (Sup. Ct. Co. of Clinton March 13, 2018). Following the filing and service of this Article 78 challenge to a Tier III hearing, the respondent administratively reversed the hearing and expunged the charges.** While the respondent reimbursed the $5.00 surcharge, petitioner had to move for reimbursement of the $15.00 filing fee and the $8.00 that he spent on copying. Notwithstanding that the action was moot as a result of the respondent having provided the petitioner with the relief that he had requested from the court, the court ordered the respondent to reimburse the petitioner for the filing fee and his copying costs.

***Pamela Smart v. Anthony Annucci*, No. 524447 (3d Dep't April 19, 2018). After the respondent agreed to administratively reverse a Tier III hearing challenging a disciplinary proceeding, and over the respondent's opposition, the court awarded Pamela Smart $186.64 in disbursements for her costs in prosecuting the case which was transferred to the Appellate Division before the respondent decided to reverse and expunge the hearing.**

DOCCS Agrees to Reverse 30 Tier III Hearings Challenged in Article 78s

Matter of Anthony Arriaga, v. Michael Capra

Matter of Moises Colon v. William Lee

Matter of Nakwon Foxworth v. Anthony Annucci

Matter of Ecson Caimite v. Anthony J. Annucci

Matter of Luis Aramas v. Donald Venettozzi

Matter of Akeem Ulmer v. Anthony J. Annucci

Matter Lindel Buggsward v. A. Rodriguez

Matter of Michael Farrell v. Anthony J. Annucci

Matter of Earl Stone v. Anthony J. Annucci

Matter of Anthony Rucano v. Anthony J. Annucci

Matter of Antwon White v. Anthony J. Annucci

Matter of Pamela A. Smart v. Anthony J. Annucci

Matter of Julio Nova v. Venettozzi

Matter of Atiq Weston v. Anthony J. Annucci

Matter of Darius Guillebeaux v. Anthony J. Annucci

Matter of Moises Colon v. Anthony J. Annucci

Matter of Edgar Ortega v. William Lee

Matter of Danny Diaz v. Donald Venettozzi

Matter of Michael H. Morgan v. Donald Venettozzi

Matter of Ladale Kennedy v. Anthony Annucci

Matter of James Brown v. Anthony J. Annucci

Matter of Rashad Maye v. Donald Venettozzi

Matter of Albert Fountain v. Anthony Annucci

Matter of Javon Gonzalez v. Michael Kirkpatrick

Matter of Richard Rivera v. William Lee

Matter of Anderson Worrell v. Donald Venettozzi

Matter of John Hogan v. Anthony Annucci

Matter of Hasim Thioubo v. Anthony J. Annucci

Matter of James Dallas v. Anthony J. Annucci

Matter of Carlton Walker v. Anthony J. Annucci

Matter of Anthony Arriaga v. Joana Otaiza

Pro Se Victories! *features summaries of successful unreported pro se litigation. In this way, we recognize the contribution of pro se litigants. We hope that this column 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

Insufficient Evidence of Smuggling and Violating Correspondence Rules

In *Matter of Smith v. Annucci*, 160 A.D.3d 651 (2d Dep't 2018), the court was called upon to decide whether the determination that the petitioner had smuggled and/or violated the rules pertaining to correspondence was supported by substantial evidence. The petitioner was the inmate facilitator for the Nation of Islam office at Green Haven. He was charged with violating correspondence rules and smuggling after a letter was found in an envelope among religious publications. The envelope was addressed to another inmate. The letter, which was addressed only to "brother," and which petitioner acknowledged having written, included inspirational religious comments.

At the hearing into the charges, a Nation of Islam chaplain acknowledged that typed notes might be sent with the other materials and that there was nothing inappropriate in the note that was the subject of the hearing. A second Nation of Islam chaplain testified that he relied on the petitioner to respond to inmate requests for reading materials and that petitioner would include inspirational messages with the other materials. The officer who wrote the misbehavior report was not able to identify the portion of the facility correspondence rule that the petitioner had violated.

The court noted that although the correction officer charged the petitioner with failing to follow guidelines and instructions provided by staff regarding facility correspondence procedures, he did not specify any particular guideline or instruction with which the petitioner had failed to comply, nor could he identify the particular correspondence policy he believed the petitioner had violated. For this reason, the court found the determination of guilt relating to the correspondence violation was not supported by substantial evidence and must be reversed and the charge expunged.

With respect to the smuggling charge, the court pointed out that the petitioner was responsible for sending religious materials to other inmates and that neither the chaplains nor the author of the misbehavior report identified any regulation prohibiting the petitioner from including the letter with the other materials. For this reason, the court found that the determination that the petitioner had engaged in smuggling was not supported by substantial evidence and must be reversed and the charge expunged.

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Willie Smith represented himself in this Article 78 proceeding.

Tester's Testimony Remedies Error in Urinalysis Testing Documents

After a Family Reunion Program (FRP) visit, the petitioner in *Matter of Snyder v. NYS DOCCS*, 70 N.Y.S.3d 256 (3d Dep't 2018), submitted a urine sample that tested positive for marijuana. The sample that he submitted immediately prior to the visit was negative for any drugs. At his Tier III hearing, the petitioner denied having used marijuana during the visit and argued that the result of the post-visit test was unreliable because, as documented on the paperwork relating to the test, the reagent used during the test had expired. The officer who tested the petitioner's urine testified that she had made a clerical error on the paperwork, accidentally entering the date that the bottle of reagent had been opened on the line where the

expiration date was supposed to have been entered. The actual reagent expiration date was after the test date. Based on this testimony, explaining the errors in the paperwork, the court upheld the determination that the petitioner had violated the FRP rules and the rule prohibiting drug use.

Daryl Snyder represented himself in this Article 78 proceeding.

Where HO Accepts Witness's Proposed Testimony as True, Witness is Redundant

After a sharpened metal shank was recovered during a cell search, Michael Maisonet was charged with possessing a weapon. At his hearing, Mr. Maisonet testified that the item had been planted by officers in retaliation for the grievances that Mr. Maisonet had filed against them and that Mr. Maisonet had, prior to the recovery of the weapon, expressed concerns that a weapon was going to be placed in his cell. He asked that to support his retaliation defense, the hearing officer call several witnesses. The hearing officer refused, stating that he credited Mr. Maisonet's testimony on those two issues (that he had filed grievances and expressed concern that a weapon would be planted). After the hearing officer found him guilty and the Director of Special Housing affirmed the determination of guilt, Mr. Maisonet challenged the hearing in an Article 78.

In *Matter of Maisonet v. Annucci*, 159 A.D.3d 1172 (3d Dep't 2018), the court rejected the petitioner's challenge to the hearing officer's refusal to call the witnesses, finding that "inasmuch as the Hearing Officer accepted as true [the petitioner's] claim that he had filed a grievance and raised concerns that a weapon would be planted in his cell," the petitioner had not been improperly denied the right to call various witnesses.

Michael Maisonet represented himself in this Article 78 proceeding.

HO's Failure to Consider Accused's Mental State Leads to Reversal

Title 7 NYCRR 254.6(b) requires that when a person whose mental state is at issue appears at a Tier III hearing, the hearing officer must consider evidence of the accused's mental condition at the time of the incident and at the time of the hearing. In *Matter of Haynes v. Annucci*, 72 N.Y.S.3d 889 (4th Dep't 2018), the court granted the petition, finding that by virtue of the fact that following the alleged misconduct, the petitioner had been committed to Central New York Psychiatric Center, the hearing officer had erroneously refused to consider evidence of the petitioner's mental condition.

The court then turned to the issue of whether the appropriate remedy was a re-hearing, at which the petitioner's mental condition at the time of the incident could be considered, or reversal of the hearing and expungment of the charges. Noting that three years had passed since the incident, thereby making it difficult to ensure a hearing that comported with due process could be conducted, and that the petitioner had long since served the confinement time, the court concluded that remittal for a new hearing was unwarranted. It therefore granted the petition, annulled the determination that the petitioner had violated the rules, and directed the respondent to expunge the charges from the petitioner's institutional record.

Theodore Haynes represented himself in this Article 78 proceeding.

Parole

Court Finds Denial of Parole to Have Been Arbitrary and Capricious

Over 35 years ago, Judith Clark was convicted for her role as a driver in an armed robbery of an armored truck that resulted in the death of three people, two of them police officers. The court imposed a sentence of three terms of 25 years to life to be served consecutively, commenting that given her crimes and conduct during the trial, she was irredeemable.

In December 2016, Governor Cuomo, recognizing that Ms. Clark had taken responsibility for her crime, expressed remorse and tried to improve the lives of other prisoners, granted her clemency. In doing so, he commuted her sentence by reducing the minimum term to 35 years, making her eligible for parole in 2017.

When Ms. Clark went before the Board of Parole (BOP), the interview lasted 8 hours and included discussion of the crime, Ms. Clarke's early life, her criminal history, her trial and sentencing, and her prison history and achievements. Acknowledging Ms. Clarke's favorable risk assessment, the BOP nonetheless found that her release would be incompatible with the welfare of society and would deprecate the seriousness of her crimes, thereby undermining respect for law. The BOP wrote: "You are still a symbol of violent and terroristic crime."

After the Appeals Board affirmed the BOP's decision, Ms. Clarke filed an Article 78 petition challenging the denial of parole release. In *Matter of Clark v. NYS BOP*, Index No. 160965/2017, (Sup. Ct. N.Y. Co. April 26, 2018), the court, based on analysis set forth below, ruled that the denial of parole was arbitrary and capricious, set aside the decision and remitted the matter for a new hearing, to be conducted within 60 days, before a different Parole Board panel.

According to the decision, although the BOP acknowledged that the governor had granted Ms. Clarke clemency, it appeared to have given little weight to the commutation, stating that the Board asserted that it had "considered substantial additional information that 'was created and submitted pursuant to its [presumably the Board's] unique process.' "

As we have often noted in ***Pro Se***, the Executive Law, which governs parole release procedures, sets forth eight factors that the Parole Board is required to consider when an incarcerated individual is seeking parole release:

1. The individual's institutional record including program goals and accomplishments, academic achievements, vocational education, training or work assignments, therapy and interactions with staff and inmates;

2. The individual's performance, if any, in a temporary release program;

3. The individual's release plans including community resources, employment, education and training and support services available to the inmate;

4. Whether there is a deportation order issued by the federal government against the individual while in the custody of the department and any recommendation regarding deportation made by the commissioner of the department;

5. Current or prior statements made to the board by the crime victim or the victim's representative, where the crime victim is deceased or is mentally or physically incapacitated;

6. The length of the determinate sentence to which the inmate would be subject had he or she received a sentence pursuant to section 70.70 or section 70.71 of the penal law for a felony defined in article two hundred twenty or article two hundred twenty-one of the penal law;

7. The seriousness of the offense with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court, the district attorney, the attorney for the inmate, the pre-sentence probation report as well as consideration of any mitigating and aggravating factors, and activities following arrest prior to confinement; and

8. The individual's prior criminal record, including the nature and pattern of offenses, adjustment to any previous probation or parole supervision and institutional confinement.

The court first noted, citing *Platten v. NYS Bd. of Parole*, 5 N.Y.S.3d 702 (Sup. Ct. Sullivan Co. 2015), that the legislative intent of the Executive Law is to "base parole board determinations on a forward looking **paradigm** [perspective], rather than a backward-looking approach that focuses on the severity of the crime." It is for this reason, the First and Second Departments of the Appellate Division have held that a parole board may not deny parole based solely on the seriousness of the offense. See, e.g., *Matter of Rossakis v. NYS Bd. of Parole*, 41 N.Y.S.3d 490 (1st Dep't 2016); Matter of *Gelsomino v. NYS Bd. of Parole*, 918 N.Y.S.2d 892 (2d Dep't 2011). The Fourth Department has held that where the seriousness of the crime is the primary factor in denying parole, in order to preclude granting parole exclusively on the ground of the seriousness of the particular crime, there must have been some significantly aggravating or egregious circumstance surrounding the commission of the crime. See, *Matter of Johnson v. NYS DOP*, 884 N.Y.S.2d 545 (4th Dep't 2009). **The Third Department disagrees with the analysis adopted by the First and Second Departments and even that adopted by the Fourth Department and has held that as long as the Board *considers* the required factors, a denial of parole release based on the seriousness of the crime is not a basis for finding that the decision was arbitrary and capricious, see, e.g., *Matter of Hamilton v. NYS DOP*, 990 N.Y.S.2d 714 (3d Dep't 2014), specifically rejecting the analysis used in *Matter of King v. NYS Div. of Parole*, 598 N.Y.S.2d 245 (1st Dep't 1993)).**

Rather than relying solely on the seriousness of the crime as a basis for denying parole, the *Clark* court noted, the Board must be guided by the risk and needs principles and must explain its reasons with particularity if it departs from a risk assessment analysis. Further, if the Board considers factors that are not among the factors that the law requires it to consider, the court must remand the matter for a new interview before different commissioners.

Ms. Clark argued that the Board:

1. focused almost exclusively on the severity of her crime and her conduct during her arrest and trial; and

2. Improperly considered factors such as penal philosophy, the imposition of life sentences for people convicted of murder and felony murder, and the consequences to society if life sentences are not imposed.

The court found that the decision to deny parole was arbitrary and capricious for the following reasons:

1. Instead of considering the views of the sentencing judge, the court considered the views of another judge in the same judicial district who had been asked to provide the sentencing court's view of Ms. Clark's parole eligibility. The court found that this letter, which was strongly opposed to Ms. Clark's release, should not have been considered.

2. Because the governor had granted clemency, the sentencing judge's negative views of Ms. Clark's suitability for parole release, expressed at the time of sentencing, should not have been considered. That judge could not have predicted the extent of Ms. Clark's rehabilitation thirty years after he interacted with her.

3. The Board considered letters that it had failed to disclose to Ms. Clark prior to the interview or her administrative appeal. While the Board can withhold

the names and addresses of the authors of the letters, its regulations provide that, in the absence of a finding that disclosing the letters would result in harm to any person, the Board must disclose the letters to Ms. Clark. The court found that Board's failure to do so was contrary to both the letter and spirit of the Executive Law and the regulations.

4. The Board, under the heading community opposition, gave great weight to a letter from a legislative body sitting a great distance from the scene of the crime and from Ms. Clark's current location, but failed to explain why numerous letters of support from people who knew Ms. Clark were outweighed by opposition letters from members of the community. To the court, this strongly signaled that the Board had considered impermissible factors, such as penal philosophy in reaching its decision.

Based on its review of the record, the court found that the Board's decision was arbitrary, capricious and contrary to the law. It ordered that the Board conduct a new hearing before a different panel of examiners within 60 days and issue a new decision within 30 days of the hearing.

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Michael Cardozo of the law firm Proskauer Rose LLP and Steven Zeidman represented Judith Clark in this Article 78 proceeding.

Completion of Required Programs Does Not Guarantee Release to Parole Supervision

Having completed all **mandated** (required) programs, the Board of Parole nevertheless denied Darryl Grate's application for parole release. After that denial was affirmed by the Appeals Board, Mr. Grate filed a petition for habeas corpus relief, arguing that having completed all required programs, he was entitled to parole release. In *People ex rel. Grate v. Artus*, 72 N.Y.S.3d 900 (4th Dep't 2018), the petitioner argued that Form 3617 – Program Refusal Notice – which provides that a "refusal to participate in recommended programming may result in the denial of parole," amounted to a contractual obligation to release him to parole supervision in the event that he successfully completed the recommended programming. Previously, the Appellate Division, Third Department, in *People ex rel. Germenis v. Cunningham*, 899 N.Y.S.2d 907 (3d Dep't 2010), had rejected this argument, finding that Form 3617 "discloses no basis upon which to conclude that it created a contractual obligation" and dismissed the petition. While the Fourth Department was free to reconsider this argument and agree or disagree with the Third Department, here the Fourth Department adopted the reasoning upon which Third Department relied and dismissed the petition.

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Darryl Grate represented himself in this Article 70 proceeding.

Court of Claims

After Trial, Court Finds State Was Liable for Medical Malpractice

Immediately before coming into DOCCS custody, a doctor at Albany Medical Center recommended that Matthew Manley (the claimant or claimant) undergo a discectomy to relieve back and leg pain, cramping and numbness in his leg and a foot drop that he was experiencing due to a herniated disc. In March 2012, roughly 6 months after the recommendation was made, the claimant agreed to the surgery. However, in spite of familiarity with the claimant's medical condition and the recommendation, the Department did not schedule the surgery, and by February 2013, the nerve compression had degenerated to the point that surgery was no longer a viable option because the claimant had suffered permanent nerve damage.

The claimant, asserting a claim of medical malpractice, sought damages for pain and loss of function. Three doctors testified at the trial, two for the claimant and one for the State. The court found that while it was unlikely that the surgery could have corrected the foot drop or stopped his muscles from atrophying, there was a substantial probability

that surgical intervention prior to July 2013 could have lessened or eliminated claimant's leg pain.

Further, the court found, the State was 100% liable for the left leg and left foot pain that the claimant experienced between March 2012 and July 2013.

Based on these findings, the court awarded damages.

Brian Dratch, of Franzblau Dratch, P.C., represented Matthew Manley in this Court of Claims action (Ct. Clms., Claim No. 125604, Feb. 14, 2018.)

Miscellaneous

Court Grants Name Change; Denies Renunciation of Citizenship

In *Matter of Ronnie Ramael Todd***,** 73 N.Y.S.3d 736 (Sup.Ct. Erie Co. Mar. 2018), the court was faced with an application for a change of name, renunciation of citizenship and assumption of the race/nationality of Moor/Americas Aboriginal national. The court noted that Article 6 of the NYS Civil Rights Law requires that an applicant for a name change provide the court with a list of all crimes that the applicant has been convicted of, and for each such conviction, the name of the offense, the date of conviction and the court where the applicant was convicted. In this case, the petition revealed a closed criminal matter from DeKalb County, Georgia. After searching the DeKalb County records, the court found that the criminal charge related to a felony that was administratively closed in 2009.

The court also noted that "petitions for name change by convicted felons, while serving their sentences, should be vetted by the [NYS DOCCS] and/or the prosecuting District Attorney's office[,]" because these agencies are in a position to object to a name change petition where the change would create record-keeping problems for corrections or law enforcement officials, as well as potentially endangering crime victims and the general public. In such situations, the court wrote, courts should defer to the opinions of law enforcement personnel.

Further, the court opined, "even in the absence of any such objection, the courts must carefully **scrutinize** [look very closely at] a name change application, because the change order gives the new name an aura of propriety and official sanction, and makes it a public record." [internal quotation and citation omitted].

Applying this law to the petitioner's application, the court found that:

1) Petitioner is not currently incarcerated;

2) The court is unaware of whether he was convicted of the Georgia felony charge;

3) A background check revealed no pending or past matters that would adversely affect consideration of the application; and

4) Petitioner resided in the county in which the court that was considering the application was located.

Based on these findings, the court granted the application for a name change.

Turning to the issue of the renunciation of the petitioner's nationality as a citizen of the United States of America and the adoption of the Moor/Americas Aboriginal as his nationality, the court reached a different result. For a citizen of the United States to change his or her nationality, s/he must take the steps set forth in 8 United States Code §1481. The steps include, for example:

1. Obtaining naturalization in a foreign state by filing a application in that state;

2. Making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state; or

3. Formally renouncing nationality when the United States is in a state of war.

The court found that the petitioner had not taken the steps required to renounce his United States citizenship.

The petitioner argued that a resolution of the House of Representatives of the Commonwealth of Pennsylvania, adopted in 1933, authorized his renunciation of his United States citizenship. The court disagreed, finding that the resolution in fact granted former Moors the right to affix to their names El, Ali or Bey (or any other prefix or suffix that they used). Further, it only applied in Pennsylvania and was not a means of renouncing citizenship, even in Pennsylvania.

The court also rejected petitioner's argument that Article 15 of the Universal Declaration of Human Rights was controlling. Article 15 provides that no one shall be arbitrarily denied the right to change his or her nationality. With respect to this argument, the court held that the Declaration is not binding on it because it is merely a "statement of principles" and "not a treaty or international agreement . . . imposing legal obligations." Thus, the court found, the Declaration does not create "any private cause of action." This means that the Declaration is not a basis upon which an individual can base a lawsuit.

The court ordered that the petitioner could assume the name of Ramael Blackwell El and denied his application to change his nationality.

Ronnie Ramael Todd represented himself in this Article 78 proceeding.

FEDERAL COURT DECISIONS

Transgender Woman Settles Lawsuit Claiming Failure to Protect

On February 5, 2018, the New York Department of Corrections and Community Supervision agreed to pay a settlement to a woman who is transgender and incarcerated in a men's prison for the Department's failure to protect her from rape by another prisoner. Lawyers for the woman understand this to be the first-ever payment by DOCCS to a woman who is transgender to compensate her for sexual abuse.

LeslieAnn Manning filed a Section 1983 claim in the Southern District of New York on January 5, 2015, seeking compensation for injuries resulting from another inmate's assault upon her. The assault occurred in February 2013. Ms. Manning alleged that five prison officials failed to protect her from sexual assault by another person who was incarcerated. That man, she alleged, was a known sexual predator. Ms. Manning's complaint asserted violations of the Eighth Amendment for subjecting her to cruel and unusual punishment.

In a failure to protect case under the Eighth Amendment, the plaintiff must show that defendants were deliberately indifferent to a risk of serious harm. The standard of deliberate indifference for failure to protect was established by the U.S. Supreme Court in *Farmer v. Brennan*, 511 U.S. 825 (1994). To meet this standard, a plaintiff must show that there was an objectively serious risk of harm that was known to prison officials, and that prison officials were deliberately indifferent to that risk by purposely not taking steps to reduce that risk.

Ms. Manning was able to show that there was a serious risk of harm known to prison officials because she was openly transgender in a men's prison, and statistical data and studies, including the Sylvia Rivera Law Project's report "It's War in Here," put prison officials on notice of the risk of sexual violence faced by transgender women in men's prisons. Additionally, she had letters in her prison file from the Sylvia Rivera Law Project and the Cornell Law School's LGBT Clinic (now the Brooklyn Law School's LGBT Advocacy Clinic) warning prison officials of her particular risk of sexual violence as a transgender woman housed in a men's prison.

Ms. Manning filed her Amended Complaint on May 20, 2015. After the defendants filed a motion to dismiss, Ms. Manning's First Amended Complaint was dismissed on March 31, 2016; Judge Kenneth Karas found that she had not pleaded sufficient facts to show that the defendants "consciously disregarded" the risk to Ms. Manning. The court did find that she was able to show that prison officials were aware that she faced a risk of harm. The court stated that "Plaintiff's allegations demonstrating the widespread recognition, 'both inside and outside the correctional community,' ([Am. Compl.] ¶ 54), that transgender inmates face heightened risks of sexual assault, including in DOCCS facilities, render it plausible that Defendants, concerned about the safety of Sullivan's inmates, were aware that the Plaintiff 'belongs to an identifiable group of prisoners who are frequently singled out for violent attack by other inmates,' Farmer, 511 U.S. at 843, and thus was subject to a heightened risk of harm as a transgender prisoner in a male prison[.]" *Manning v. Griffin*, 2016 WL 1274588, *7 (S.D.N.Y. Mar. 31, 2016).

However, Judge Karas found that Ms. Manning had not made sufficient factual allegations to support her claim that prison officials deliberately disregarded that risk and did not take remedial measures to prevent her from being raped. He gave her leave to amend her complaint.

Ms. Manning submitted a Second Amended Complaint, strengthening her deliberate indifference claim by including statements from other prisoners about the lack of safety and security in the area where she was raped and by alleging that she had alerted her supervisor about the lack of security and that none of the defendants had taken measures to improve her safety by adopting additional security measures.

The defendants filed a second motion to dismiss on the same grounds as the first, and after oral argument on June 21, 2017, Judge Karas found that Ms. Manning had successfully pleaded her deliberate indifference claim as to all defendants. He did not write an opinion, but a transcript of the oral argument and his opinion delivered from the bench is available on PACER. Transcript, *Manning v. Griffin*, No. 7:15-cv-00003-KMK (S.D.N.Y. Mar. 5, 2018), ECF No. 78. After this, the State offered to settle Ms. Manning's case, and she will receive a substantial settlement of money damages.

This case represents a significant victory for women who are transgender and incarcerated, as they are more likely to face sexual violence in prison. Plaintiffs alleging failure to protect claims also must meet a high burden of proof, as they must show that officials were deliberately indifferent to a risk that they would be harmed. Ms. Manning's case is notable because it survived a motion to dismiss and was settled with money damages.

Law students at the Civil Rights Clinic at Benjamin N. Cardozo School of Law in New York City and the LGBT Advocacy Clinic at Brooklyn Law School in Brooklyn, NY (formerly the LGBT Clinic at Cornell Law School in Ithaca, NY) represented Ms. Manning.

Betsy Ginsberg is the supervising attorney of the Civil Rights Clinic at Benjamin N. Cardozo School of Law. The Civil Rights Clinic represents people who are incarcerated and have had their constitutional rights infringed.

Susan Hazeldean is the supervising attorney of Brooklyn Law School's LGBT Advocacy Clinic. The LGBT Advocacy Clinic represents LGBT individuals and performs advocacy on their behalf.

NEW YORK STATE OF OPPORTUNITY. | Division of Veterans' Affairs

ANDREW M. CUOMO
Governor

ENTRY INFORMATION FOR INCARCERATED VETERANS

The New York State Division of Veterans' Affairs thanks you for your service to our Nation. As a justice-involved Veteran, you need to know certain pieces of information regarding the benefits that you earned through your military service. This article briefly summarizes key points for your reference.

Despite your incarceration, you and your family members may be eligible to receive certain benefits from the United States Department of Veterans Affairs (VA). However, you also have certain obligations regarding specific benefits that you may be already receiving. Understanding this information will avoid problems with the federal government during your incarceration and upon your release, and ensure that you receive the full complement of benefits that you deserve.

Notifying The VA

You need to notify the VA and inform them about your incarceration. Otherwise, if the VA continues paying you as if you were not incarcerated, they can hold that you have been overpaid. **The VA can then withhold all financial benefits from you and your family until the overpayment is recovered**.

To prevent that from happening, ensure that the VA receives notice in writing from you stating that you are incarcerated. Ask that the VA send you written confirmation of this receipt. Keep a copy of both your letter to the VA and the VA's confirming response.

When you get out of prison, you also need to notify the VA with proof of your release. Otherwise, the VA will assume that you are still incarcerated, and will continue paying your benefits at a reduced rate.

If you are released on parole, an original letter (not a photocopy) from your parole agent on government stationary should suffice as proof. A "movement history" from your parole agent generally will not be enough for VA purposes. Again, ask that the VA send written confirmation of receiving your letter of notification. Keep a copy of your letter to the VA and the VA's confirming response.

Disability Compensation

If you are presently receiving disability compensation payments from the VA, these payments **do not necessarily stop** because you are incarcerated.

If you are convicted of a felony and imprisoned for more than 60 days, your disability compensation payments **will not stop, but will be reduced**.

- If you have a VA disability rating of **20% or higher**, you will be paid as if your disability rating were 10% during your period of incarceration.

- If you have a VA disability rating of **10%**, your current payment at the 10% rating level will be cut in half during your period of incarceration.

- Payments are **not reduced** for recipients participating in **work release programs, residing in halfway houses, or under community supervision.**

Apportionment To Dependent Family Members

While you are imprisoned, your family may be able to receive all or part of the portion by which your benefits are reduced. For instance, if you have a disability rating of 70% when you enter prison, you will personally receive payment at a 10% rating level while imprisoned, but your family can apply to the VA to receive up to the remaining 60% of your benefits.

However, this is not automatic. Your family must apply to the VA for "Apportionment" using VA Form 21-0788. Your family can download this from the VA's website (www.va.gov).

The VA determines how much money from a Veteran's remaining benefits will be apportioned to his or her spouse, children, and/or dependent parent(s) **based on individual need.** The VA will evaluate factors such as the applying family member's household income and living expenses, and the number of family members applying, when deciding how much money from an incarcerated Veteran's benefits to apportion to the family.

Pension

If you are receiving a non-service-connected VA pension, **the VA will terminate pension payments on your sixty-first day of imprisonment, regardless of whether you are serving prison time for a felony or a misdemeanor**.

When you are released, you can apply for a VA pension again, and the VA can grant you a pension if you still meet all of the eligibility requirements (i.e., income below the Congressionally established limit, assets that are not deemed "excessive" by the VA, etc.).

Education Benefits

If you are incarcerated for committing a **felony**, you can only be paid the costs of **tuition, fees, books, and equipment or supplies** from the VA. You cannot receive your full monthly education benefits. You can receive these payments only if another federal, state, or local program is not already paying for these items.

If you are convicted of a felony, and you are **participating in a work release program or residing in a halfway house** (also called a "residential re-entry center"), then you can continue receiving your **full monthly education benefits**.

Health Care For Re-Entry Veterans

The Health Care For Re-Entry Veterans program (HCRV) aims to address the physical and mental care needs of Veterans returning to the community, including connection to health care benefits that your military service earned.

Importantly, planning for these post-release steps should begin during your period of incarceration. Beginning at least one year before your conditional release date or maximum sentence date, you should request to be placed on call out to meet with your facility's Veterans Liaison to discuss the HCRV program and other VA benefits that may be available to you upon your release. Each facility in DOCCS has a Veterans Liaison, who you can contact through your corrections counselor.

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ITHACA, 114 Prospect Street, Ithaca, NY 14850

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