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December 2019

### Decision in CPLR Article 78 proceedings - Franklin, Ernest (1998-01-30)

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STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ALBANY

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In the Matter of the Application of  
ERNEST FRANKLIN, #96-A-0539,

Petitioner.

For a Judgment pursuant to Article 78  
of the Civil Practice Law & Rules

-against-

GLENN GOORD, Commissioner, New York State  
Department of Correctional Services,

Respondent.

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(Supreme Court, Albany County Special Term,  
September 5, 1997. RJI 01-97-ST7891, Calendar #14)  
Final Submission - November 28, 1997

(JUSTICE GEORGE L. COBB PRESIDING)

APPEARANCES:

Ernest Franklin, petitioner pro se.

Dennis C. Vacco, Attorney-General  
(Karen Marcoux Mankes of counsel), for respondent.

COBB, J.

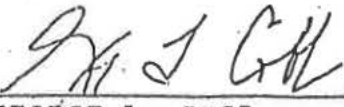
Petitioner has commenced an article 78 proceeding challenging a determination of the Time Allowance Committee which recommended the loss of 12 months good time as the result of petitioner's "failure/refusal to participate in/complete sex offender program". Judicial review of determinations of the Time Allowance Committee is extremely limited and will only be granted with respect to errors of law (People ex rel. Jelich v. Smith, 105 AD2d 1125).

Correction Law, § 803(1) (a) provides that the good time allowance may be withheld "for bad behavior, violation of institutional rules or failure to perform properly in the duties or program assigned". Petitioner contends that he was never assigned to sex offender treatment. Respondent's return is entirely devoid of any indication that petitioner was assigned to sex offender treatment. At best, petitioner's quarterly reviews indicate that sex offender programs were recommended. Nothing in the Corrections Law allows that the time allowance be withheld for refusal to participate in recommended programs. As such, the Court finds that the determination of the Time Allowance Committee was contrary to law.

Such determination is hereby vacated and annulled and respondent is directed to provide petitioner with a new time allowance hearing within 30 days of the date hereof.

SO ADJUDGED.

Dated at Catskill, N.Y.  
January 30, 1998

  
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 GEORGE L. COBB  
 Justice of the Supreme Court

Papers submitted returned to attorney for respondent for filing.

Order to show cause signed by Judge Graffeo on June 5, 1997; notice of motion dated May 28, 1997; affidavit of Ernest Franklin for poor person status sworn to on May 28, 1997; affidavit of Ernest Franklin sworn to on May 28, 1997; petition verified May 28, 1997; exhibits.

FILED