

DECISIONS

(32 PAPERS TOTAL)

#USCA2 NO.21-1442

ORDERS / JUDGMENTS

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(32 PAPERS TOTAL)

APPROX.

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SUPREME COURT, U.S.

42

The Tao gives birth to One.
 One gives birth to Two.
 Two gives birth to Three.
 Three gives birth to all things.

All things have their backs to the female
 and stand facing the male.
 When male and female combine,
 all things achieve harmony.

Ordinary men hate solitude,
 But the Master makes use of it,
 embracing his loneliness, realizing
 he is one with the whole universe.

OTTO ERNST

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The gentlest thing in the world
 overcomes the hardest thing in the world.
 That which has no substance
 enters where there is no space.
 This shows the value of non-action.

Teaching without words,
 performing without actions;
 that is the Master's way.

* JUDGMENT SOUGHT *

TO BE REVIEWED

United States Court of Appeals
FOR THE
SECOND CIRCUIT

N.D.N.Y.
21-cv-203
Kahn, J.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 19th day of November, two thousand twenty-one.

Present:

Rosemary S. Pooler,
Richard C. Wesley,
Joseph F. Bianco,
Circuit Judges.

Thomas Carl Bruni,

Petitioner-Appellant,

v.

21-1442

Craig Apple, Sheriff; Albany County Jail,

Respondent-Appellee.

Appellant, pro se, moves for a certificate of appealability, in forma pauperis status, appointment of counsel, and various other relief. Upon due consideration, it is hereby ORDERED that the motions are DENIED and the appeal is DISMISSED because Appellant has not "made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c); *see Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

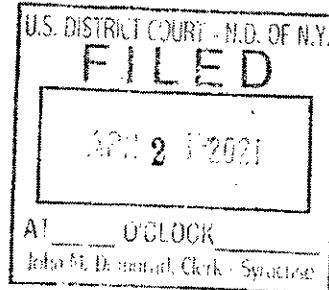
Catherine O'Hagan Wolfe



2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THOMAS CARL BRUNI,



Petitioner,

-against-

9:21-CV-0203 (LEK)

THE PEOPLE OF THE STATE
OF NEW YORK, *et al.*,

Respondents.¹

DECISION AND ORDER

I. INTRODUCTION

Petitioner Thomas Bruni seeks federal habeas relief pursuant to 28 U.S.C. § 2254. See generally Pet. Petitioner also filed exhibits in support of the Petition, a motion for appointment of counsel, and an application to proceed in forma pauperis (“IFP”). Dkt. Nos. 1-1; 1-2; 1-3; 1-4; 2. On February 23, 2021, this action was administratively closed due to Petitioner’s failure to properly commence the case by either paying the statutory filing fee or filing a properly certified IFP application. See Dkt. No. 3.

On March 8, 2021, the Court received Petitioner’s second IFP application. See Dkt. No. 4 (“Second IFP Application”). The case was reopened. See Dkt. No. 5.

II. SECOND IFP APPLICATION

Based on Petitioner’s Second IFP Application, he is eligible to proceed with this action

¹ Petitioner named “The People of the State of New York” and “The Albany County Court” as respondents in this action. See Dkt. No. 1 (“Petition”) at 1. The proper respondent, however, is the superintendent of the facility in which Petitioner is incarcerated. See Rule 2(a), Rules Governing Section 2254 Cases in the United States District Courts (“If the petitioner is currently in custody under a state-court judgment, the petition must name as respondent the state officer who has custody.”). In light of this technical error, the Clerk is directed to substitute Sheriff Craig Apple, Warden of the Albany County Jail, as the respondent.

without paying the statutory filing fee. The Second IFP Application is therefore granted.

Petitioner will still be required to pay fees that he may incur in the future regarding this action, including but not limited to copying fees (fifty (50) cents per page).

III. PETITION

The Petition is devoid of information regarding the factual basis for Petitioner's conviction, the exhaustion of his state court remedies, and the claims which he contends should provide him with habeas relief.

First, it is unclear whether Petitioner has been convicted of a crime or whether the state court criminal proceedings are still in process. Petitioner has included what are presumably copies of speedy trial motions he has filed with New York state courts. Dkt. Nos. 1-1; 1-2; 1-3; 1-4 at 3. Further, in correspondence to this Court, Petitioner explains that his "first step is making sure that [his speedy trial] motions get filed in court." Dkt. No. 1-6.

Second, it is impossible to determine what constitutional rights have been violated, if any. Petitioner appears to argue he is entitled to habeas relief because his continued incarceration is in violation of New York's new bail reform laws. Pet. at 1-2. Further, Petitioner appears to contend that there has been an unreasonable delay in his case, that he is forced to go to trial, and is pursuing relief through motions in state court alleging violations of Petitioner's right to a speedy trial. Id. at 2; see also Dkt. Nos. 1-1; 1-2; 1-3; 1-4 at 3. Moreover, it appears Petitioner claims some sort of violation of his right to face his accuser given the mandatory mask mandates instituted as a COVID-19 precaution. Pet. at 5; Dkt. No. 1-1 at 3. Lastly, Petitioner apparently challenges his conditions of confinement as related to the COVID-19 restrictions put in place at the county jail. Pet. at 6; Dkt. No. 1-1 at 2; Dkt. No. 1-4 at 2.

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Third, assuming Petitioner's underlying criminal proceedings have terminated, it is unclear whether he has finished engaging in the exhaustion of his state court remedies. Pet. at 3 (explaining how Petitioner thought it "[wa]s very important that this justice understand how [Petitioner has] made every single diligent effort to perfect those appeals [and how Petitioner is] sending this to the Third Appellate Court [because he] was never told that this case had to go to trial before [he] can appeal" and noting that the "latest mailing went out dated February 11, 2021"). For a more complete statement of Petitioner's claims, reference is made to the Petition and its exhibits.

IV. DISCUSSION

A. Rule 2

Petitioner's papers do not comply with the Rules Governing Section 2254 Cases in the United States District Courts. Rules 2(c)(1) and (2) require that a petition specify all grounds for relief available to the petitioner and the facts supporting each ground. It is impossible to determine what constitutional violations Petitioner alleges he has suffered, as well as the specific factual basis Petitioner proffers in support of his asserted grounds for relief. See generally Petition. The Court will not speculate on the grounds being advanced by Petitioner. Each ground he wants to raise in this proceeding, and the facts supporting each ground, must be set forth in the petition itself.

B. Pending Criminal Proceedings

To the extent Petitioner seeks to have the Court intervene in his pending criminal matter and order his release from detention, the Court cannot grant him that relief.

"Under *Younger v. Harris*, 401 U.S. 37 (1971), a federal district court must abstain

from adjudicating claims seeking to dismiss or enjoin pending state criminal proceedings.” Griffin v. Warden of Otis Bantum Corr. Ctr., No. 20-CV-1707, 2020 WL 1158070, at *2 (S.D.N.Y. Mar. 10, 2020). While Younger applies explicitly to pending state court claims, “federal courts have applied the abstention doctrine . . . when asked to enjoin or dismiss enforcement of federal criminal proceedings.” Ali v. United States, No. 12-CV-816A, 2012 WL 4103867, at *1 (W.D.N.Y. Sept. 14, 2012); see also Thomas v. Ramos, No. 20-CV-3422, 2020 WL 2192716, at *2 (S.D.N.Y. May 5, 2020) (explaining that equitable principles compel federal courts to abstain from enjoining ongoing criminal prosecutions when the prosecution itself provides a legal remedy, and concluding that “when asked to intervene in pending federal criminal proceedings, courts have inevitably refused.”).

Any petition seeking such intervention must be dismissed. “If [Petitioner] wishes to litigate the claims raised in this [Petition] or raise objections to the ongoing criminal proceedings, he should file the appropriate motion in the criminal action.” Thomas, 2020 WL 2192716, at *2. Furthermore, “if [Petitioner] is not satisfied with the result, he may raise the issue on direct appeal,” or in a proper habeas petition thereafter. Id.

C. Exhaustion

An application for a writ of habeas corpus may not be granted until a petitioner has exhausted all remedies available in state court unless “there is an absence of available State corrective process” or “circumstances exist that render such process ineffective to protect the rights of the applicant.” 28 U.S.C. § 2254(b)(1)(A), (B)(i)–(ii):

To satisfy the exhaustion requirement, a petitioner must do so both procedurally and substantively. Procedural exhaustion requires that a petitioner raise all claims in state court

prior to raising them in a federal habeas corpus petition. O'Sullivan v. Boerckel, 526 U.S. 838, 845 (1999). Substantive exhaustion requires that a petitioner "fairly present" each claim for habeas relief in "each appropriate state court (including a state supreme court with powers of discretionary review), thereby alerting that court to the federal nature of the claim." Baldwin v. Rees, 541 U.S. 27, 29 (2004) (citations omitted). In other words, a petitioner "must give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process." O'Sullivan, 526 U.S. at 845.

Here, it is unclear whether Petitioner has attempted to exhaust his state court remedies. Further, assuming Petitioner has made such an attempt, the Court is unsure whether those attempts remain ongoing.

Based on the foregoing, Petitioner is directed to file an amended petition within thirty (30) days of the filing date of this Decision and Order, addressing: (1) each ground Petitioner wishes to raise in his habeas petition, and the facts supporting each ground; (2) whether any state criminal proceedings are pending and, if so, the procedural posture of such proceedings; and (3) if and how Petitioner has exhausted his state court remedies.

D. Motion for Counsel

Petitioner also asks for "the public defender to represent [him]." Dkt. No. 2. It is unclear whether Petitioner makes this request in conjunction with his habeas petition or any ongoing criminal proceedings in state court. Petitioner fails to indicate why he needs representation, instead indicating that the standby counsel that was appointed for his criminal proceedings was presumably ineffective. Id.

There is no constitutional right to representation by counsel in habeas corpus

proceedings: Pennsylvania v. Finley, 481 U.S. 551, 555 (1987) ("Our cases establish that the right to appointed counsel extends to the first appeal of right, and no further."). A court may, in its discretion, appoint counsel for "any financially eligible person" where "the interests of justice so require[.]" 18 U.S.C. § 3006A(a)(2)(B). In determining whether to appoint counsel, a habeas court:

should first determine whether the indigent's position seems likely to be of substance. If the claim meets this threshold requirement, the court should then consider the indigent's ability to investigate the crucial facts, whether conflicting evidence implicating the need for cross-examination will be the major proof presented to the fact finder, the indigent's ability to present the case, the complexity of the legal issues and any special reason in that case why appointment of counsel would be more likely to lead to a just determination.

Hodge v. Police Officers, 802 F.2d 58, 61–62 (2d Cir. 1986); see also Soto v. Walker, No. 00-CV-0197, 2005 WL 2260340, at *4 (N.D.N.Y. Sept. 15, 2005) (outlining the factors to "consider[:] the petitioner's likelihood of success on the merits of his petition, the complexity of legal issues raised by such application and the petitioner's ability to investigate and present his case to the federal habeas court"). When a petitioner's claims may "fairly be heard on written submissions," a habeas petitioner's request for counsel should ordinarily be denied."

Reynolds v. Greene, No. 05-CV-1539, 2010 WL 604179, at *2 (N.D.N.Y. Feb. 16, 2010) (quoting Brito v. Burge, No. 04-CV-1815, 2005 WL 1837954, at *1 (S.D.N.Y. Aug. 3, 2005)).

While the Court has not determined whether Petitioner's claims are likely to be of substance, even assuming that to be true, Petitioner has not identified any "special reason" why appointing counsel to assist him is warranted. Hodge, 802 F.2d at 62. The fact that he is indigent, incarcerated, or unable to independently retain counsel does not compel the Court to appoint him an attorney. Pennsylvania, 481 U.S. at 555. Furthermore, counsel is not required

solely because Petitioner believes counsel would be more skilled in presenting his legal arguments. See Voymas v. Unger, No. 10-CV-0645, 2011 WL 2670023, at *12-13 (W.D.N.Y. July 7, 2011) (holding that despite petitioner's "layman" status, petitioner failed to demonstrate that (1) he was "unable to present the facts relevant to disposition of his habeas petition or to understand his legal position," (2) "the legal issues in his case are so complicated as to require the assistance of an attorney," or (3) "appointment of counsel would lead to a more just determination"). Therefore, at least at this time, the Court finds appointment of counsel is not warranted.

E. Miscellaneous Submissions and Extension Request

Petitioner has also filed copies of various motions and appeals he has filed in state court. See Docket. Nonc help to clarify whether Petitioner's criminal proceedings remain pending and whether he has exhausted his state court remedies. For the aforementioned reasons, amendment is necessary should Petitioner wish to continue this action. Petitioner's request for an extension, see Dkt. No. 8, is therefore denied as moot.

The Court notes that, should Petitioner's amended petition survive initial review, he need not provide the Court with the state court record, so any such filings are unnecessary.

Finally, Petitioner has also filed numerous grievances and correspondence related to grievances. See Docket. To the extent Petitioner wishes to raise a challenge pertaining to those grievances, the proper mechanism is through a civil rights action pursuant to 42 U.S.C. § 1983.

V. CONCLUSION

Accordingly, it is hereby:

ORDERED, that the Clerk respectfully update the caption to reflect the proper respondent, Sheriff Craig Apple, Warden of Albany County Jail; and it is further

ORDERED, that Petitioner's second IFP application, Dkt. No. 4, is **GRANTED**; and it is further

ORDERED, that Petitioner's application for appointment of counsel, Dkt. No. 2, is **DENIED** without prejudice; and it is further

ORDERED, that Petitioner's letter request, Dkt. No. 8, is **DENIED**; and it is further

ORDERED; that Petitioner may file an amended petition within thirty (30) days of the filing date of this Decision and Order. The Clerk is directed to provide Petitioner with a blank § 2254 habeas petition for this purpose. Petitioner shall complete every part of the blank petition, including the sections requiring him to state the name and location of the court that entered the challenged judgment(s), the date of the judgment(s), and, if applicable, the offense(s) for which he was convicted and the length of the sentence that was imposed. Petitioner must also state the date(s) upon which he filed any state court proceedings in which he challenged his conviction and clearly set forth the grounds raised in each application and the date(s) upon which the court(s) denied each application. If Petitioner is asking the Court to equitably toll the limitations period, he must set forth facts establishing a basis for the application of equitable tolling as stated above. If Petitioner is asking the Court to apply an equitable exception to the limitations period, he must set forth facts establishing a basis for doing so. Petitioner must specify all of the grounds upon which his federal petition is based, and the facts supporting each ground, in the amended petition.

Petitioner shall not incorporate any portion of his original papers into his amended petition by reference. He must include all relevant information in the amended petition and shall submit only one amended petition in accordance with the terms of this Decision and Order. Petitioner must also sign and date the petition; and it is further.

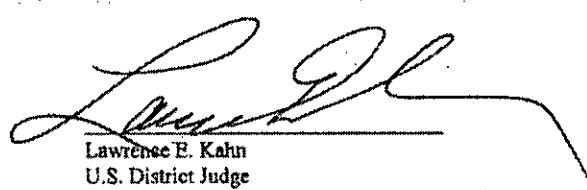
ORDERED that if Petitioner does not file an amended petition within thirty (30) days of the filing date of this Decision and Order, the Clerk shall enter judgment dismissing this action without further order of the Court, Habeas Rule 4; and it is further

ORDERED that upon the filing of any amended petition, the Clerk shall forward the file in this matter to the Court for further review. No answer to the petition will be required from the Respondent until Petitioner has submitted the amended petition, and the Court has had the opportunity to review his arguments; and it is further

ORDERED that the Clerk shall serve a copy of this Decision and Order on Petitioner in accordance with the Local Rules.

IT IS SO ORDERED.

DATED: April 22, 2021
Albany, New York



Lawrence E. Kahn
U.S. District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THOMAS CARL BRUNI

Petitioner,
-against-

9:21-CV-0203 (LEK)

SHERIFF CRAIG APPLE,

Respondent.

DECISION AND ORDER

I. INTRODUCTION

Petitioner Thomas Bruni seeks federal habeas relief pursuant to 28 U.S.C. § 2254. See Dkt. No. 1 (“Petition”). Petitioner also filed additional submissions and exhibits in support of his Petition, as well as a motion for appointment of counsel and a properly certified application to proceed in forma pauperis (“IFP”). See Dkt. Nos. 1-1-1-4; 2; 4; 6-7; 9.

II. BACKGROUND

On April 23, 2021, the Court issued an order granting Petitioner’s IFP application, directing him to submit an amended petition, and denying all other requested relief. See Dkt. No. 10 (“April Order”). The April Order identified and discussed the deficiencies which any amended petition needed to cure. Id. at 3–5. Specifically, Petitioner was required to (1) specify “each ground [he] wishes to raise in his habeas petition, and the facts supporting each ground; (2) [identify] whether any state criminal proceedings are pending and, if so, the procedural posture of such proceedings; and (3) [detail] if and how [he] has exhausted his state court remedies.” Id. at 5.

III. DISCUSSION

In compliance with the April Order, Petitioner timely submitted an amended petition. See Dkt. No. 11 ("Amended Petition"). However, the Amended Petition failed to cure any of the deficiencies identified by the April Order, and the Court therefore dismisses it pursuant to Rule 4 of the Rules Governing Section 2254 Cases. First, Petitioner was asked to specify each ground he wished to raise and the facts supporting them. Much like the Petition, the content of the Amended Petition is difficult to decipher. As previously stated by the Court in the April Order, "[t]he Court will not speculate on the grounds being advanced by Petitioner." April Order at 3. Second, Petitioner did not clarify the procedural posture of his state criminal proceedings. However, Petitioner did state that he is "charged with [four counts of third-degree] burglary and one [count of] felony criminal mischief" and has "not [been] convicted of any pending charge[s]." Am. Pet. at 3.

Petitioner cited to a state court case, People v. Bruni, 67 Misc. 3d 254 (Albany Co. Ct. 2020). This decision regarded a counseled state habeas petition seeking Petitioner's release or, in the alternative, confining him to a hospital for purposes of conducting Petitioner's competency examination pursuant to Criminal Procedure Law § 730. Id. at 255. The County Court denied the petition, holding that despite recent bail reform, Petitioner's continued remand for purposes of conducting a competency exam was permitted. Id. at 256-57.

Petitioner references § 730 competency hearings throughout the Amended Petition, see Am. Pet. at 3, 8, and claims he is not incapacitated, id. at 13. Petitioner also indicates that the April Order "greatly strengthens [his] Court of Appeals submission." Am. Pet. at 4. Further, Petitioner discusses his briefing schedule for his speedy trial motion, and it appears that a decision on this issue has not been issued. Id. at 6. This, in conjunction with Petitioner's prior

ADDITIONAL PAPERS

statements, suggest that Petitioner's criminal proceedings are still pending; therefore, this Court is barred from considering the Amended Petition. See April Order at 3-4. Petitioner also indicates that this action is "unconventionally pre-mature," stating that his "intentions were more to put the federal courts on alert[.]" Am. Pet. at 3-4.

Finally, Petitioner failed to outline how he has exhausted his state court remedies; likely because those proceedings are ongoing.

IV. CONCLUSION

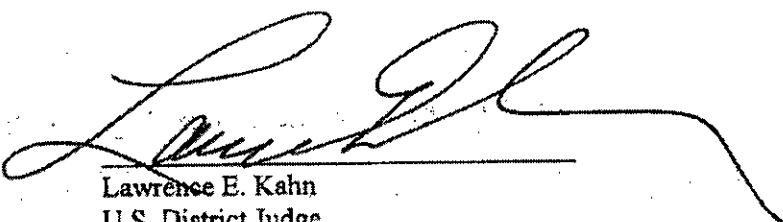
Accordingly, it is hereby:

ORDERED, that the Amended Petition (Dkt. No. 11) is **DISMISSED** without prejudice pursuant to Habeas Rule 4; and it is further

ORDERED, that the Clerk shall serve a copy of this Decision and Order on Petitioner in accordance with the Local Rules.

IT IS SO ORDERED.

DATED: May 13, 2021
Albany, New York


Lawrence E. Kahn
U.S. District Judge

State of New York
Court of Appeals

*Decided and Entered on the
sixteenth day of December, 2021*

Present, Hon. Janet DiFiore, *Chief Judge, presiding.*

Mo. No. 2021-687
In the Matter of Thomas Carl Bruni,
Appellant,

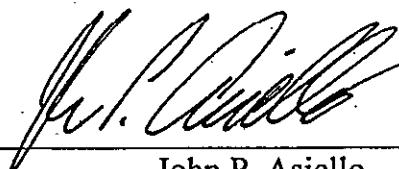
v.
New York State Commission of Correction, et
al.,
Respondents.

Appellant having moved for leave to appeal to the Court of Appeals and for poor person relief in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, that the motion for leave to appeal is denied; and it is further

ORDERED, that the motion for poor person relief is dismissed as academic.



John P. Asiello
Clerk of the Court

STATE OF NEW YORK COURT OF APPEALS
APPEAL TO
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

IN THE MATTER OF
THOMAS CARL BRUNI
APPELLANT

AGAINST

NEW YORK STATE COMMISSION OF CORRECTIONS ET AL.
RESPONDENTS

DATED X JANUARY 3RD 2022

- 1- THIS IS RECEIPT OF THE NEW YORK STATE COURT OF APPEALS DECISION TO DENY LEAVE TO APPEAL OF NEW YORK THIRD DISTRICT ACCESS APPEAL #529828 - DECIDED DEC. 16 2021 - MISS JUSTICE JANET DIPIORE #2021-687
- 2- THIS IS NOTICE OF INTENT TO FILE CLAIM IN THE UNITED STATES COURT SYSTEM, AND I HAVE A U.S.A. SUPREME COURT WRIT OF CERTIORARI. I HAVE FAIRLY PRESENTED ALL CONSTITUTIONAL CLAIMS WITHIN THE WHOLE NEW YORK STATE COURT SYSTEM THE U.S. NORTHERN DISTRICT AND THE SECOND CIRCUIT - AND HOPE TO SKIP TO THE U.S. SUPREME COURT I WILL MAIL THIS TO THE U.S. SUPREME COURT WHEN I CURE DEFECTS.
- 3- I WOULD LIKE TO FILE A 1983 AND U.S.C § 1331 - BUT I SEE WILL V. MICH DEPT. OF STATE POLICE 491 U.S. 58 - HOLDING THAT STATES MAY NOT BE SUED UNDER 1983 - WHEREFORE I NEED TIME TO FIND THE APPROPRIATE METHOD TO CHANGE "TITLE 9" NY-CRR 7031.9 ET. AL.
- 4- I ASK FOR A STAY AGAINST N.Y. PRISONS SHUTTING DOWN MORE LAW ACCESS AS I GET SENTENCED ON JANUARY 19th 2021 - AND SEEK TIME TO TRANSITION
- 5- I WILL SEEK TO INJOIN GRIEVANCE 2021-100 AND 6-03 2021 NOTICE OF INTENT AGAINST FRAUDULENT COMMUNIST PARTY BIG TECHNO CONTRACT
- 6- I ALSO WISH TO CONSIDER INJOINING - ACCESS CLAIM 2021-687 - GRIEVANCE 2021-100 - GRIEVANCE 2021-034 - GRIEVANCE 2021-101 ET. AL. ALONG WITH FAMILY COURT OF APPEALS #2021-928 IN A FEDERAL TITLE 18 U.S.C.S. § 241+242 CONSPIRACY AGAINST RIGHTS AND I WILL SEEK AN ACT OF CONGRESS AS I DID IN THE WRIT OF CERTIORARI VERIFICATION - I THOMAS CARL BRUNI HEARBY VERIFY THAT THE ABOVE IS TRUE EXCEPT AS TO MATTERS UPON INFORMATION AND BELIEF AND THESE MATTERS I BELIEVE TO BE TRUE. - RESPECTFULLY SUBMITTED

CERTIFICATE OF SERVICE

I THOMAS CARL BRUNI HEARBY CERTIFY UNDER PENALTY OF PERJURY THAT I WILL MAIL A TRUE COPY OF ① THIS PAPER DATED ABOVE - AND ② STATE OF NEW YORK COURT OF APPEALS DEC. 16 2021 DECISION - ORDERED DENIED APPEALABLE PAPER - I SWEAR I WILL PLACE THESE 2 PAPERS INSIDE AN ENVELOPE AND MAIL MAIL BOX TO BE SERVICED BY C.O. STAFF TO THE UNITED STATES POSTAL SERVICE TO 3 BELOW ON X JANUARY 3RD OR 4TH 2022

LAWRENCE K. BAERMAN CLERK
U.S. NORTHERN DISTRICT COURT

P.O. BOX 7367
SYRACUSE, N.Y. 13261
NEW YORK ATTORNEY GENERAL
THE CAPITOL BUILDING
ALBANY, NEW YORK 12224-0341

THOMAS CARL BRUNI
Thomas R. R.

NEW YORK COURT OF APPEALS
CLERK OF THE COURT
20 EAGLE STREET
ALBANY, N.Y. 12207-1095

PART CLERK-APPELLANT
CURRENTLY AT THE
ALBANY COUNTY JAIL

Sworn to before me this 3 day

of January 2022

ANN MURPHY
Notary Public, State of New York
Qual. in Albany Co. No. 01MUG102272
Commission Expires Dec. 01, 2023

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: June 17, 2021

529828

In the Matter of THOMAS CARL
BRUNI,

Appellant,

v.

MEMORANDUM AND ORDER

NEW YORK STATE COMMISSION OF
CORRECTION et al.,
Respondents.

Calendar Date: May 7, 2021

Before: Clark, J.P., Aarons, Pritzker, Reynolds Fitzgerald and
Colangelo, JJ.

Thomas Carl Bruni, Albany, appellant pro se.

Letitia James, Attorney General, Albany (Sarah L.
Rosenbluth of counsel), for New York State Commission of
Correction, respondent.

Daniel C. Lynch, County Attorney, Albany (Joseph A.
Coticchio of counsel), for Craig Apple and others, respondents.

Appeal from a judgment of the Supreme Court (O'Connor,
J.), entered July 22, 2019 in Albany County, which dismissed
petitioner's application, in a proceeding pursuant to CPLR
article 78, to, among other things, review a determination of
respondent Commission of Correction's Citizen's Policy and
Complaint Review Council denying petitioner's grievance.

Petitioner, an inmate at the Albany County Correctional Facility, filed a grievance in which he complained that the facility's law library provided inadequate access to legal reference works and inadequate free photocopying for indigent inmates in violation of 9 NYCRR 7031.4. The grievance was denied, and that denial was eventually upheld by the Citizen's Policy and Complaint Review Council of respondent Commission of Correction (see Correction Law § 42 [b] [1]). Petitioner then commenced this CPLR article 78 proceeding to challenge the determination and the legality of 9 NYCRR part 7031. Supreme Court dismissed the petition following joinder of issue, and petitioner appeals.

We affirm. To begin, "judicial review of the denial of an inmate grievance is limited to whether such a determination was arbitrary or capricious, without a rational basis or affected by an error of law" (Matter of Barnes v Bellamy, 137 AD3d 1391, 1392 [2017]; see Matter of Reed v Annucci, 182 AD3d 883, 884 [2020], lv denied 35 NY3d 908 [2020], lv dismissed and denied 35 NY3d 1075 [2020]). The record reflects that the facility complied with 9 NYCRR 7031.4 by providing inmates with electronic access to the requisite legal reference materials, granting indigent inmates two free printed pages from those materials per day, and supplying stationery supplies for legal purposes. Contrary to petitioner's suggestion, there is no requirement that physical copies of legal reference materials be made available or that indigent inmates are entitled to a set number of photocopies free of charge (see 9 NYCRR 7031.4 [a], [b], [i] [2]; [j]). Thus, inasmuch as there was no violation of 9 NYCRR 7031.4 as alleged by petitioner, we perceive nothing irrational in the determination denying his grievance (see Matter of Kalwasinski v Central Off. Review Comm., NYS DOCCS, 150 AD3d 1514, 1515 [2017]).

Petitioner further asserts what appears to be a challenge to 9 NYCRR part 7031 as allowing a facility law library to be so inadequate that it impairs his constitutional right of access to the courts. His argument is essentially founded upon his preference for physical copies and a more expansive selection of legal reference materials. However, this falls far short of the

required showing that the materials available to him actually hindered him from "pursu[ing] a legal claim or otherwise interfered with his ability to access the courts" (Matter of Johnson v Annucci, 153 AD3d 1059, 1061 [2017], lv denied 30 NY3d 904 [2017]; see Lewis v Casey, 518 US 343, 351 [1996]; Johnson v Bruen, 187 AD3d 1294, 1294-1295 [2020]). His remaining contentions, to the extent that they are based upon facts in the record and are preserved for our review, have been examined and lack merit.

Clark, J.P., Aarons, Pritzker, Reynolds Fitzgerald and Colangelo, JJ., concur.

ORDERED that the judgment is affirmed, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court

**Additional material
from this filing is
available in the
Clerk's Office.**