

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-107

SEPTEMBER TERM, 2002

	}	APPEALED FROM:
	}	
Robert W. Godette	}	Rutland Superior Court
	}	
v.	}	DOCKET NO. 741-11-0
	}	Rdcv
John Gorczyk, et al.	}	
	}	Trial Judge: William D. Cohen
	}	

In the above-entitled cause, the Clerk will enter:

Petitioner Robert W. Godette seeks review of the Rutland Superior Court' s grant of summary judgment in favor of the Commissioner of the Vermont Department of Corrections (" DOC") in this V.R.C.P. 75 action relating to denial of good-time credit under 28 V.S.A. § 811(c). We affirm.

Because the Rutland Superior Court disposed of petitioner' s complaint by summary judgment, we review the order using the same standard as the trial court. If there are no genuine issues of material fact for trial and a party is entitled to judgment as a matter of law, summary judgment is proper. V.R.C.P. 56(c)(3); Wentworth v. Fletcher Allen Health Care, 171 Vt. 614, 616 (2000) (mem.).

The undisputed facts show that petitioner is currently serving sentences for burglary and escape convictions. Upon his incarceration at the Northern State Correctional Facility (" NSCF"), DOC classified petitioner as having a high need for intervention in substance abuse, and a medium to medium high need for alcohol, educational, employment, and vocational programming. NSCF does not offer substance abuse programming, and petitioner did not participate in any other program for his identified need areas from January 2000 through August 2000, the relevant time period.

When he was denied good-time credit for failing to participate in programs that NSCF offers to address his other need areas, he filed the present complaint against DOC' s Commissioner under V.R.C.P. 75. He alleged that he was improperly denied mandatory good-time credit under 28 V.S.A. § 811(c) because there was no way for him to participate in substance abuse programming due to the lack of such programming at NSCF. He also claimed that when he tried to obtain employment to address his need for employment or vocational programming, he was told that he needed a high school diploma; petitioner has a GED rather than a high school diploma. Petitioner alleged that he should have been granted maximum credit under § 811(c) because he was denied employment opportunities, and had no need for educational programming in light of his GED. The affidavit petitioner submitted in support of his motion for summary judgment stated only that petitioner applied for several jobs at NSCF but no work was made available to him. DOC also submitted an affidavit to support its motion for summary judgment. In that affidavit, NSCF Corrections Service Specialist Joseph Silvestri testified that petitioner could have earned maximum good-time credits by engaging in either employment and educational programming or educational programming only. According to Silvestri, petitioner could not earn maximum credit for participating in employment programming alone because DOC " places great importance on education programming." Petitioner provided no evidence to challenge the statements in Silvestri' s

affidavit.

The trial court granted DOC' s motion for summary judgment, concluding that petitioner' s failure to engage in any programming for his identified need areas was proper grounds for DOC' s decision to deny him mandatory good-time credits under the DOC policy directive implementing § 811(c). As to petitioner' s claim that he was denied employment because he had a GED instead of a high school diploma, the court found no evidence supporting petitioner' s assertion. Petitioner appealed the decision to this Court.

On appeal, petitioner again asserts that DOC unlawfully denied him credit under § 811(c) because no substance abuse programming was made available to him at NSCF. Under § 811(c), an inmate

who agrees to participate in a treatment, educational or vocational program or work identified by [DOC] to address the inmate' s needs, but is unable to participate due to insufficient program opportunities provided by [DOC] shall be awarded the maximum number of days' reduction in the maximum term of confinement allowable for the program opportunity denied the inmate.

DOC Policy Directive 316.01(D) implements § 811(c), and provides that if an inmate is willing to engage in programming to address his highest need area, but DOC does not offer a program to address that need, the inmate will receive up to the maximum allowable credit for participating in programs designed to address the inmate' s lower priority needs. Dep' t of Corrections Policy Directive 316.01(D). Here, DOC identified several need areas for petitioner; substance abuse treatment was only one of those areas. It is undisputed that petitioner did not engage in any need area programming, although programs were available to address his other needs. Accordingly, the trial court properly granted summary judgment for DOC because petitioner was not entitled to mandatory credit under § 811(c).

Petitioner next argues that he should have been awarded credit under § 811(c) because he was required to participate in educational programming as a condition of employment at NSCF even though he holds the equivalent of a high school diploma. We agree with the trial court that nothing in the record supports petitioner' s factual assertion. Petitioner' s affidavit states only that he applied for several jobs and failed to secure one. Moreover, according to Silvestri' s uncontroverted affidavit, even if petitioner had secured employment at NSCF, he would not be entitled to maximum credit without also engaging in the facility' s educational programming, which petitioner refused to do. Summary judgment for DOC was therefore proper.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice