

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

Decided and Entered: February 1, 2007

500653

In the Matter of MARY JANEAN
SYLVESTER,
Petitioner,

v

MEMORANDUM AND JUDGMENT

GLENN S. GOORD, as Commissioner
of Correctional Services,
et al.,
Respondents.

Calendar Date: January 16, 2007

Before: Mercure, J.P., Peters, Carpinello, Rose and
Lahtinen, JJ.

Mary Janean Sylvester, Scotia, petitioner pro se.

Andrew M. Cuomo, Attorney General, Albany (Frank Brady of
counsel), for respondents.

Carpinello, J.

Proceeding pursuant to CPLR article 78 (transferred to this
Court by order of the Supreme Court, entered in Albany County) to
review a determination of respondent Commissioner of Correctional
Services which revoked petitioner's visitation privileges.

In 2004, petitioner concealed three cell phones inside of a
typewriter and mailed them to Great Meadow Correctional Facility
in Washington County to be used by her husband and two other
prison inmates. After an investigation, petitioner's visitation
privileges were revoked. She thereafter requested a hearing and,
as a result, respondent Commissioner of Correctional Services

affirmed the penalty imposed.¹ Petitioner now brings this CPLR article 78 proceeding challenging that determination.

We confirm. Petitioner's admission that she mailed the cell phones to the facility, the confidential information indicating that the cell phones were intended to be used in connection with an escape and an investigator's testimony regarding the serious threats that cell phones pose to the safety and security of the facility provide substantial evidence to support the Commissioner's determination (see Matter of Fleming v Coughlin, 222 AD2d 835, 836 [1995]). Petitioner's contrary testimony that she did not intend to facilitate an escape attempt but, instead, simply sought to reduce the cost of her husband's facility phone bill is irrelevant.

Furthermore, we reject petitioner's assertion that, because the incident in question did not occur during a personal visit, her visitation privileges cannot be revoked. Visitation privileges may be revoked when there is "reasonable cause to believe that such action is necessary to maintain the safety, security and good order of the facility" (7 NYCRR 202.2 [b] [2]). Moreover, there is no express requirement that the actions which lead to the revocation take place during an actual visit.

As a final matter, we note that petitioner, at the conclusion of her five-year probation period, may request reconsideration of the revocation on an annual basis (see 7 NYCRR 200.5 [d]).

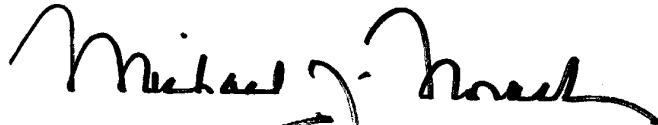
Each of the remaining arguments raised by petitioner in her pro se brief has been considered and found to be without merit.

Mercure, J.P., Peters, Rose and Lahtinen, JJ., concur.

¹ In addition, petitioner pleaded guilty in a separate criminal proceeding to attempted promoting prison contraband in the first degree and was sentenced to five years of probation. One condition of her probation was that she not enter any state correctional facility.

ADJUDGED that the determination is confirmed, without costs, and petition dismissed.

ENTER:



Michael J. Novack
Clerk of the Court