

STATE OF VERMONT

SUPERIOR COURT  
Windsor Unit

CIVIL DIVISION  
Docket No. 107-3-16 Wrev

JACOB S. FORCIER,  
Petitioner

v.

LISA MENARD,  
Respondent

DECISION  
Motion To Dismiss (#2)

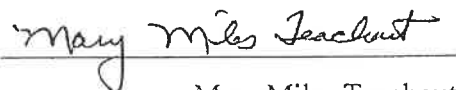
The Vermont Attorney General, on behalf of Respondent Lisa Menard, moves to dismiss this Rule 75 review of a Department of Corrections programming decision for lack of subject matter jurisdiction. Petitioner seeks review of the Department's decision not to allow him to begin programming until pending charges against him are resolved. The State has moved to dismiss this action for lack of subject matter jurisdiction.

Rule 75 review is not available for discretionary acts absent a showing that the inferior agency or tribunal's decision was arbitrary and capricious. *Alger v. Department of Labor and Industry*, 2006 VT 115. There is little dispute that it is within the Department's discretion to determine whether and when an inmate receives programming. *Rheaume v. Pallito*, 2011 VT 72, ¶ 11. The Petitioner has alleged in his response to this motion that the Department's programming decision was arbitrary and capricious.

The Supreme Court has specifically held that the Department's specific programming decisions following classification are unreviewable as a matter of subject matter jurisdiction. See *Rheaume*, 2011 VT 72 at ¶ 11 ("We conclude that while an inmate may have review of his designation under Rule 75, the particular programming requirements promulgated after that designation becomes final are a matter of DOC discretion and as such are nonreviewable under Rule 75."). This applies to all programming decisions, not only those related to high-risk sex-offender programming as in *Rheaume*. See *Inman v. Pallito*, 2013 VT 94, 195 Vt. 218. The court therefore lacks subject matter jurisdiction to review the Department's decision denying Petitioner VTPSA programming.

The State's motion to dismiss is *granted*.

Dated in Woodstock, Vermont this 19th day of August, 2016.



Mary Miles Teachout  
Superior Court Judge

FILED

AUG 22 2016