

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
CIVIL ACTION
No. 2177CV00105

JAMES CARVER

vs.

CAROL A. MICI¹ & others²

**MEMORANDUM OF DECISION AND ORDER ON
PETITIONER'S MOTION TO STRIKE ADMINISTRATIVE RECORD AND TO
REPLACE WITH UPDATED ADMINISTRATIVE RECORD TO INCLUDE DOC JUNE
21, 2020 VIDEO OF INCIDENT RELIED UPON BY COMMISSIONER**

In this lawsuit, the petitioner, James Carver ("Carver"), pursuant to G. L. c. 127, § 119A, and G. L. c. 249, § 4, seeks judicial review of the decision of the defendant, the Commissioner of the Massachusetts Department of Corrections ("DOC"), Carol A. Mici (the "Commissioner"), denying his application for medical parole. Before the court is Carver's motion to strike the administrative record prepared and submitted by the defendants as their Answer to the Complaint, and to replace it with an updated administrative record that includes a surveillance video of a June 21, 2020 incident relied upon by the Commissioner in her decision to deny medical parole and her decision on reconsideration denying medical parole. Carver contends that the video is an integral part of his claims and that the court must have the opportunity to review the video to make an informed decision on the case.

The Commissioner relied on the June 21 incident, which involved an altercation between Carver and DOC officers, in her December 4, 2020 decision, stating that it illustrated that Carver is not permanently incapacitated and that he remains a threat to public safety. Carver disputes the

¹ In her capacity as Commissioner of the Massachusetts Department of Corrections

² Stephen Kennedy, in his capacity as Superintendent of Old Colony Correctional Center

Commissioner's characterization of the incident in her decision and contends that the video contradicts that characterization. In January 2021, he sought reconsideration of his petition based on the video. The Commissioner denied the request for reconsideration on March 1, 2021. According to the Commissioner's brief in opposition to the present motion, in making her decision to deny Carver's request for medical parole, she reviewed reports regarding the June 21 incident, but did not consider the video of the incident.

The defendants oppose Carver's motion on grounds that the administrative agency, not a plaintiff, determines the contents of the administrative record, and that this court has no authority to expand the administrative record because G. L. c. 30A, § 14(6), which addresses applications for leave to present additional evidence, does not apply to the DOC by virtue of G. L. c. 30A, § 1A. See G. L. c. 30A, § 1A (providing that DOC "shall be subject to sections one through eight, inclusive, and shall not otherwise be subject to this chapter. . . ."). The court agrees that G. L. c. 30A, § 14(6), does not apply to DOC.

While Carver may not expand the administrative record presently before the court, the court deems it prudent to remand the matter to DOC so that the Commissioner may review and consider the video in connection with deciding Carver's petition for medical parole. The recently filed cross-motions for judgment on the pleadings are not yet before the court, but the failure to consider the video itself could impact the court's analysis of the merits of Carver's Complaint seeking certiorari review. It may be up to the Commissioner to determine what information is relevant for purposes of making a decision on Carver's petition for medical parole, but where the Commissioner has apparently deemed reports describing the June 21 incident relevant, it is difficult to understand how video evidence of the incident would not also be relevant. The video of the incident itself is the best evidence, and instead of relying on reports of others, the

Commissioner should view it herself to make an independent assessment of the events in question. This is so, especially where Carver asserts that the video contradicts other accounts of the incident.

ORDER

For the foregoing reasons, petitioner James Carver's Motion to Strike Administrative Record and to Replace With Updated Administrative Record to Include DOC June 21, 2020 Video of Incident Relied Upon By Commissioner (Paper No. 14) is **ALLOWED** in part and **DENIED** in part. Carver's request that the administrative record be struck and replaced with a new one to include the video of the June 21, 2020 incident is **DENIED**. The matter is **REMANDED** to the Department of Correction so that the Commissioner may issue a revised decision on Carver's petition for medical parole after reviewing the video of the June 21, 2020 incident.

Dated: July 9, 2021

/s/ Janice W. Howe
Janice W. Howe
Justice of the Superior Court