

Matter of Lee v Dennison

2007 NY Slip Op 30492(U)

March 26, 2007

Supreme Court, New York County

Docket Number: 0400015/2007

Judge: Judith J. Gische

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: GISCHE
Justice

PART 10

LEE, RAYMOND
- v -
ROBERT DENNISON,
ET AL.

INDEX NO. 400015107
MOTION DATE _____
MOTION SEQ. NO. 01
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

UNFILED JUDGMENT

Cross-Motion: Yes No

This judgment has not been entered by the County Clerk and notice of entry cannot be given based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Upon the foregoing papers, It is ordered that this motion

motion (s) and cross-motion(s) decided in accordance with the annexed decision/order of even date.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Dated: 3/26/07

J. GISCHE
HON. JUDITH J. GISCHE J.S.C. [* 1]

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10

-----X
In the Matter of the Application of
RAYMOND LEE,

Petitioner,

For a Judgment under Article 78 of the
Civil Practice Law and Rules,

-against-

ROBERT DENNISON, chairman of the New York
State Division of Parole,

Respondent.

Decision/Order

Index No.: 400015/07
Seq. No. : 001

Present:
Hon. Judith J. Gische

J.S.G.
UNFILED JUDGMENT
This judgment has not been reviewed by the County Clerk
and notice of entry is hereby given to all parties herein. To
obtain any comment or proposed responsive motion must
appear in person at the Department Clerk's Desk (Room
141B).

-----X
Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this
(these) motion(s):

Papers	Numbered
Pet's OSC	1
Resp's crs mtn (chg/ven)	2
Pet's opp	3

-----X
Upon the foregoing papers, the decision and order of the court is as follows:

This is an application pursuant to Article 78 of the Civil Practice Act. Petitioner,
Raymond Lee, is currently incarcerated with the New York State Department of
Corrections. Petitioner, *pro se*, seeks a judgment: (1) annulling respondent's determination
of February 28, 2006, denying petitioner parole release and thereby releasing the
petitioner to parole supervision, or in the alternative; (2) directing respondent to
immediately afford petitioner a *de novo* hearing to determine whether petitioner will be
released to parole supervision.

The respondent is Robert Dennison, Chairman of the New York State Division of

Parole ("Dennison"). In opposition to the instant motion, respondent seeks an order changing the place of trial in this proceeding and transferring this petition to either St. Lawrence County or Albany County on the grounds that New York County is not the proper venue. CPLR § 506(b).

Background

Petitioner is currently serving a sentence of 25-years to Life, following a jury trial on Second Degree Murder and First Degree Robbery. On February 28, 2006, petitioner appeared before the Parole Board for the second time. His request for parole was subsequently denied on March 5, 2006. Petitioner initiated an administrative appeal pursuant to New York Executive Law Section 259-i(4) on June 13, 2006. Respondent has yet to issue a decision on the appeal, and concedes that petitioner has exhausted his administrative remedies. Petitioner commenced the instant CPLR Article 78 proceeding challenging the Parole Board's determination.

In lieu of an answer, respondent demands that venue be changed from New York County to Albany County, as the place of business of respondent, or in the alternative, Lawrence County, as the situs of the "material events" (i.e., where the parole determination was made). CPLR 506(b). Petitioner opposes the change of venue, contending that the original choice of venue was proper, as the events underlying the parole determination, the New York County crime and the conviction, were "material events' within the meaning of CPLR 506(b).

Discussion

An Article 78 proceeding may be commenced:

"in any county within the judicial district where the respondent made the determination complained of or

refused to perform the duty specifically enjoined upon him by law or where the proceedings were brought or taken in the course of which the matter sought to be restrained originated, or where the material events otherwise took place, or where the principal office of the respondent is located."

While the lower courts have been divided as to whether the petitioner's position has merit, the Second Department has recently weighed in on the issue. Vigilante v. Dennison, 36 A.D.3d 620 (2 Dept. 2007), involved an inmate-petitioner who challenged the denial of his parole application. Dennison, respondent in that action as well, cross moved for change of venue therein. The Supreme Court, Kings County, denied respondent's cross motion on the basis that the petitioner's crime and sentencing took place in Kings County. Respondent subsequently appealed. The Second Department held that "the relevant material event was the decision-making process leading to the determination under review," and reversed the lower court, thereby granting respondent's motion and transferring that proceeding to Albany County.

Absent any authority from the First Department, this court is bound to follow the applicable ruling of another department. Tzolis v. Wolff, 829 N.Y.S.2d 488 (1st Dept. 2007). Accordingly, the respondent's cross motion for change of venue is hereby granted and the instant proceeding is hereby transferred to Albany County.

Any relief not expressly addressed herein has nonetheless been considered by the Court and is denied.

This shall constitute the order, decision and judgment of the Court.

Dated: New York, New York
March 26, 2007

HON. JUDITH J. GISCHKE, J.S.C.