

Matter of Ashford v Joy
2007 NY Slip Op 30498(U)
April 2, 2007
Supreme Court, Albany County
Docket Number: 0488106/2007
Judge: George B. Ceresia
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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In The Matter of the Application of
MARK ASHFORD,

Petitioner,

-against-

DEBRA JOY,

Respondent,

For A Judgment Pursuant to Article 78
of the Civil Practice Law and Rules.

Supreme Court Albany County Article 78 Term
Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding
RJI #01-06-ST7010 Index No. 4881-06

Appearances: Mark Ashford
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Petitioner, Pro Se
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DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

The petitioner, an inmate at Gouverneur Correctional Facility, has commenced the instant CPLR Article 78 proceeding to review a determination to deny petitioner's application for presumptive work release. The petitioner argues that the Temporary Release Committee erred in its determination by reason that the sentencing judge, who had knowledge of his criminal history, had directed that he be permitted to participate in the CASAT program pursuant to Penal Law § 60.04 (6). The respondent, in opposition to the petition, argues that it still retains the right to review the application under the administrative rules applicable to participation in the temporary release program (see 7 NYCRR Part 1900).

The decision of the central office reviewer recites, in part, as follows:

“Your application has been denied by the temporary release committee for the following reason(s): violent hist, weapons.
Explanation: Inmate's history of violence and weapons possession makes him an inappropriate candidate for CASAT consideration.
You may not reapply for CASAT until 04/2008.”

The administrative appeals decision of the Temporary Release Chairperson recites, in part, as follows:

“After reviewing all factors in this case, both positive and negative, the decision has been made to affirm the TRC decision in this case.
Reasons: Violent Hist, Recdivst Hst, PAR/PRB Viol
Comments: Your multi-state legal history includes absondence from North Carolina probation to NY. You were returned and sentenced to a state term for assault with a deadly weapon. You have served three NYS terms for offenses including Assault 1. You have violated parole. Your acceptable custodial record to date is noted. You failure to modify your pattern of criminal behavior or to conform to the rules of parole renders you

unsuitable for phase two of the CASAT program.”

The order dated February 16, 2006 of Monroe County Court Judge Richard Keenan recited as follows:

“Ordered that, pursuant to Penal Law § 60.04 (6), the Department of Correctional Services is directed to enroll the defendant in the Comprehensive Alcohol and Substance Abuse Treatment Program, provided that the defendant will satisfy the statutory eligibility criteria for participation in such program”.

Penal Law § 60.04 (6) recites as follows:

“Substance abuse treatment. When the court imposes a sentence of imprisonment which requires a commitment to the state department of correctional services upon a person who stands convicted of a controlled substance or marihuana offense, the court may, upon motion of the defendant in its discretion, issue an order directing that the department of correctional services enroll the defendant in the comprehensive alcohol and substance abuse treatment program in an alcohol and substance abuse correctional annex as defined in subdivision eighteen of section two of the correction law, provided that the defendant will satisfy the statutory eligibility criteria for participation in such program. Notwithstanding the foregoing provisions of this subdivision, any defendant to be enrolled in such program pursuant to this subdivision shall be governed by the same rules and regulations promulgated by the department of correctional services, including without limitation those rules and regulations establishing requirements for completion and those rules and regulations governing discipline and removal from the program. No such period of court ordered corrections based drug abuse treatment pursuant to this subdivision shall be required to extend beyond the defendant's conditional release date.”

In Matter of Bailey v Joy (11 Misc3d 941 [Sup. Ct., Westchester Co., 2006]), the

Court was presented with a situation very similar to the one at bar. As relevant here the sentencing judge, upon motion of the defendant pursuant to Penal Law § 60.04 (6), ordered the Department of Correctional Services to enroll the petitioner in the CASAT program provided that he satisfied the statutory eligibility requirements for enrollment in the program. Upon being received by the Department of Corrections he applied to be enrolled in the CASAT program. He was administratively denied enrollment by reason of his prior criminal history. The court, applying well established rules of statutory construction, found that under Penal Law § 60.04 (6) the only eligibility requirements were statutory (specifically that the inmate be within two years six months of parole eligibility). The Court found that the failure of Penal Law § 60.04, to expressly mention that an inmate is also subject to administrative review with respect to eligibility “was intentional and not inadvertent” (Bailey, supra, at 946).

The court commented:

“In addition, and perhaps most importantly, if this Court were to accept DOCS interpretation, the result would be to return the ultimate decision making concerning CASAT enrollment to DOCS thereby effectively repealing Penal Law § 60.04 (6). It is a fundamental canon of statutory construction that a Court must avoid an interpretation that renders it a nullity (McKinney’s Cons Laws of NY, book 1, Statutes § 98. At 223-24; Matter of Yolanda D., 88 NY2d 790, 794, 673 N.E.2d 1228, 651 NYS2d 1 [1996]).” (Matter of Bailey v Joy, supra, at 946).

The foregoing interpretation appears to be supported by the Memorandum of the Assembly Rules Committee issued with respect to the adoption of Penal Law § 60.04 (L

2004, C 738), which recites in part as follows:

“Under current law, the Department of Correctional Services has the discretion to place or not place inmates into the CASAT program. Under the bill, judges would also be given the discretion to make such placements. Offenders placed in CASAT by courts, however, would then become subject to all of the normal rules and requirements imposed on other CASAT offenders by the corrections department.* * *”

If the Court were to adopt respondent’s interpretation, an inmate applying for admission to the CASAT program would still be subject to discretionary review by the temporary release committee, even though the sentencing court had issued an order pursuant to Penal Law § 60.04 (6). Were this the case, Penal Law § 60.04 (6), and orders issued pursuant thereto, would serve no useful purpose, since even prior to the adoption of Penal Law § 60.04 (6), a sentencing court could always make recommendations for alcohol or substance abuse treatment. The Court recognizes that Penal Law § 60.04 (6) recites that any defendant to be enrolled in the CASAT program “shall be governed by the same rules and regulations promulgated by the department of correctional services, including without limitation those rules and regulations establishing requirements for completion and those rules and regulations governing discipline and removal from the program” (see Penal Law § 60.04 [6], supra). The Court finds that the purpose of this provision is to insure that once enrolled in CASAT, an inmate will then be subject to all applicable rules and regulations. It does not operate to overrule or contradict the prior sentence, which recites that the

defendant must satisfy *statutory* eligibility criteria¹.

Under all of the circumstances, the Court concludes that the petition must be granted, and the respondent pursuant to the directive of the sentencing judge must enroll petitioner in the CASAT program.

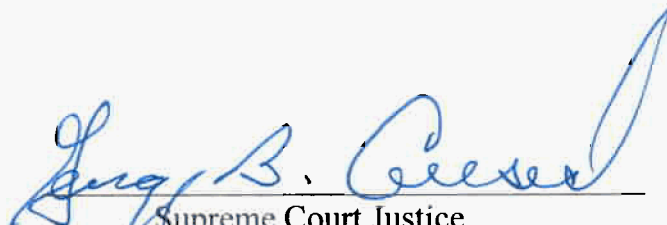
Accordingly, it is

ORDERED and ADJUDGED, that the petition be and hereby is granted, and the respondent is directed, within thirty (30) days, to enroll the petitioner in the CASAT program.

This shall constitute the decision, order and judgment of the Court. All papers are returned to the attorney for the respondent who is directed to enter this Decision/Order/Judgment without notice and to serve petitioner with a copy of this Decision/Order with notice of entry.

ENTER

Dated: April 2, 2007
Troy, New York



Supreme Court Justice
George B. Ceresia, Jr.

Papers Considered:

1. Order To Show Cause dated August 11, 2006, Petition, Supporting Papers and Exhibits
2. Respondent's Answer dated September 29, 2006, Supporting Papers and Exhibits

¹Respondent has not, in either its administrative decisions, or the instant CPLR Article 78 proceeding, taken the position that the petitioner does not satisfy statutory eligibility requirements (see generally, Corrections Law §§ 2 [18], 851 [2]).