

Matter of Francis v Joy
2007 NY Slip Op 30499(U)
March 30, 2007
Supreme Court, Albany County
Docket Number: 0665306/2007
Judge: George B. Ceresia
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In The Matter of ROCKEL FRANCIS,

Petitioner,

-against-

DEBRA JOY, Director of TRP,

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-ST7197 Index No. 6653

Appearances: Rockel Francis
 Inmate No. 05-B-1853
 Petitioner, Pro Se
 Wyoming Correctional Facility
 P.O. Box 501
 Dunbar Road
 Attica, NY 14011

Eliot Spitzer
Attorney General
State of New York
Attorney For Respondent
The Capitol
Albany, New York 12224
(David L. Cochran,
Assistant Attorney General
of Counsel)

DECISION/ORDER

George B. Ceresia, Jr., Justice

The petitioner, an inmate at Wyoming Correctional Facility, has commenced the

instant CPLR Article 78 proceeding to review a determination dated September 23, 2006 which denied petitioner's application for temporary release.

The respondent has made a motion to dismiss the petition on grounds that the petition fails to state a cause of action. It is indicated that the petition is facially deficient in that it does not contain factual allegations of an evidentiary nature, but rather is vague and conclusory. It is asserted that the petition does not contain clear and accurate dates. In support of the motion, respondent Joy indicates that she did not make a determination to deny the petitioner's application for temporary release on September 23, 2006, as alleged in the petition.

It is well settled that in response to a motion pursuant to CPLR 3211, pleadings shall be liberally construed, the facts as alleged accepted as true, and every possible favorable inference given to plaintiffs (see, Leon v. Martinez, 84 NY2d 83, 87). On such a motion, the Court is limited to examining the pleading to determine whether it states a cause of action (see, Guggenheimer v. Ginzburg, 43 NY2d 268, 275). In examining the sufficiency of the pleading, the Court must accept the facts alleged therein as true and interpret them in the light most favorable to the plaintiff (see, Leon v Martinez, 84 NY2d 83, 87-88; Matter of Board of Educ., Lakeland Cent. School Dist. of Shrub Oak v. State Educ. Dept., 116 AD2d 939 [3rd Dept., 1986]). Only affidavits submitted by the plaintiff in support of his or her causes of action may be considered on a motion of this nature (see, Rovello v. Orofino Realty Co., 40 NY2d 633, 635-636). On such a motion, the court's sole inquiry is whether the facts alleged

in the complaint fit within any cognizable legal theory, not whether there is evidentiary support for the complaint (see, Leon v Martinez, 84 NY2d 82, 87-88; Pietrosanto v Nynex Corp., 195 AD2d 843, 844 [3rd Dept., 1993]).

Petitioner alleges that the respondent improperly considered charges of which he was acquitted at trial. Petitioner also alleges that the TRP Reviewer relied solely on petitioner's criminal history as the basis for denying temporary release.

The Court finds that the petition adequate states a cause of action. The issue concerning the incorrect date of the determination is a matter which may be addressed in respondent's answer.

Accordingly it is

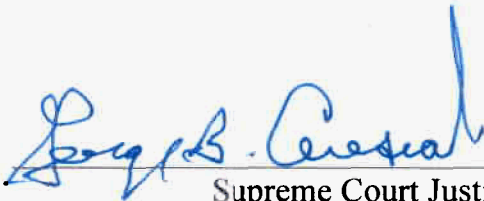
ORDERED, that the motion to dismiss is denied; and it is further

ORDERED, that respondent is directed to serve and file an answer to the petition within twenty (20) days, and re-notice the proceeding pursuant to CPLR § 7804 (f).

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

ENTER

Dated: March 30, 2007
Troy, New York



Supreme Court Justice
George B. Ceresia, Jr.

Papers Considered:

1. **Order To Show Cause dated October 24, 2006 Supporting Papers and Exhibits**
2. **Notice of Motion dated January 5, 2007, Supporting Papers and Exhibits**