

Matter of Blake v Dennison

2007 NY Slip Op 31177(U)

May 4, 2007

Supreme Court, New York County

Docket Number: 0402443/2007

Judge: Judith J. Gische

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SCANNED ON 5/14/2007
[* 1]
SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JUDITH J. GISGHE, J.S.C.
Justice

PART 10
~~3~~

Alphonso Blake

INDEX NO. 402443/07

- v -

Robert D. Dennison

MOTION DATE _____

MOTION SEQ. NO. 001

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

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

Motion decided in accordance
with annexed decision & order.

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be based hereon. To obtain entry, counsel or authorized persons must appear in person at the Judgment Clerk's Desk (Room 1200).

Dated: 5/14/07

JUDITH J. GISGHE, J.S.C.
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

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

In the Matter of the Application of
ALPHONSO BLAKE,

Petitioner,

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

-against-

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

Respondent

Decision/Order

Index No.: 402433/07

Seq. No. : 001

Present:

Hon. Judith J. Gische

J.S.C.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk
and notice of entry cannot be served hereon. To
obtain entry, counsel or party must
appear in person at the County Clerk's Office and
submit the papers to the Judgment Clerk's Desk (Room
Numbered

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

Papers

Pet's OSC 1

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 Law and Rules.

Petitioner is currently incarcerated with the New York State Department of Corrections.

Petitioner, *pro se*, seeks a judgment: (1) annulling respondent's determination of May 16, 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"). Respondent has not answered or opposed the petition. While this petition has been submitted on default, it must be dismissed for the reasons that follow.

It is important to note that New York County is an improper venue for this proceeding. Petitioner contends that venue is proper as the "petitioner was sentenced on the underlying conviction in this county and there are material facts within the sentencing minutes that are essential to the instant case." However, in Vigilante v. Dennison, 36 A.D.3d 620 (2d Dept. 2007), the court held that for purposes of venue, the situs of a petitioner's crime and sentencing is not "[w]here the material events... took place" in accordance with CPLR 506(b). Rather, "the relevant material event was the decision-making process leading to the determination under review." Vigilante, supra. 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).

Even if venue were proper, petitioner has failed to provide a record, including transcripts from the parole hearing, to the court. A fundamental tenet of Article 78 review is that "[j]udicial review of administrative determinations is confined to the facts and record adduced before the agency." Featherstone v. Franco, 95 N.Y.2d 550 (2000). Accordingly, this petition is hereby denied.

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
May 4, 2007

SO ORDERED:


HON. JUDITH J. GISCHE, J.S.C.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1000) of the County of New York Court House.