

Matter of Riley-James v Soares

2007 NY Slip Op 31711(U)

May 18, 2007

Supreme Court, Albany County

Docket Number: 0023252/0051

Judge: Joseph C. Teresi

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 the Application of
ALPHONSE RILEY-JAMES,

Petitioner,

-against-

DECISION and ORDER
RJI NO.: 01-05-081979
INDEX NO.: 2325-05

P. DAVID SOARES, District Attorney
of Albany County,

Respondent.

Albany County Supreme County All Purpose Term, March 23, 2007
Assigned to Justice Joseph C. Teresi

APPEARANCES:

Alphonse Riley-James
Inmate # 88-B-2242
Shawangunk Correctional Facility
PO Box 700
Wallkill, New York 12589

TERESI, J.:

In 1988, Petitioner was convicted of various crimes including two counts of murder in the Second Degree (*People v. Riley-James*, 168 AD2d 740 [1990]). In 2004, Petitioner requested from the Albany County District attorney, various documents under the Freedom of Information Law (Public Officer’s Law Article 6). Petitioner now brings this motion pursuant to CPLR § 5104 and Judiciary Law § 756 holding Respondent, District Attorney P. David Soares in civil contempt of court. The record is complete with an Affidavit of Service on Respondent dated March 8, 2007. No opposition has been received by or filed with the Supreme Court Clerk

After fully reviewing the record, this Court grants Petitioner’s motion and finds

Respondent to be in contempt of this Court. The Court further finds that Respondent's actions were contemplated and calculated to, and did actually, defeat, impair, impede or prejudice Petitioner's right to receive documents pursuant to his FOIL request and as Ordered by the Supreme Court of the State of New York, Appellate Division, Third Department, dated October 26, 2006 (*Alphonse Riley-James v. P. David Soares*, 33 A.D.3d 1171 [3d Dept 2006]).

Respondent may purge the contempt by complying with the Third Department's Order within 15 days of this Decision and Order.

Petitioner seeks to enforce a judgment of the Supreme Court of the State of New York, Appellate Division, Third Department entered on October 26, 2006 reversing the judgment of the lower court (Malone, J: dated July 19, 2006) and directing Respondent to disclose the documents and materials sought in Petitioner's underlying FOIL request. On September 20, 2004, Petitioner first requested certain documents from former-district attorney Paul A. Clyne. No response was forthcoming. After Petitioner wrote to the FOIL Appeals officer on November 8, 2004, the original FOIL request was denied on November 19, 2004. Appeal was denied on December 14, 2004. The petition was further denied in a CPLR Article 78 proceeding on July 19, 2005 (Judge Malone) which was subsequently reversed by the Appellate Division (33 AD3d 117). Despite, the appellate decision, Respondent has continually failed to provide the requested documents. On February 27, 2007 Justice McDonough signed an Order to Show Cause requiring Respondent to answer regarding this failure and allowing this proceeding to be brought. Respondent, has failed to respond to this motion, and is in default.

Petitioner requests that the Court hold Respondent, District Attorney, in contempt pursuant to CPLR § 5104. "To sustain a finding of ... civil ... contempt based on an alleged

violation of a court order it is necessary to establish that a lawful order of the court clearly expressing an unequivocal mandate was in effect.... It must also appear with reasonable certainty that the order has been disobeyed.... Of course, the party charged must have had knowledge of the court's order" (*Matter of Department of Environmental Protection of the City of New York v. Department of Environmental Conservation of the State of New York*, 70 N.Y.2d 233, 240 [1987]). Here, Respondent has failed to comply with an Order by the Supreme Court of the State of New York, Appellate Division, Third Department, dated October 26, 2006 (*Alphonse Riley-James v. P. David Soares*, 33 A.D.3d 1171 [3d Dept 2006]) to turn over the requested documents and has failed to respond to an Order to Show Cause signed by this Court (Justice McDonough) on February 27, 2007 which brought on this motion. A hearing is not required because there is no factual dispute regarding Respondent's total lack of response to multiple court orders. Moreover, the constructive denial of Petitioner's FOIL requests in violation of multiple court orders clearly impedes Petitioner's rights to obtain the documents in question. This Court finds that Respondent's actions were calculated to or actually did deprive, impair, impede or prejudice the rights of Petitioner.

Therefore, this Court grants Petitioner's motion and finds Respondent to be in contempt of Court. Respondent may purge the contempt by fully complying with the Third Department's Order within 15 days of this Decision and Order: By delivering, within 15 days, to Petitioner copies of any documents pertaining to promises made or funds given to witnesses at Petitioner's trial and any documents pertaining to proposed plea agreements. The Appellate Division has already ruled that none of these documents requested come within any statutory construction exceptions. The Appellate Court also determined that respondent, District Attorney, had not

demonstrated that the requested materials were turned over to Petitioner's defense counsel during the underlying criminal case.

All papers, including this Decision and Order, are being filed with the Albany County Clerk. A copy of this Decision and Order is being mailed to Petitioner and Respondent Pursuant to CPLR § 2220.

SO ORDERED!

Dated: May 18, 2007

Albany, New York


JOSEPH C. TERESI, J.S.C.

PAPERS CONSIDERED:

1. Petitioner's Order to Show Cause, dated February 27, 2007 with Attached Affidavit of Alphonse Riley-James, dated February 27, 2007 and Attached Exhibits A-D.