

Matter of Bunche v Dennison
2007 NY Slip Op 31737(U)
June 15, 2007
Supreme Court, New York County
Docket Number: 0400494/2007
Judge: Lewis Bart Stone
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Lewis Bart Stone
HON. LEWIS BART STONE Justice

PART 508

Genalo Bunche

INDEX NO. 400494/07

- v -

Robert Dennison

MOTION DATE _____

MOTION SEQ. NO. 2

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

is granted and
Ordered that the venue of this proceeding
is changed from this Court to the Supreme Court,
County of Richmond and the Clerk of this Court
is directed to transfer the papers on file
in this proceeding (Index No 400494/07) to
the Clerk of the Court, Richmond County,
upon service of a certified copy of this
order with notice of entry and payment of
appropriate fees, if any. See separate
Opinion.

FILED

JUN 21 2007

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 13 June 2007

Lewis Bart Stone

HON. LEWIS BART STONE J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST DEFERENCE

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 50

-----X
In the Matter of the Application of
GERALD BUNCHE,

Petitioner,

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

- against-

ROBERT DENNISON, CHAIRMAN OF
NEW YORK STATE DIVISION OF PAROLE,

Respondents.

Hon. Lewis Bart Stone:

This proceeding was commenced on or about February 14, 2007, by petitioner Gerald Bunche ("Bunche") by Order to Show Cause pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR"), seeking to challenge a determination (the "Determination") by Robert Dennison, Commissioner of the New York State Division of Parole ("Parole") denying Bunche discretionary parole release. On April 20, 2007, Parole cross moved to change venue and transfer the petition to either Albany County, the principal office where Parole is located, or Richmond County, where Bunche is incarcerated and where Bunche's parole hearing was held. Bunche opposes the motion.

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DECISION AND
ORDER

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INDEX NUMBER
400494/07

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COUNTY CLERK'S OFFICE
NEW YORK

Bunche was convicted of Murder in the Second Degree in New York County, and sentenced, as a juvenile offender, to nine years to life. Bunche has had three previous hearings before the Parole Board. The Board denied parole each time, the last hearing taking place on October 25, 2005. Bunche filed an administrative appeal and the Parole Appeals Unit affirmed on October 23, 2006. By this petition, Bunche challenges the Determination which denied discretionary parole release and ordered a 24-month hold.

Bunche argues that the proceeding should be heard in New York County pursuant to CPLR §506 which provides that an Article 78 proceeding shall be commenced “in any county...where the respondent made the determination complained of...or where the material events otherwise took place or where the principal office of the respondent is located.”

Bunche contends that the location of the “material event” was New York County where the crime occurred. It is now well established that an Article 78 challenge to the denial of parole is properly venued where the Parole Board hearing was held, or in Albany, where the Parole Board’s principal office is located. Phillips v. Dennison, ___ AD3d ___, 834 NYS2d 121 (1st Dept. 2007), Matter of Vigilante v. Dennison, 36 AD3d 620 (2nd Dept. 2007). Such cases have interpreted that the relevant “material event” for the purposes of interpreting the venue provisions of CPLR §506(b) was the “decision making process leading to the determination under

[* 4]
review” and not where the crime occurred. Vigilante, supra; Phillips, supra at 126.

Accordingly, this Court grants the cross-motion of Parole and hereby transfers the matter to Richmond County, the location of the Determination to deny parole.

This constitutes the Decision and Order of the Court.

DATED: JUNE 15, 2007
NEW YORK, NEW YORK



Hon. Lewis Bart Stone
Justice of the Supreme Court

