

**Matter of Lugo v Dennison**

2007 NY Slip Op 31738(U)

June 8, 2007

Supreme Court, New York County

Docket Number: 0405407/2006

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 505

Lugo, Alfredo

INDEX NO. 405407/06

- 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 \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...  
Answering Affidavits — Exhibits \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_

**FILED**

JUN 21 2007

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that ~~this~~ <sup>the</sup> motion is granted and

it is further

ORDERED that the venue of this proceeding is changed from this Court to the Supreme Court, County of Albany, and the Clerk of this Court is directed to transfer the papers on file in this proceeding (Index 405407/06) to the Clerk of the Supreme Court County of Albany, upon service of a certified copy of this order with notice, entry and payment of any appropriate fees see separate opinion

Dated: 5 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

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  
ALFREDO LUGO

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.

:  
:  
: DECISION AND  
ORDER

:  
:  
: INDEX NUMBER  
405407/06

**FILED**

: JUN 21 2007

-----X  
**COUNTY CLERK'S OFFICE**  
**NEW YORK**

Hon. Lewis Bart Stone:

This proceeding was commenced on or about January 2, 2007 by Petitioner Alfredo Lugo ("Lugo") by an Order to Show Cause pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR") Article 78, seeking to challenge a determination by Robert Dennison, Commissioner of the New York State Division of Parole ("Parole") denying Lugo discretionary parole release. On March 9, 2007, Parole cross moved to change venue and transfer the petition to either Albany County, the principal office where Parole is located or Wyoming County, where Lugo is incarcerated and where Lugo's parole hearing was held. Lugo opposes the motion.

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Lugo was convicted of Murder in the Second Degree after a jury trial in New York County, and sentenced to fifteen years to life. Lugo has five previous hearings before the Parole Board. The Board denied parole each time, the last hearing taking place on April 11, 2006.<sup>1</sup> By this petition, Lugo challenges this Determination which was made by Parole at Wyoming Correctional Facility, Lugo's place of incarceration, which is located in Wyoming County. The Office of the Division of Parole located in Albany, New York.

Lugo 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."

Lugo contends that review of Parole determination should take place in New York County, the location of the "material event." It is now well established that an Article 78 proceeding 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 (1<sup>st</sup> Dept. 2007), Matter of Vigilante v. Dennison, 36 AD3d 620 (2<sup>nd</sup> Dept. 2007). Such cases

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<sup>1</sup> Lugo filed on administrative appeal but the Division of Appeals of Unit failed to issue a finding within the required 120 day statute of limitation. Lugo therefore was deemed to have exhausted his administrative remedies.

[\* 4 ]

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

Notably, Lugo’s previously made an Article 78 motion in New York County challenging a March 10, 2004 determination to deny parole. On October 21, 2005, Judge Roland Acosta denied Lugo’s petition and granted Parole’s cross motion for change of venue to Albany County. Since Lugo’s previous Article 78 petition was heard in Albany County, and consistent with Vigilante where the appropriate venue for a challenge may be made in the location of the principal office of the Division of Parole, this proceeding is hereby transferred to Albany County.

This constitutes the Decision and Order of the Court.

DATED: JUNE 8, 2007  
NEW YORK, NEW YORK



Hon. Lewis Bart Stone  
Justice of the Supreme Court

**FILED**  
JUN 21 2007  
COUNTY CLERKS OFFICE  
NEW YORK