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| Matter of Murray v Goord |
| 2007 NY Slip Op 32023(U) |
| June 19, 2007 |
| Supreme Court, Franklin County |
| Docket Number: 0001003/2006 |
| Judge: S. Peter Feldstein |
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**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF FRANKLIN

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In the Matter of the Application of
JAMES MURRAY, #04-A-6644,
Petitioner,

For a Judgment Pursuant to Article 78
Of the Civil Practice Laws and Rules

-against-

**DECISION AND JUDGMENT
RJI #16-1-2006-0371.038
INDEX # 2006-1003
ORI #NY016015J**

GLENN S. GOORD, Commissioner, New
York State Department of Correctional Services,
Respondent.

X

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the petition (“AFFIDAVIT IN SUPPORT OF ORDER TO SHOW CAUSE”) of James Murray, verified on September 13, 2006, and stamped as filed in the Franklin County Clerk’s office on October 10, 2006. Petitioner, who is an inmate at the Bare Hill Correctional Facility, is challenging the July 10, 2006, decision of the Central Office Reviewer affirming the denial of his application for presumptive work release. The Court issued an Order to Show Cause on October 18, 2006, and an Amended Order to Show Cause on February 23, 2007. The Court has since received and reviewed respondent’s Answer and Return, including in camera materials, verified on April 6, 2007, as well as respondent’s Letter Memorandum of April 6, 2007. The Court has received no Reply thereto from the petitioner.

On December 7, 2004, the petitioner was sentenced in Supreme Court, Kings County, to two, concurrent, indeterminate sentences of imprisonment of 7 to 21 years upon his convictions of the crimes of Conspiracy 2^o and Criminal Sale of a Controlled

Substance 3°. On May 3, 2006, the petitioner applied for presumptive work release to participate in the Comprehensive Alcohol and Substance Abuse Treatment (CASAT) program. Said application was denied by the Temporary Release Committee at the Bare Hill Correctional Facility (TRC) with the following explanation:

“. . . DENIED CASAT BECAUSE OF YOUR LENGTHY RECIDIVIST LEGAL HISTORY BEGINNING IN 1978 WITH A JUVENILE ARREST AND A P.I.N.S. PLACEMENT. YOU HAVE SERVED 2 PRIOR NYS TERMS AND VIOLATED PAROLE AT LEAST ONCE. YOU ARE THEREFORE DEEMED UNSUITABLE FOR CASAT. YOU WILL BE REVIEWED FOR CASAT PHASE I TREATMENT CONSISTENT WITH THE SENTENCING JUDGE’S ORDER AT A LATER DATE.”¹

The TRC further directed that the petitioner could not reapply for CASAT until May of 2008. On July 10, 2006, upon administrative appeal, the Central Office Reviewer affirmed the TRC decision based upon the nature of the offense underlying petitioner’s incarceration as well as the petitioner’s violent/recidivist criminal history. The comments of the Central Office Reviewer were as follows:

“YOUR LEGAL HISTORY DATES TO 1979 AND INCLUDES CONVICTIONS FOR LARCENOUS AND DRUG RELATED OFFENSES AND TWO PRIOR NYSDOCS TERMS FOR ATT. ROBBERY 1 AND BURGLARY 2/ATT. ROBBERY 1. THE INSTANT OFFENSE, CONSPIRACY 2/CSCS 3, INVOLVED THE CONSPIRACY TO SELL AND DISTRIBUTE NARCOTIC DRUGS. YOUR ACCEPTABLE CUSTODIAL ADJUSTMENT IS NOTED HOWEVER, YOUR CONTINUED, SOMETIMES VIOLENT CRIMINAL BEHAVIOR COUPLED WITH THE NEGATIVE IMPACT DRUGS HAVE ON THE COMMUNITY RENDERS YOU AN UNSUITABLE CANDIDATE FOR PHASE 2 OF THE CASAT PROGRAM WHICH IS WORK RELEASE.”

¹The last sentence of the TRC’s denial determination is clearly in error. There is nothing in the record to suggest that the sentencing judge directed DOCS to enroll petitioner in the CASAT program pursuant to Penal Law §60.04(6).

The administrative affirmance of the Central Office Reviewer also provided that the petitioner could not re-apply for presumptive work release until May 9, 2008. This proceeding ensued.

The CASAT program was designed “. . . to prepare chemically dependant inmates for a return to the community, to reduce recidivism by providing education and counseling focused on continuing abstinence from all mood altering substances, and to encourage participation in self-help groups.” 7 NYCRR §1950.1. Under DOCS regulations CASAT is a three-phase program with Phase 1 occurring in a DOCS alcohol and substance abuse treatment correctional annex as defined in Correction Law §2(18). Phase 2 of CASAT involves “. . . a transitional period in a community reintegration component, which would include transfer to a work release facility for employment and placement in appropriate community-based programs . . .” 7 NYCRR §1950.2(b). Accordingly, prior to the commencement of Phase I of CASAT an inmate must be approved for work release or presumptive work release. 7 NYCRR §1951.1(c).

It is not disputed that the petitioner is an “eligible inmate” within the meaning of Correction Law §851(2) and was therefore entitled to apply to participate in the DOCS work release programs at the Ogdensburg Correctional Facility. *See* Correction Law §855(1). Correction Law §855(4), provides that “[i]f the temporary release committee determines that a temporary release program for the applicant is consistent with the safety of the community and the welfare of the applicant, and is consistent with rules and regulations of the department, the committee, with the assistance of the of employees or unit designated by the commissioner . . . shall develop a suitable program of temporary release for the applicant.” DOCS regulations, in turn, have established a relatively

complex, eleven item point scoring system to initially evaluate applications for temporary release. Six of the eleven point scoring items are based on criminal history and the remaining five on the applicant's behavior while in DOCS custody. *See* 7 NYCRR §1900.4(e). The petitioner's score on the DOCS system was sufficient for his application to be referred to the TRC for disposition. With the exception of the Temporary Release Program points score system, screening for CASAT participation is the same as the screening for temporary release participation. 7 NYCRR §1951.1(c)(1). Ultimately, an otherwise eligible inmate may only be deemed unsuitable for presumptive work release based upon his or her crime of commitment, criminal history, custodial adjustment or outstanding warrants/detainers. 7 NYCRR §1951.1(c)(4).

An inmate's participation in a DOCS temporary release program, including by extension presumptive work release, is a privilege, not a right. *See Correction Law* §855(9). As such, a Court's review of a decision denying an inmates's application to participate in such a program is limited to a determination of whether the respondent violated any statutory requirement or constitutional right, or whether the denial determination was affected by irrationality bordering on impropriety. *See Crispino v. Goord*, 31 AD3d 1022, *lv dis* 7 NY3d 854, *Abascal v. Roach*, 22 AD3d 995 and *Patterson v. Goord*, 1 AD3d 845.

The petitioner's arguments to the contrary notwithstanding, the Court finds that the central office reviewer did not violate any statutory requirement or constitutional right in basing the presumptive work release denial determination, as least in part, on the nature of the offense underlying petitioner's incarceration as well as his recidivist history. *See* 7 NYCRR §1951.1(c)(4)(i) and (ii). In addition, the Court finds no basis to

conclude that other relevant factors, such as petitioner's institutional adjustment, were not considered when petitioner's application for presumptive work release was denied. *See Paterson v. Goord*, 1 AD3d 845. Finally, after determining that the petitioner has failed to establish any statutory or constitutional violation, the Court finds no irrationality bordering on impropriety in the denial of petitioner's application for presumptive work release based upon the nature of the crime underlying his incarceration as well as his sometimes violent, recidivist history. *See Abascal v. Roach*, 22 AD3d 995, *Martin v. Goord*, 305 AD2d 899, *lv den* 100 NY2d 510, and *Dixon v. Recor*, 271 AD2d 778.

Based upon all of the above, it is, therefore, the decision of the Court and it is hereby

ADJUDGED, that the petition is dismissed.

Dated: June 19 , 2007 at
Indian Lake, New York.

S. Peter Feldstein
Acting Supreme Court Justice