

Matter of Lacey v Joy
2008 NY Slip Op 30808(U)
March 19, 2008
Supreme Court, Lawrence County
Docket Number: 0125790/2007
Judge: S. Peter Feldstein
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 ST. LAWRENCE
X

In the Matter of the Application of
SEAN LACEY, #06-B-3276,

Petitioner,

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

-against-

DECISION AND JUDGMENT
RJI #44-1-2007-0668.045
INDEX #125790
ORI # NY044015J

DEBRA JOY, Director,
DOCS Temporary Release Programs,
Respondent.

X

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the petition of Sean Lacey, verified on September 25, 2007, and stamped as filed in the St. Lawrence County Clerk's office on October 3, 2007. Petitioner, who is an inmate at the Ogdensburg Correctional Facility, is challenging the respondent's September 14, 2007, decision affirming the August 13, 2007, determination of the central office reviewer denying petitioner's application for presumptive work release to participate in the DOCS Comprehensive Alcohol and Substance Abuse Treatment (CASAT) program. The Court issued an Order To Show Cause on October 9, 2007, and has received and reviewed respondent's Answer, verified on November 23, 2007, as well as petitioner's reply thereto stamped as filed in the St. Lawrence County Clerk's office on December 4, 2007.

On November 22, 2006, the petitioner was sentenced in Wayne County Court, as a second felony offender, to a determinate term of imprisonment of 3½ years (with 2 years post-release supervision) upon his conviction of the crime of Criminal Possession of a Controlled Substance 3°. On December 7, 2006, the Wayne County Court (Hon. Stephen R. Sirkin) issued an order pursuant to Penal Law §60.04(6) directing DOCS

“ . . . to enroll the defendant [petitioner] in the Comprehensive Alcohol Substance Abuse Treatment Program, provided that the defendant will satisfy the statutory eligibility criteria for participation in such program.”

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. Such a facility is defined in Correction Law §2(18) as “[a] medium security correctional facility consisting of one or more residential dormitories which provide intensive alcohol and substance abuse treatment services to inmates who: (i) are otherwise eligible for temporary release, or (ii) stand convicted of a felony offense defined in article two hundred twenty or two hundred twenty-one of the penal law, and are within six months of being an eligible inmate as that term is defined in subdivision two of section eight hundred fifty-one of this chapter including such inmates who are participating in such program pursuant to subdivision six of section 60.04 of the penal law.” 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). CASAT Phase 3, in turn, consists of “. . . an aftercare component in the community under parole supervision, which will provide for an orderly community transition for participants granted release by the parole board.” 7 NYCRR §1950.2(c).

Outside of the Penal Law §60.04(6) context, DOCS is vested with the sole administrative responsibility for placing inmates in the CASAT program and for the transition of inmates who have successfully completed Phase 1 of the program into

Phase 2.¹ Under DOCS regulations, again outside the context of Penal Law §60.04(6), inmates can not be placed in CASAT Phase 1 unless they have already been approved for work release or presumptive work release. 7 NYCRR §1950.3(a)(5). Thus, under the DOCS regulatory scheme, inmates who successfully complete CASAT Phase 1 can transition into CASAT Phase 2 without a further determination of work release eligibility. In theory, there should be no instances where an inmate successfully completes CASAT Phase 1 but is unable to proceed onto Phase 2 because he or she is not eligible for work release. 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/detainees. 7 NYCRR §1951.1(c)(4).

Penal Law §60.04(6) provides, in relevant part, as follows:

“When the court imposes a sentence of imprisonment which requires a commitment to the state department of correctional services upon a person who stands convicted of a controlled substance or a marijuana offense, the court may, upon motion of the defendant in its discretion, issue an order directing that the department of correctional services enroll the defendant in the comprehensive alcohol and substance abuse treatment program in an alcohol and substance abuse correctional annex as defined in subdivision eighteen of section two of the correction law, provided that the defendant will satisfy statutory eligibility criteria for participation in such program. Notwithstanding the foregoing provisions of this subdivision, any defendant to be enrolled in such program pursuant to this subdivision shall be governed by the same rules and regulations promulgated by the department of correctional services, including without limitation those rules and regulations establishing requirements for completion and those rules and regulations governing discipline and removal from the program.”

In the case at bar the petitioner’s temporary release program application (presumptive work release), although apparently approved at the facility level, was denied by the DOCS central office on August 13, 2007, based upon the nature of the crime underlying petitioner’s incarceration as well as his recidivist criminal history and a prior

¹DOCS obviously does not exercise administrative control over inmates moving on to CASAT Phase 3 since participants in Phase 3 must first be granted release from DOCS custody by the Parole Board.

probation violation. The comments of the central office reviewer in connection with the presumptive work release denial determination are as follows:

“THE INMATE’S LEGAL HISTORY DATES TO 1997 AND INCLUDES A YO ADJUDICATION AND A VIOLATION OF PROBATION. THE INSTANT OFFENSE, CPCS 3, INVOLVED THE POSSESSION OF CRACK/COCAINE, MARIJUANA, SCALE, AND PLASTIC BAGS. NOTED IS AN ORDER OF PROTECTION AGAINST THE INMATE ON BEHALF OF A FEMALE FRIEND. SATISFACTORY DISCIPLINARY ADJUSTMENT IS NOTED HOWEVER, HIS FAILURE TO ADHERE TO THE RULES GOVERNING PROBATION SUPERVISION COUPLED WITH THE NEGATIVE IMPACT ILLEGAL DRUGS HAVE ON THE COMMUNITY RENDERS THE INMATE UNSUITABLE FOR PRESUMPTIVE WORK RELEASE. HE WILL BE REVIEWED FOR CASAT PHASE I TREATMENT, CONSISTENT WITH THE SENTENCING JUDGE’S ORDER, AT A LATER DATE. INMATE MAY REAPPLY FOR PRESUMPTIVE WORK RELEASE AFTER 7/15/2009.”

Upon administrative appeal the presumptive work release denial determination of the central office reviewer was affirmed by the respondent. This proceeding ensued.

For the petitioner, who qualifies as a “second felony drug offender,” as defined in Penal Law §70.70(1)(b), the only statutory eligibility requirements for enrollment in the CASAT program are that he be less than two years and six months away from conditional release eligibility and that he has served at least 12 months under imprisonment, including jail time credit. *See* Correction Law §§851(2) and 2 (18)(ii). It appears from the record that the petitioner met both of these statutory eligibility requirements at the time he applied for presumptive work release to participate in the CASAT program on August 1, 2007. In any event, the respondent acknowledges in paragraph nine of her Answer that the petitioner is, in fact, statutorily eligible to be considered for placement in the CASAT program. The respondent maintains, however, that an inmate may be denied presumptive work release approval even though he or she meets the statutory eligibility requirements for CASAT enrollment.

The Court’s review of the statutory language leads it to conclude that the sentencing court’s authority to direct DOCS to enroll a defendant in the CASAT program is limited to Phase 1 of such program. In this regard the Court notes that the relevant language of

Penal Law §60.04(6) merely specifies that the sentencing court has authority to direct “. . . that the department of correctional services enroll the defendant in the comprehensive alcohol and substance abuse treatment program in an alcohol and substance abuse correctional annex as defined in subdivision eighteen of section two of the correction law . . .” (Emphasis added). Only Phase 1 of the CASAT program takes place in an alcohol and substance abuse treatment correctional annex. *Compare* 7 NYCRR §1950.2(a) with 7 NYCRR §1950.2(b) and (c). In addition, Correction Law §2(18), which sets forth the definition of an alcohol and substance abuse treatment correctional annex, characterizes the period of court-ordered drug abuse treatment authorized under Penal Law §60.04(6) as “corrections based.” The Court, moreover, finds the language of Penal Law §60.04(6) –to the extent the statute provides that notwithstanding its provisions, a defendant to be enrolled in the CASAT program is to be governed by DOCS rules and regulations establishing requirements for “completion” of the program– can logically be read as requiring DOCS administrative approval for work release or presumptive work release before an inmate placed in the CASAT program pursuant to Penal Law §60.04(6) can be temporarily released from DOCS custody for CASAT Phase 2 participation. Finally, the Court notes that Corrections Law §2(18) goes on to provide, in relevant part, that “[n]otwithstanding any other provision of law, any person who has successfully completed no less than six months of intensive alcohol and substance abuse treatment services in one of the department’s eight designated alcohol and substance abuse treatment correctional annexes . . . may be transferred to a program operated by or at a residential treatment facility . . .” (Emphasis added).

Although the statutory language is frustratingly vague and does leave room for conflicting interpretation, this Court is simply not persuaded that the enactment of Penal Law §60.04(6) (L 2004, ch 738, §20) was intended to empower a sentencing court to make a final, irrevocable determination, at sentencing, as to the suitability of a

defendant/inmate for temporary release from DOCS custody to participate in Phase 2 of the CASAT program at some future date, thereby divesting DOCS of its statutory authority to make such a discretionary determination at or about the time of the proposed release. (Correction Law §852(1) and 7 NYCRR Parts 1900 and 1951). Capriciously the foregoing, where, as here, a sentencing court has directed DOCS to enroll a defendant/inmate in the CASAT program pursuant to the provisions of Penal Law §60.04(6), the Court finds no lawful basis for DOCS to deny or delay such defendant/inmate's enrollment in CASAT Phase 1, upon his or her statutory eligibility, even if DOCS has denied such inmate's application for temporary work release or presumptive work release.

Since this Court has determined that the Penal Law §60.04(6) order issued in conjunction with petitioner's Wayne County sentence only entitles him to enrollment in Phase I of the CASAT program, the Court must still consider petitioner's argument that the denial of his application for presumptive work release was "arbitrary, capricious and excessive." 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. 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).

Contrary to the apparent suggestion of the petitioner, the Court finds that the central office reviewer did not violate the provisions of 7 NYCRR §1951.1(c)(4) by basing

the presumptive work release denial determination upon the nature of the crime underlying petitioner's incarceration, as well as petitioner's recidivist history and prior probation violation. The Court, moreover, finds no irrationality bordering on impropriety in the denial of petitioner's application for presumptive work release based upon those factors. See *Abascal v. Roach*, 22 AD3d 995, *Martin v. Goord*, 305 AD2d 899, *lv den* 100 NY2d 510 and *Dixon v. Recore*, 271 AD2d 778. Finally, the Court is simply not persuaded that the restriction against petitioner reapplying for presumptive work release until July of 2009 is "excessive."

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

ADJUDGED, that the petition is granted, without cost or disbursements, but only to the extent that the respondent is directed to forthwith enroll petitioner in Phase 1 of the CASAT program in accordance with the provisions of this Decision and Judgment.

Dated: March 19, 2008, at
Indian Lake, New York.

S. Peter Feldstein
Acting Supreme Court Justice