

Matter of Madill v Joy
2008 NY Slip Op 33430(U)
December 10, 2008
Supreme Court, Albany County
Docket Number: 5539-08
Judge: George B. Ceresia
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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In The Matter of the Application of
JAMES W. MADILL,

Petitioner,

-against-

DEBRA JOY, DOCS, Temporary Release
Program,

Respondent,

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

Supreme Court Albany County Article 78 Term
Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding
RJI # 01-08-ST9178 Index No. 5539-08

Appearances: James W. Madill
Inmate No. 04-A-4856
Petitioner, Pro Se
Gouverneur Correctional Facility
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Gouverneur, NY 13642-

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DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

The petitioner, an inmate at Gouverneur Correctional Facility, applied for

participation in the Comprehensive Alcohol and Substance Abuse (“CASAT”) program, a form of temporary release. The application was approved by the Temporary Release Committee and Superintendent of Gouverneur Correctional Facility. The application was denied by the Central Office Review Committee (“CORC”) in a determination dated May 16, 2008. On June 10, 2008 respondent Joy affirmed the determination of the Temporary Release Reviewer. The petitioner has commenced the above-captioned CPLR Article 78 proceeding to seek review of the determination to deny him participation in the Temporary Release Program.

The petitioner maintains that the determination was without statutory jurisdiction. He asserts that the factual basis for the denial was improper and “contrary to historical foundations in law”. He argues that he was denied his statutory right to appear before the “Board”. In his view he was denied due process when the central office “added a separate and distinct crime to the instant offense”; and when the temporary release reviewer considered “an uneffectuated” order of protection. He maintains that his prior criminal record does not contain crimes which disqualify him from participation in the temporary release program. He argues that it does not make sense to deny participation in the CASAT program where an inmate, such as himself, has a history of drug abuse. He contends that the overall decision to deny CASAT was arbitrary and capricious and affected by irrationality bordering on impropriety.

The decision of the Temporary Release Reviewer recites, in part, as follows:

“This is to advise you that the temporary release application for the above individual has not been approved by the central office reviewer for the following reasons: I/O Nature, Recdivst Hst.

“Reviewer’s Comments: The Inmate’s legal history dates to 1986 and includes two misdemeanor convictions and one prior felony conviction. The instant offense, CPCS 2, involved the possession of liquid methamphetamine and substances used to manufacture methamphetamine. Noted is the order of protection filed on behalf of the mother of the inmate’s children. Completion of the ASAT program is noted. However, the inmate’s continued criminal behavior coupled with the negative impact illegal drugs have on the community renders the inmate unsuitable for presumptive work release. RAP reviewed.

“You may reapply for presumptive work release after 08/2010.”

The determination of respondent Joy recites as follows:

“In accordance with the established rules and regulations of the temporary release program, I have reviewed your appeal of the central officer reviewer’s decision. After considering all factors both positive and negative, including your comments and available records and facility and program adjustment, I have affirmed the decision of the central office reviewer.”

Under Corrections Law Section 855 (9), participation in a temporary release program is a privilege, not a right (see Matter of Vaughan v Goord, 26 AD3d 553, 553-554 [3rd Dept., 2006], lv denied 6 NY3d 886 [2006]; Matter of Crispino v Goord, 31 AD3d 1022 [3rd Dept., 2006]; Walker v. Le Fevre, 193 AD2d 982, [3rd Dept., 1993]; Matter of Szucs v Recore, 209 AD2d 803 [3rd Dept., 1994]). “[The scope of judicial review] of a determination to deny an application to participate in such a program is limited to consideration of whether the determination “violated any positive statutory requirement or denied a constitutional right of the inmate and whether [it] is affected by irrationality bordering on impropriety”” (Matter of Vaughan v. Goord, supra, at 553-554, quoting Matter of Abascal v Maczek, 19 AD3d 913, 914 [3rd Dept., 2005], lv denied 5 NY3d 713 [2005], quoting Matter of Gonzalez v Wilson, 106 AD2d 386, 386-387 [2nd Dept., 1984]). Denial of a temporary release application may

be based upon the seriousness of the crime for which petitioner is incarcerated (see Matter of Peck v Maczek, 38 AD3d 948 [3rd Dept., 2007]; Matter of Crispino v Goord, 30 Ad3d 874 [3rd Dept., 2006]), and the risk he would pose to community safety (see Matter of Cody v Pataki, 24 AD3d 1058 [3rd Dept., 2005; Montgomery v Recore, 217 AD2d 777 [3d Dept., 1995]),

In this instance, while the petitioner is correct in pointing out that his crimes do not render him ineligible to participate in the CASAT program, this does not mean they may not be considered in evaluating the merits of his application (see Matter of Peck v Maczek, *supra*; Matter of Crispino v Goord, *supra*). With regard to making a personal appearance, under § 1900.4 of the Rules of the Department of Correctional Services, an inmate applying for temporary release must be personally interviewed by the Temporary Release Committee (see 7 NYCRR 1900.4). The decision of the Temporary Release Committee reflects that the petitioner did appear before that committee. The petitioner, on the other hand, denies that this ever happened. Irrespective, however, of whether or not he appeared before the Temporary Release Committee, the fact remains that the Temporary Release Committee *approved* his application. Thus, even assuming that petitioner's contention on this point is true (that he did not appear before the Temporary Release Committee), any failure to have the petitioner personally appear before the Temporary Release Committee did not work to his disadvantage, and must be deemed to be harmless error. Contrary to petitioner's contention, the Court discerns no right to personally appear before the Temporary Release Reviewer or the Director of the Temporary Release Committee (see 7 NYCRR Part 1900).

In addition, the Court finds that the Temporary Release Reviewer did not "add a new

crime” to his record by mentioning that, at the time he was apprehended for the instant offense, he was also found to be in possession of the ingredients for making methamphetamine. Under the Rules of the Department of Correctional the Temporary Release Committee is required to review the inmate’s file and to “pay careful attention to the circumstances surrounding the offense to determine as accurately as possible the nature of the offense” (7 NYCRR 1900.4 [1] [3])¹. In addition, the Temporary Release Committee must consider “any factors, besides the items in the point system, which, in their best judgment, they find significant” (see 7 NYCRR 1900.4 [1] [2]). Thus the respondent could properly consider matters included in petitioner’s pre-sentence investigation report, including the surrounding circumstances of the crime. Similarly, the Court finds that it was proper for the respondent to consider, as an additional factor, the issuance of an order of protection (see 7 NYCRR 1900.4 [1], [2]).

The Court has reviewed and considered petitioner’s remaining arguments and finds them to be without merit.

The Court finds that the determination to deny petitioner’s application for temporary release did not violate any positive statutory requirement or deny him a constitutional right. Nor was it affected by irrationality bordering on impropriety. Petitioner has not demonstrated that the determination to deny his application to participate in the temporary release program was irrational, in violation of lawful procedure, affected by an error of law or arbitrary and capricious

¹In the Court’s view the foregoing rule applies, with equal force and effect, to other officers reviewing a temporary release application, including the Temporary Release Reviewer and the Director of the Temporary Release Program.

For all of the foregoing reasons, the Court concludes that the petition must be dismissed.

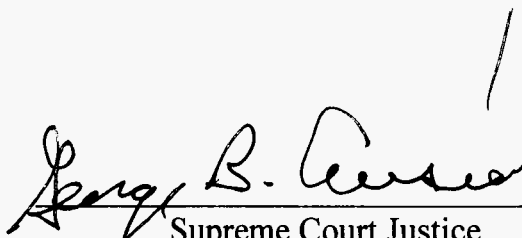
Accordingly, it is

ORDERED and ADJUDGED, that the petition be and hereby is dismissed.

This shall constitute the decision, order and judgment of the Court. All papers are returned to the attorney for the respondent who is directed to enter this Decision/Order/Judgment without notice and to serve petitioner with a copy of this Decision/Order with notice of entry.

ENTER

Dated: December 10, 2008
Troy, New York



Supreme Court Justice
George B. Ceresia, Jr.

Papers Considered:

1. Order To Show Cause dated July 8, 2008, Petition, Supporting Papers and Exhibits
2. Respondent's Answer dated September 4, 2008, Supporting Papers and Exhibits
3. Petitioner's Reply Affidavit sworn to September 9, 2008