

**Matter of Stevenson v Joy**

2009 NY Slip Op 30589(U)

March 17, 2009

Supreme Court, Franklin County

Docket Number: 2008-1455

Judge: S. Peter Feldstein

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**STATE OF NEW YORK  
SUPREME COURT**

**COUNTY OF FRANKLIN  
X**

In the Matter of the Application of  
**WALLACE STEVENSON, #07-R-1446,**  
Petitioner,

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

**DECISION AND JUDGMENT  
RJI #16-1-2008-0484.149  
INDEX # 2008-1455  
ORI #NY016015J**

-against-

**DEBRA JOY**, Director, New York State  
Department of Correctional Services  
Temporary Release Program,

Respondent.

**X**

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the petition of Wallace Stevenson, verified on September 12, 2008, and filed in the Franklin County Clerk's office on September 22, 2008. Petitioner, who is an inmate at the Franklin Correctional Facility, is challenging the June 6, 2008, decision of the Central Office Reviewer affirming the April 10, 2008, decision of the Temporary Release Committee at the Franklin Correctional Facility (TRC) to deny his application for presumptive work release, thereby preventing his participation in the DOCS Comprehensive Alcohol and Substance Abuse Treatment (CASAT) program as allegedly ordered by his sentencing Court pursuant to Penal Law §60.04(6). The Court issued an Order to Show Cause on October 8, 2008, and has received had reviewed respondent's Answer and Return, verified on November 28, 2008, as well as respondent's Letter Memorandum of November 28, 2008. The Court has also received had reviewed petitioner's Reply letter of December 5, 2008, received directly in chambers on December

10, 2008, and intended to be filed in the Franklin County Clerk's office simultaneously with this Decision and Judgment.

On April 23, 2007, petitioner was sentenced in Supreme Court, New York County to a controlling determinate term of 5 years, with 2 years post-release supervision, upon his convictions of the crimes of Criminal Possession of a Controlled Substance 3<sup>o</sup> and Criminal Possession of a Weapon 3<sup>o</sup>. Although at sentencing there was no specific reference to Penal Law §60.04(6), the sentencing Court clearly stated it was going to "mandate" petitioner's placement in the CASAT program and the 2007 sentence and commitment order contains the remark "CASAT MANDATED." In paragraph eight of the petition it is specifically alleged that petitioner was sentenced pursuant to Penal Law §60.04(6). Inasmuch as respondent admits the allegations set forth in paragraph eight of the petition, the Court finds that in Penal Law §60.04(6) order was, in fact, issued in conjunction with petitioner's sentencing.

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." 7NYCRR §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.<sup>1</sup> 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

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<sup>1</sup>DOCS obviously does not exercise full 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.

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 respondent concedes that petitioner became statutorily eligible for CASAT enrollment on April 9, 2008, 30 months prior to his October 9, 2010, merit eligibility date. Petitioner’s April, 2008, temporary release program application (presumptive work release) was denied at the facility level by the TRC on April 10, 2008, based upon the nature of the offense underlying petitioner’s incarceration as well his recidivist history. The explanation of the TRC for its denial determination was as follows:

“DENIAL IS BASED ON NATURE OF I.O. CPCS 3RD WHICH REPRESENTS HIS FIRST NYS TERM. HE HAS PRIOR CONVICTIONS FOR CPW 3RD AND ATTEMPTED UNLAWFUL IMPRISONMENT. SANCTIONS INCLUDED AN ORDER OF PROTECTION, CONDITIONAL DISCHARGE, FINE AND LOCAL JAIL. POSITIVE PROGRAMING AND DISCIPLINARY ARE NOTED.”

Petitioner took an administrative appeal from the TRC denial determination. In his administrative appeal, however, petitioner took no exception to the TRC’s reference

to an order of protection. The TRC denial determination was ultimately affirmed by the DOCS central office reviewer on June 6, 2008, with the following comments:

“YOUR LEGAL HISTORY DATES TO 1983 AND INCLUDES A CONVICTION FOR CPW 3 AND A CONVICTION FOR ATT. UNLAWFUL IMPRISONMENT 2. THE INSTANT OFFENSE, CPCS 3 INVOLVED THE POSSESSION OF A LOADED HANDGUN AND POSSESSION OF COCAINE. NOTED IS THE ORDER OF PROTECTION FILED AGAINST YOU. ACCEPTABLE DISCIPLINARY ADJUSTMENT IS NOTED HOWEVER, YOUR CONTINUED CRIMINAL BEHAVIOR COUPLED WITH THE NEGATIVE IMPACT ILLEGAL WEAPONS HAVE ON THE COMMUNITY RENDERS YOU UNSUITABLE FOR PRESUMPTIVE WORK RELEASE.  
YOU WILL BE REVIEWED FOR CASAT PHASE 1 TREATMENT, CONSISTENT WITH THE SENTENCING JUDGE’S ORDER, AT A LATER DATE.”

This proceeding ensued.

The Court will first consider petitioner’s assertion that the respondent’s failure to immediately enrollment him in the CASAT program constituted a violation of the sentencing court’s Penal Law §60.45(6) order. Although the Court agrees, generally, with this assertion, its review of the relevant 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, Corrections 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). Notwithstanding 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. To the extent respondent urges the Court to take into account the penological considerations which led DOC to its position with respect to the timing of a court-ordered inmate's enrollment into CASAT Phase 1, the Court finds that such argument should be addressed to the legislative, rather than judicial branch.

The Court nevertheless finds that neither logic nor the provisions of Penal Law §60.04(6) dictate that an inmate armed with a sentencing court's CASAT enrollment order is entitled to leapfrog to the head of any CASAT waiting list upon reaching statutory eligibility for enrollment in the program. In short, the Court finds no basis to distinguish between court-ordered CASAT inmates and inmates who have been administratively approved for CASAT enrollment. In the case at bar, however, the petitioner has been statutorily eligible for CASAT since April 9, 2008, and has actively sought to be enrolled in the program since that time. It would be clearly prejudicial to the petitioner to merely direct his placement on the CASAT waiting list at this late juncture.

The Court's finding that the sentencing court's Penal Law §60.45(6) order entitled petitioner to immediate enrollment into Phase 1 of the CASAT program does not end its inquiry in this case since petitioner also challenges the denial of his application for presumptive work release on the merits. In this regard the petitioner asserts that denial determination was based upon the erroneous information that he was subject to an order of protection filed against him. Petitioner maintains that the order of protection in question was issued, at his behest, against another individual. The Court finds, however, that petitioner's claim on this point is not preserved for judicial review since he did not advance it on administrative appeal. See CPLR §7801(1) and *Rivera v. Joy*, 50 AD3d 1333.

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 17, 2009, at  
Indian Lake, New York.

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S. Peter Feldstein  
Acting Supreme Court Justice