

Matter of Lawson v Fischer

2009 NY Slip Op 30932(U)

April 17, 2009

Supreme Court, Franklin County

Docket Number: 2008-1892

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
REGINALD LAWSON, #08-B-1373,
Petitioner,

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

-against-

DECISION AND JUDGMENT
RJI #16-1-2008-0712.205
INDEX # 2008-1892
ORI #NY016015J

BRIAN FISCHER, Commissioner,
NYS 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 of Reginald Lawson, filed in the Franklin County Clerk's office on December 16, 2008. Petitioner, who is an inmate at the Bare Hill Correctional Facility, is challenging the respondent's failure to enroll him in the DOCS Comprehensive Alcohol and Substance Abuse Treatment (CASAT) program as directed by his sentencing judge pursuant to Penal Law §60.04(6). The Court issued an Order to Show Cause on December 24, 2008, and has received and reviewed respondent's Answer and Return, verified on February 13, 2009, as well as respondent's Letter Memorandum of February 13, 2009. The Court has also received and reviewed petitioner's Reply thereto, received directly in chambers on March 2, 2009, and intended to be filed in the Franklin County Clerk's office simultaneously with this Decision and Judgment.

On April 29, 2008, petitioner was sentenced in Cayuga County Court to two concurrent determinate terms of 3 years each, with 2 years post-release supervision, upon two convictions of the crime of Criminal Sale of a Controlled Substance 3°. Both

sentence and commitment orders specified “CASAT ordered (PL 60.04(6)).” By separate order, also dated April 29, 2008, the sentencing judge directed DOCS “. . . to enroll the defendant [petitioner] in the Comprehensive Alcohol and 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,

¹DOCS 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.

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 was statutorily eligible for CASAT enrollment. Although petitioner does not challenge, or even directly reference, any application for work release or presumptive work release, it appears that a June 2, 2008, application for presumptive work release, although granted at the facility level, was denied by a DOCS Central Office Reviewer on June 13, 2008, due to the nature of the offense underlying petitioner’s incarceration, his recidivist history and other factors. The comments of the Central Office Reviewer were as follows:

“RAP REVIEW. THE INMATE’S PRESENT OFFENSE IS 2 CTS CSCS 3. THIS OFFENSE INVOLVED THE SALE OF CRACK/COCAINE TO AN UNDER COVER POLICE OFFICER. HIS LEGAL HISTORY INCLUDES YO ADJ, AN ORDER OF PROTECTION ON FILE ON BEHALF OF A FEMALE FRIEND, 1 MISDEMEANOR & 3 FELONY CONVICTIONS. NOTED IS HIS ACCEPTABLE DISCIPLINARY RECORD. HOWEVER, HIS INABILITY TO LIVE A CRIME FREE LIFESTYLE RENDERS HIM UNSUITABLE CANDIDATE FOR PRESUMPTIVE WORK RELEASE. THE INMATE WILL BE REVIEWED FOR CASAT PHASE 1 TREATMENT, CONSISTENT WITH THE SENTENCING JUDGE’S ORDER, AT A LATER DATE.”

The denial determination of the Central Office Reviewer was affirmed by the DOCS Director of Temporary Release Programs on June 24, 2008.

As noted previously, petitioner does not specifically challenge the denial of his application for presumptive work release. Instead, he asserts that the plain language of the sentencing court’s Penal Law §60.04(6) orders mandate his immediate placement in the CASAT program. According to petitioner, respondent’s failure to so place him

constitutes a failure to perform a duty enjoined upon respondent by law. The Court agrees, but only to a point.

The Court's 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 reaching statutory eligibility. To the extent respondent urges the Court to take into account the penological considerations which led DOCS 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 he was received into DOCS custody on May 2, 2008, and has actively sought to be enrolled in the program since June of 2008. It would be clearly prejudicial to the petitioner to merely direct his placement on the CASAT waiting list at this late juncture.

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: April 17 , 2009, at
Indian Lake, New York.

S. Peter Feldstein
Acting Supreme Court Justice