

**Matter of Pittman v Fischer**

2009 NY Slip Op 30992(U)

May 1, 2009

Supreme Court, Franklin County

Docket Number: 2008-1943

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  
**DANYELL L. PITTMAN, #08-A-0093,**  
Petitioner,

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

**DECISION AND JUDGMENT**  
**RJI #16-1-2008-0728.209**  
**INDEX # 2008-1943**  
**ORI #NY016015J**

-against-

**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 Danyell L. Pittman, verified on December 18, 2008, and filed in the Franklin County Clerk's office on December 23, 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 allegedly directed by his sentencing judge pursuant to Penal Law §60.04(6). The Court issued an Order to Show Cause on December 31, 2008, and has received and reviewed respondent's Answer, verified on February 20, 2009, including the Affirmation of Kelly L. Munkwitz, Esq, Assistant Attorney General, dated February 20, 2009. The Court has also received and reviewed petitioner's Reply thereto, filed in the Franklin County Clerk's office on March 13, 2009, as well as additional correspondence from counsel for the respondent dated March 27, 2009.

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.<sup>1</sup> Under DOCS regulations, again outside the context of Penal Law §60.04(6), inmates cannot 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.”

On January 4, 2008, petitioner was sentenced in County Court, Herkimer County, to a determinate term of 5 years, with 1 year post-release supervision, upon his

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<sup>1</sup>DOCS 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.

conviction of the crime of Criminal Possession of a Controlled Substance 3°. During the course of the sentencing proceedings the sentencing judge inquired “. . .whether it was appropriate to mention or direct that you [petitioner] enter into the CASAT program or not to mention it.” After the petitioner indicated that he wanted the judge to issue a directive, the judge responded “[t]hat’s fine,” and ultimately stated as follows: “ I direct that as far as practical with the New York State Department of Correctional Services, that they consider putting you into the CASAT Program for a chronic drug offender.” There was absolutely no reference to Penal Law §60.04(6) and petitioner, who was represented by counsel, interposed no objection to the sentencing court’s CASAT enrollment language.

After petitioner was received into DOCS custody his earliest possible release date (Merit Eligibility Date pursuant to Correction Law § 803(1)(d)) was determined to be January 15, 2011. Calculating back 2 years and 6 months from January 15, 2011, it was apparently determined that petitioner became statutorily eligible for CASAT enrollment as of July 15, 2008. *See* Correction Law §§ 851(2) and 2(18). At that time petitioner was referred to the Temporary Release Committee (TRC) at the Bare Hill Correctional Facility for CASAT consideration presumably pursuant to 7 NYCRR § 1951.1(5). The committee, however, citing petitioner’s recidivist history, a previous probation violation, satisfactory programing/disciplinary adjustment along with “ COURT ORDERED CASAT,” determined petitioner to be “. . .AN UNSUITABLE CANDIDATE FOR PHASE 2 OF THE CASAT PROGRAM WHICH IS WORK RELEASE.” Upon petitioner’s administrative appeal the CASAT Phase 2 denial determination was affirmed by the DOCS Central Office

on September 10, 2008. The Central Office determination made no reference to court ordered CASAT.

By correspondence dated November 30, 2008, petitioner formally demanded that the respondent comply with the sentencing court's CASAT order allegedly issued pursuant to Penal Law §60.04(6). By letter dated December 8, 2008, Debra R. Joy, DOCS Director of Temporary Release Programs, responded to petitioner's demand on behalf of the respondent as follows: "You [petitioner] were denied CASAT Phase 2 Presumptive Work Release by Central Office Temporary Release on appeal on September 10, 2008 . . . As a court-ordered CASAT case, you will be transferred to CASAT Phase 1 Treatment when you are 6-12 months to your release date." This proceeding ensued.

In the petition no reference is made to the CASAT Phase 2 denial determination of the TRC, as affirmed on administrative appeal by the DOCS Central Office on September 10, 2008. Rather, the ". . . petition challenges an [sic] decision made on December 8, 2008, by Debra R. Joy, Director of Temporary Release Programs, telling petitioner he will be enrolled to CASAT phase 1 treatment when he is 6-12 months to his release date." Petitioner goes on to assert that "[r]espondent is exceeding his legal authority and, failing or refusing to perform a duty required by law, because petitioner was Ordered to be enrolled into the CASAT program by sentencing Judge pursuant to P. L. [Penal Law §] 60.04(6); which allows a sentencing judge to direct the enrollment of an offender who is Statutorily eligible into CASAT without DOCS passing on the offender's suitability under DOCS regulations at the enrollment stage."

Under the facts and circumstances of this case it is not necessary for the Court to determine whether the sentencing court's CASAT pronouncement constituted a Penal Law §60.04(6) order directing petitioner's enrollment in to the CASAT program or, rather, a recommendation that DOCS consider such enrollment. If this issue was properly before the court its resolution would not be altogether certain. Although it is clear from the conversation between the petitioner and the sentencing judge that some form of "directive," rather than a mere "mention," was intended, the actual language employed by the sentencing judge was not couched in mandatory terms and did not reference Penal Law §60.04(6). Notwithstanding the forgoing, however, Director of Temporary Release Programs Joy, when responding to petitioner's demand for CASAT placement pursuant to Penal Law §60.04(6), specifically found petitioner to be ". . . a court-ordered CASAT case . . ." That aspect of Ms. Joy's determination is not challenged in this proceeding and the Court, therefore, will limit its inquiry to whether or not, given petitioner's conceded court-ordered CASAT status, it was proper to delay his enrollment into CASAT Phase 1 up to two years beyond the July 15, 2008, statutory eligibility date.

Notwithstanding the fact that Penal Law §60.04(6) does not include a specific time frame for the enrollment of a court-ordered inmate into the CASAT program, this Court finds no lawful basis for DOCS to deny or delay such enrollment once the court-ordered inmate becomes statutorily eligible, even if DOCS has already denied such inmate's application for temporary work release or presumptive work release.

Notwithstanding all of the above, the Court's review of relevant statutory language leads it to conclude that the sentencing court's authority to direct DOCS to enroll a defendant into 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).

Based upon all the above, it is, therefore, the decision of the Court and it is hereby **ADJUDGED**, that the petition is granted, without costs or disbursements, but only to the extent that the respondent is directed to forthwith enroll petitioner into Phase 1 of the CASAT Program in accordance with the provisions of this Decision and Judgement.

**Dated:** May 1, 2009, at  
Indian Lake, New York.

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S. Peter Feldstein  
Acting Supreme Court Justice