

Matter of Mitchell v New York State Dept. of Correctional Servs.
2009 NY Slip Op 31909(U)
July 9, 2009
Supreme Court, New York County
Docket Number: 10370-08
Judge: George B. Ceresia
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STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In The Matter of
DELTON MICHELL. 08-B-1344.

Petitioner,

-against-

NEW YORK STATE DEPARTMENT
OF CORRECTIONAL SERVICES
BRIAN FISCHER. COMMISSIONER

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 # 01-09-ST9821 Index No. 10370-08

Appearances: Delton Michell, 08-A-1344
 Petitioner Pro Se
 Coxsackie Correctional Facility
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DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

The petitioner, an inmate at Coxsackie Correctional Facility, has commenced the instant CPLR Article 78 proceeding, inter alia, to review the timing of the respondent's determination to enroll the petitioner in the Comprehensive Alcohol and Substance Abuse Treatment (CASAT) program. In a pre-answer motion pursuant to CPLR 3211 (a) (7), the respondent moves to dismiss the petition.

On April 23, 2008, County Court, Onondaga (Aloi, J.), sentenced the petitioner to a determinate term of two years of incarceration and one and one-half years of post-release supervision for Attempted Criminal Possession of a Controlled Substance, Third Degree. The Sentencing Court also directed that the petitioner be enrolled in CASAT pursuant to Penal Law § 60.04 (6).

The petitioner commenced this CPLR article 78 proceeding, arguing that the respondent failed to timely place him in CASAT. The petitioner contends that his earliest possible release date from incarceration was May 24, 2009 based on the time computation he received upon his admission to the Department of Correctional Services (DOCS). This time computation assumed that the petitioner would comply with Corrections Law §§ 803 and 805 by obtaining a Merit Certificate and an Earned Eligibility Certificate. The petitioner maintains that the respondent was aware that, in order for the petitioner to obtain these certificates, he needed to be placed in CASAT in June 2008 and not in late November 2008. Thus, in this proceeding, the petitioner seeks review of the determination with regard to the time of his enrollment in CASAT, alleging that his late enrollment prevented him from

obtaining the needed certifications to be released by May 24, 2009. Petitioner also contends that his late enrollment in CASAT violated Penal Law § 60.04 (6) since he maintains that he will be required to be in CASAT past the time that his lawful imprisonment will end. Petitioner also seeks an order from the Court directing the respondent to credit the petitioner with earning the above-noted certifications and releasing the petitioner on May 24, 2009, assuming his disciplinary record remains clean (see Petition Wherefore Clause [verified 12-8-08]).

The respondent now moves pursuant to CPLR 3211 (a) (7) to dismiss the petition. The respondent argues that the petition fails to state a cause of action since it does not establish that the respondent violated any positive statutory or regulatory mandate in reaching its determination.

The Court agrees with respondent that the petition fails to state a cause of action for which the relief the petitioner seeks can be granted. First, Penal Law § 60.04 (6), in part, provides: “No such period of court ordered corrections based drug abuse treatment pursuant to this subdivision shall be required to extend beyond the defendant’s conditional release date.” Here, the records shows that the petitioner’s conditional release date is September 8, 2009. In that the petitioner was placed in CASAT on November 25, 2008 and the first-phase of that program runs for six months, the petitioner would have completed phase one of CASAT prior to his conditional release date.¹ Thus, the petitioner’s complaints that he would

¹ After the six-month period, the CASAT participant may be eligible for work-release or a community-based residential program.

be required to be imprisoned beyond the conditional release date are without merit and not in violation of Penal Law § 60.04 (6). In addition, nothing in the Sentencing Court's order directed DOCS to ensure that the petitioner was enrolled in CASAT and to additionally guarantee that he would receive other programming to entitle him to obtain certain certifications that could potentially lead to his early release from custody. In any event, nothing in the petition supports the petitioner's assumption that even had he been enrolled in CASAT earlier he would have completed the necessary steps to earn the subject certifications.

To the extent that the petitioner is seeking relief in the form of mandamus to compel the respondent to issue certifications and impose an early release date, such relief is unavailable. "Mandamus to compel is available 'only to enforce a clear legal right where the public official has failed to perform a duty enjoined by law'" (Matter of Schmitt v Skovira, 53 AD3d 918, 920 [3d Dept 2008], quoting New York Civ. Liberties Union v State of New York, 4 NY3d 175, 183-184 [2005]). "Thus, mandamus does not lie to enforce the performance of a duty that is discretionary, as opposed to ministerial. A discretionary act 'involves the exercise of reasoned judgment, which could typically produce different acceptable results whereas a ministerial act envisions direct adherence to a governing rule or standard with a compulsory result'" (New York Civ. Liberties Union, 4 NY3d at 184, quoting Tango v Tulevech, 61 NY2d 34, 41 [1983]; see Matter of Coleman v Goord, 307 AD2d 462, 463 [3d Dept 2003]). The Court cannot compel the respondent to issue certifications and change a merit time release date since these are not purely administrative

functions and require the exercise of discretion (see Penal Law §§ 803; 805; Matter of La Rocca v Goord, 15 AD3d 809, 809-810 [3d Dept 2005]; see also Matter of Jarvis v Commissioner of the New York State Dept. of Correctional Servs., 277 AD2d 556, 557 [3d Dept 2000]).

The Court has reviewed and considered petitioner's remaining arguments and contentions and finds them to be without merit. Accordingly it is

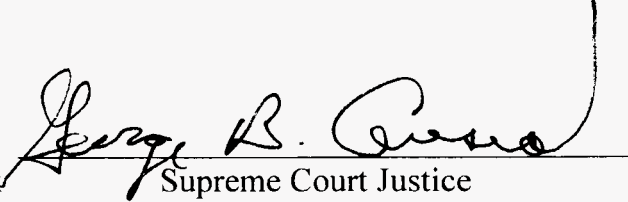
ORDERED that the respondent's motion pursuant to CPLR 3211 (a) (7) is hereby granted in its entirety; and it is further

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

This shall constitute the decision, order and judgment of the Court. The original decision/order/judgment is returned to the attorney for respondent. All other papers are being delivered by the Court to the Supreme Court Clerk for transmission to the County Clerk, or directly to the County Clerk. The signing of this decision/order/judgment shall not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry and notice of entry.

ENTER

Dated: July 9, 2009
Troy, New York



Supreme Court Justice
George B. Ceresia, Jr.

Papers Considered:

- (1) Order to Show Cause dated December 29, 2008;
- (2) Petition verified December 8, 2008;
- (3) Addendum to Petitioner verified January 7, 2009, with exhibits annexed;