

Matter of Graves v NYS Dept. of Correctional Servs.
2009 NY Slip Op 32696(U)
November 16, 2009
Supreme Court, St. Lawrence County
Docket Number: 131482
Judge: S. Peter Feldstein
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**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF ST. LAWRENCE

X

In the Matter of the Application of
MAURICE GRAVES, #05-B-2127,
Petitioner,

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

-against-

**DECISION AND JUDGMENT
RJI #44-1-2009-0523.39
INDEX #131482
ORI # NY044015J**

**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 (including the “Statement of Facts” and “Memorandum of Law”) of Maurice Graves, verified on July 31, 2009, and filed in the St. Lawrence County Clerk’s office on August 5, 2009. Petitioner, who is an inmate at the Riverview 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 court pursuant to Penal Law §60.04(6). The Court issued an Order to Show Cause on August 11, 2009, and has received and reviewed respondent’s Answer, including Confidential Exhibits F and G, verified on October 2, 2009. The Court has received no Reply thereto from petitioner.

On January 14, 2008, petitioner was re-sentenced for a second time in Onondaga County Court, to a determinate term of 9 years, with 5 years post-release supervision, upon his conviction of the crime of Criminal Possession of a Controlled Substance 2°. Petitioner had been originally sentenced on July 19, 2005, and resentenced for a first time on April 24, 2006. It appears that the re-sentencing judge, presumably acting pursuant

to Penal Law §60.04(6), directed petitioner's placement into the CASAT program if statutorily eligible. Petitioner was received into DOCS custody on July 29, 2005, certified as entitled to 639 days of jail time credit. His merit eligibility date (Correction Law §803(1)(d)) was calculated, after re-sentencings, as March 26, 2010.

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 2.¹ 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, 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 the petitioner’s temporary release application (presumptive work release), was denied by the Temporary Release Committee (TRC) at the Riverview

¹DOCS 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.

Correctional Facility and that denial was affirmed on administrative appeal by the DOCS central office on August 6, 2009, based upon the nature of the crime underlying petitioner's incarceration, as well as his recidivist criminal history. The comments of the central office reviewer in connection with the affirmance of the presumptive work release denial determination were as follows:

“RAP REVIEWED. YOUR LEGAL HISTORY INCLUDES A YO ADJUDICATION AND A MISDEMEANOR CONVICTION THAT INVOLVED DRUG OFFENSES. THE INSTANT OFFENSE INVOLVED AN IN CONCERT LARGE SCALE DRUG OPERATION WHERE DRUGS WERE BEING TRANSPORTED FROM NEW YORK CITY TO SYRACUSE. PROGRAM PARTICIPATION IS NOTED HOWEVER, THE SERIOUS NATURE OF THE I.O. RENDERS YOU UNSUITABLE FOR PRESUMPTIVE WORK RELEASE AT THIS TIME. YOU MAY REAPPLY ON THE ABOVE DATE [probably should read ‘BELOW DATE’] WITH A SATISFACTORY CUSTODIAL ADJUSTMENT.

THE INMATE MAY REAPPLY FOR PRESUMPTIVE WORK RELEASE ON 02/01/2010.”

This proceeding ensued.

Petitioner became statutorily eligible for enrollment in the CASAT program two years and six months prior to his merit parole eligibility. *See* Correction Law §§851(2) and 2(18)(ii). He asserts that he commenced this proceeding to compel his “. . . placement into the CASAT program and participation in all phases of the program, in compliance with the governing statutes and the intent and will of the legislature, that inmates enrolled into the CASAT program administratively or pursuant to Penal Law §60.04(6), obtain earlier release while addressing their needs in a community based program located in a residential treatment facility.”

Respondent counters that petitioner is not entitled, at this time, to a court order directing his placement into the CASAT program. In this regard respondent annexed to

its Answer, as Exhibit D, the unsigned “affidavit” of Dwight Bradford, DOCS Director of Alcohol and Substance Abuse Treatment Services. In Mr. Bradford’s “affidavit” he discusses the penological benefits derived from structuring drug treatment programs such that a participating inmate spend a minimal amount of time back in general population after completion of the program. For that reason, according to Mr. Bradford, DOCS opts to place court-ordered CASAT inmates who do not receive presumptive work release approval into Phase 1 of the program “. . .when they are within six to twelve months of their merit or conditional release date . . . By contrast, the inmates who receive presumptive work release approval my be placed up to 24-30 months prior to their Merit or Conditional Release Date, as the inmate who receives Presumptive Release approval is released into the community (Work Release) upon completion of [CASAT] Phase One. While in Work Release these inmates continue to receive out-patient drug treatment, in the community . . .” Thus, according to respondent, petitioner has not been permanently denied admission into Phase 1 of the CASAT program. Rather, since petitioner was not approved for presumptive work release his admission into CASAT Phase 1 has simply been delayed until such time as petitioner is within six to twelve months of his earliest release date in order to increase the possibility of petitioner’s successful reintegration into the community.

To the extent petitioner asserts, in effect, that he is entitled to immediate placement in the CASAT program, 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.

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: November 16, 2009, at
Indian Lake, New York.

S. Peter Feldstein
Acting Supreme Court Justice