

Matter of Collins

2009 NY Slip Op 32748(U)

November 24, 2009

Supreme Court, Albany County

Docket Number: 8547-09

Judge: Joseph C. Teresi

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In the Matter of the Escape of Inmate
Brian Collins from the Erie County
Holding Center

DECISION and ORDER
INDEX NO. 8547-09
RJI NO. 01-09-98251

Supreme Court Albany County All Purpose Term, November 20, 2009
Assigned to Justice Joseph C. Teresi

APPEARANCES:

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TERESI, J.:

On October 7, 2009 this Court executed an Order (hereinafter "Order") submitted ex parte, pursuant to Correction Law §46, by The New York State Commission on Correction (hereinafter "the Commission"). The Correction Law §46 Order requires, in part, the Erie County Sheriff to provide the Commission with any information it requests. It also prohibits any County of Erie employee from being present when the Commission interviews Sheriff's

department employees, except for a representative of the interviewee's labor union. The County of Erie commenced this proceeding seeking to vacate such Order, pursuant to CPLR §5015, and transfer venue of the Commission's application. Because the Commission failed to obtain jurisdiction over Erie County, the County of Erie's motion to vacate is granted and its motion to change venue denied as moot.

CPLR §5015 provides that a "court which rendered a[n] order may relieve a party from it upon such terms as may be just... upon the ground of: lack of jurisdiction to render the judgment or order." The County of Erie argues that this court lacked jurisdiction to execute the Order because the Commission filed no action or proceeding upon which this Court could exercise its jurisdiction.

It is uncontested that the Commission commenced no action or proceeding to obtain the Order. Rather, pursuant to Correction Law §46(3), the Commission "applied" to this Court. Correction Law §46(3) specifically states that "[i]n any case where a person in charge or control of a correctional facility or an officer or employee thereof shall fail to comply with the provisions of subdivision one, the commission may apply to the supreme court for an order directed to such person requiring compliance therewith." (emphasis added). The statute is silent about the specific procedures for such "application". It does not require the "application" to be made within the context of an action or proceeding. Nor does it grant or prohibit the Commission from making its "application" ex parte. Moreover, no prior cases have examined and interpreted Correction Law §46(3)'s "apply" language. With no specific statutory or case law guidance, the issue of first impression here is: whether or not Correction Law §46(3) permits the Commission's "application" to be made ex parte without the commencement of an action or proceeding.

“It is a fundamental rule of statutory construction that a statute or legislative act is to be construed as a whole, and that all parts of an act are to be read and construed together to determine the legislative intent.” (Statutes §97). “In the course of construing a statute the court must assume that every provision thereof was intended for some useful purpose, and that an enforceable result was intended by the statute.” (Statutes §144, comment). Where, as here, “the question is one of pure statutory reading and analysis, dependent only on accurate apprehension of legislative intent, there is little basis to rely on any special competence or expertise of the administrative agency” and its interpretation of the statute will be given no deference. (Lorillard Tobacco Co. v. Roth, 99 NY2d 316, 322 [2003], quoting Seittelman v. Sabol, 91 NY2d 618 [1998]).

With such fundamental canons of construction in mind, Correction Law §§40-48 (Article 3) creates the Commission and sets forth its organization, functions, powers and duties. Correction Law §48 specifically requires that “[a]ny action or proceeding commenced by the commission pursuant to this article shall have preference over all other cases, except habeas corpus proceedings, pending before the court.” Such specific directive clearly demonstrates that the legislature intended the Commission to “commence” actions or proceedings pursuant to Article 3. Thus, the entire Correction Law Article 3 must be construed considering such intent.

However, Article 3 of the Correction Law fails to set forth any provision specifically authorizing or requiring the Commission to commence an action or proceeding. Article 3’s only reference to the “commencement” of an action or proceeding is set forth at Correction Law §45(8). Such section authorizes a “correctional facility” or “local correctional facility” to challenge an order to close, issued by the Commission, with a CPLR Article 78 proceeding.

(Correction Law §§40[2, 3] and 45[8]). Neither Correction Law §45(8) nor any other section of Article 3 addresses the Commission's commencement of an action or proceeding.

While Article 3 of the Correction Law contemplates the Commission commencing an action or proceeding (Correction Law §48), it fails to specify when it may do so. To not render "ineffective" Correction Law §48's intent that the Commission commence actions or proceedings, such intent must be implemented through Correction Law §46's "apply [and] application" language. Construing Correction Law §46(3) as requiring the Commission to commence an action or proceeding when "applying" to a court for an order avoids the impermissible construction that would render Correction Law §48's explicit intent "ineffective." (see generally In re Christopher F, 260 AD2d 97 [3d Dept. 1999])

Such result also facilitates the implementation of Correction Law §46's "apply" language, by giving certainty and a recognized framework within which the Commission may pursue an order. Without such framework, the Commission would have carte blanche authority to secure a court order without providing notice or complying with any of the other rules surrounding civil actions and proceedings. The Commission failed to demonstrate the desirability of such result or the legislature's intent in granting such expansive authority.

This construction also obviates any potential due process problems with Correction Law §46. Construing a Correction Law §46 "application" as falling outside of the established actions and proceedings framework to allow ex parte "applications" would raise substantial due process problems with the statute. (see generally Sniadach v. Family Finance Corp. of Bay View, 395 US 337 [1969]). It has long been recognized that "[e]x parte applications are generally disfavored by the courts, unless expressly authorized by statute, because of the attendant due

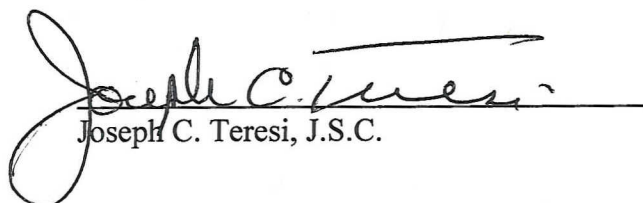
process implications caused by proceeding without notice.” (Fosmire v. Nicoleau, 144 AD2d 8 [2nd Det. 1989]). Correction Law §46 does not explicitly authorize the Commission to apply ex parte, and such construction will not be adopted.

Accordingly, because it is uncontested that the Commission failed to commence an action or proceeding to obtain its Order, Erie County’s motion to vacate this Court’s October 7, 2009 Order is granted. The Commission may re-“apply”, if it deems necessary, for the order that is now vacated by commencing an action or proceeding. The County of Erie’s motion to change venue of the Commission’s application, however, is denied as moot because it is no longer pending.

This Decision and Order is being returned to the attorneys for the County of Erie. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: November 24, 2009
Albany, New York



Joseph C. Teresi, J.S.C.

PAPERS CONSIDERED:

1. Order to Show Cause, undated, Affidavit of Cheryl Green, dated October 8, 2009, with attached Exhibits A-D; Affidavit of Kristin Klein Wheaton, dated October 8, 2009, with attached Exhibit A; Affidavit of Kristin Klein Wheaton, dated October 9, 2009, with attached Exhibit A;
2. Notice of Motion, dated October 21, 2009, Affidavit of Kristin Klein Wheaton, dated October 21, 2009, with attached Exhibits A-C;
3. Affirmation of Brian Callahan, dated October 16, 2009, with attached Exhibits "Callahan Appendix 1" - "Callahan Appendix 5".
4. Affidavit of Kristin Klein Wheaton, dated October 19, 2009, with attached Exhibit A.