

Matter of Hamilton v Joy

2011 NY Slip Op 30339(U)

February 14, 2011

Sup Ct, Albany County

Docket Number: 7337-10

Judge: George B. Ceresia Jr

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In The Matter of the Application of
THERESA HAMILTON,

Petitioner,

-against-

DEBRA JOY, DIRECTOR OF TEMPORARY
RELEASE; J. MACZEK, TEMPORARY
RELEASE REVIEWER, ALBANY; K. KELLY,
ALBION CORRECTIONAL FACILITY
TEMPORARY RELEASE COMMITTEE
CHAIRMAN,

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 # 01-10-ST2069 Index No. 7337-10

Appearances: Theresa Hamilton
Inmate No. 06-G-0001
Petitioner, Pro Se
Albion Correctional Facility
3595 State School Road
Albion, NY 14411-9399

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Attorney General
State of New York
Attorney For Respondent
The Capitol
Albany, New York 12224
(Adam W. Silverman,
Assistant Attorney General
of Counsel)

DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

The petitioner, an inmate at Albion Correctional Facility, has commenced the instant CPLR Article 78 proceeding to review a determination dated March 19, 2010 to deny petitioner participation in the Temporary Release Program. Among the arguments set forth in the petition, the petitioner indicates that the respondents have denied her application to participate in the temporary release program on three prior occasions, essentially for the same reasons given in the determination dated March 19, 2010. She maintains that the foregoing makes no sense from the stand-point that these reasons for denial will never change, and will still exist in June 2011 when she is permitted to re-apply. She points out that she has been granted work release in the past, in 1987 and again in 2001 through 2003. She indicates that she has been granted outside clearance and has completed 400 hours of community service. She criticizes the Temporary Release Reviewer for considering her criminal history. She points out that she had an extensive criminal history prior to 2001, but this circumstance did not prevent her from participating in the work release program. The petitioner maintains that the Temporary Release Reviewer improperly considered the offenses for which she is currently incarcerated. She argues that the Temporary Release Reviewer's comment that she her criminal history includes five prior NYSDOCS terms is incorrect.

The determination of the Temporary Release Committee recites as follows:

“Your application for temporary release work release has been denied by the temporary release committee for the following reason(s): Recdivst Hst PAR/PRB Viol.

“Explanation: 6th state term. Crim Hx consists of 39 arrests. Parole violator.

“You may not re-apply for work release until 06/2011.”

The decision of the central office reviewer recites, in part, as follows:

“After reviewing all factors in this case, both positive and negative, the decision has been made to affirm the TRC decision in this case.

“Reasons: I/O Nature, Recdivst Hst, PAR/PRB Viol.

“Comments: Your adult legal history includes 5 prior NYSDOCS Terms. You have violated parole supervision. The 2 instant offenses involved you in concert in forging checks and using another person’s driver’s license. Your extensive criminal behavior renders you a poor work release candidate.”

“The inmate may re-apply for work release on 06/2011.”

Under Corrections Law Section 855 (9), participation in a temporary release program is a privilege, not a right (see Matter of Lapetina v Fischer, 76 AD3d 722 [3rd Dept., 2010]; Matter of Herber v Joy, 61 AD3d 1142 [3rd Dept., 2009]; Matter of Vaughan v Goord, 26 AD3d 553, 553-554 [3rd Dept., 2006], lv denied 6 NY3d 886 [2006]; Matter of Crispino v Goord, 31 AD3d 1022 [3rd Dept., 2006]; Walker v. Le Fevre, 193 AD2d 982, [3rd Dept., 1993]; Matter of Szucs v Recore, 209 AD2d 803 [3rd Dept., 1994]). “[The scope of judicial review] of a determination to deny an application to participate in such a program is limited to consideration of whether the determination “violated any positive statutory requirement or denied a constitutional right of the inmate and whether [it] is affected by irrationality bordering on impropriety”” (Matter of Vaughan v Goord, supra, at 553-554, quoting Matter of Abascal v Maczek, 19 AD3d 913, 914 [3rd Dept., 2005], lv denied 5 NY3d 713 [2005], quoting Matter of Gonzalez v Wilson, 106 AD2d 386, 386-387 [2nd Dept., 1984]). Denial of a temporary release application may be based upon the seriousness of the crime for which inmate is incarcerated (see Matter of Herber v Joy, supra; Matter of Peck v Maczek, 38 AD3d 948 [3rd Dept., 2007]; Matter of Crispino v Goord, 30 AD3d 874 [3rd Dept., 2006]), her history of recidivism (see Montgomery v. Recore, 217 AD2d 777 [3rd Dept., 1995]), and

the risk she would pose to community safety (see Matter of Cody v Pataki, 24 AD3d 1058 [3rd Dept., 2005; Montgomery v Recore, 217 AD2d 777 [3d Dept., 1995]), including past violations of conditions of parole supervision (see Matter of Collins v Goord, 24 AD3d 1048 [3rd Dept., 2005]).

From a review of the papers submitted by both parties, including the exhibits submitted by the respondent for *in camera* review, it is evident that the petitioner has an extensive criminal record, which includes a history of parole violations. The Court finds that respondent's determination to deny petitioner's application for temporary release did not violate any positive statutory requirement or deny her a constitutional right. Nor was it affected by irrationality bordering on impropriety. The petitioner has not demonstrated that the determination was irrational, in violation of lawful procedure, affected by an error of law or arbitrary and capricious.

The Court has reviewed petitioner's remaining arguments and finds them to be without merit. For all of the foregoing reasons, the Court concludes that the petition must be dismissed.

Accordingly, it is

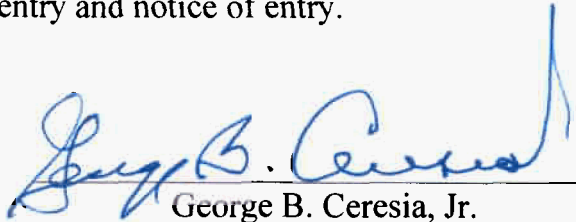
ORDERED and ADJUDGED, that the petition be and hereby is dismissed.

This shall constitute the decision, order and judgment of the Court. The original decision/order/judgment is returned to the attorney for the respondents. All other papers are being delivered by the Court to the County Clerk for filing. The signing of this decision/order/judgment and delivery of this decision/order/judgment does 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: February 14, 2011
Troy, New York


George B. Ceresia, Jr.
Supreme Court Justice

Papers Considered:

1. Order To Show Cause dated November 4, 2010, Petition, Supporting Papers and Exhibits
2. Respondent's Answer dated January 6, 2011, Supporting Papers and Exhibits
3. Petitioner's Letter Filed January 21, 2011

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

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-against-

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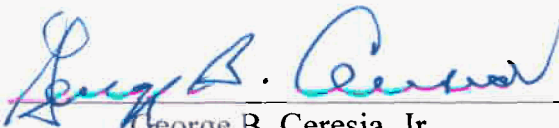
SEALING ORDER

The following documents having been filed by the respondent with the Court for *in camera review* in connection with the above matter, namely, respondent's Exhibit B, Presentence Investigation Report, and respondent's Exhibit C, Repository Inquiry, it is hereby

ORDERED, that the foregoing designated documents, including all duplicates and copies thereof, shall be filed as sealed instruments and not made available to any person or public or private agency unless by further order of the Court.

ENTER

Dated: February 14, 2011
Troy, New York


George B. Ceresia, Jr.
Supreme Court Justice