

Platten v New York State Div. of Parole

2012 NY Slip Op 30815(U)

April 2, 2012

Supreme Court, Albany County

Docket Number: 6556-09

Judge: Joseph C. Teresi

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SUPREME COURT
STATE OF NEW YORK COUNTY OF ALBANY

In the Matter of the Application of

JOHN PLATTEN,

Petitioner,

DECISION and ORDER
INDEX NO. 6556-09
RJI NO. 01-09-STO664

-against-

NEW YORK STATE DIVISION OF PAROLE,

Respondent.

Supreme Court Albany County All Purpose Term, March 12, 2012
Assigned to Justice Joseph C. Teresi

APPEARANCES:

John Platten, #90-C-0145
Pro Se Petitioner
Livingston Correctional Facility
P.O. Box 91
Sonyea, New York 14556

Eric T. Schneiderman, Esq.
Attorney General of the State of New York
Attorneys for Respondent
(Stephen M. Kerwin, Esq., AAG)
The Capitol
Albany, New York 12224

TERESI, J.:

Petitioner moves for an order to resettle the Decision and Order of this Court dated November 12, 2009 pursuant to CPLR 2221(a) alleging the Decision and Order does not accurately conform to the March 15, 2006 Order of the Erie County Supreme Court. The

petitioner also seeks annulment of the July 21, 2011 determination denying him parole release and a de novo interview before a different Parole Board. The respondent opposes the motion and maintains it has complied with the directives of the Orders of the Erie County and Albany County Supreme Courts.

Petitioner is currently serving an indeterminate sentence of twenty years to life for his conviction of Murder in the Second Degree. In Orders dated September 7, 2001 and March 15, 2006, the Erie County Supreme Court directed that certain violations and crimes be expunged from defendant's pre-sentence report ("PSI"). In an Order dated March 15, 2006, the Court directed that the PSI be "retyped to remove all the underlying facts and references to the entries set forth in this Court's original Order in this matter, dated and entered September 7, 2001." With the deletion of the enumerated crimes and violations, the petitioner's PSI would result in only one prior conviction of Driving While Intoxicated. In a Decision and Order dated November 12, 2009, this Court annulled respondent's decision denying parole and found the Board relied on information that was specifically excluded by the two prior Orders of the Erie County Supreme Court. This Court remanded the matter for a de novo hearing before a different panel of the Parole Board. This Court also directed that the respondent "delete and expunge from petitioner's institutional record all information required to be expunged by such Orders." When the respondent failed to conduct a de novo hearing, this Court found the respondent guilty of civil contempt, assessed a fine and directed the respondent to conduct a hearing in compliance with the November 12, 2009 Decision and Order. In a Decision and Order dated November 24, 2010, this Court held "that the expunged criminal history entries were removed from petitioner's parole file prior to his de novo hearing." On July 20, 2011 the petitioner appeared before the Board for his June of 2010 reappearance hearing. On July 21, 2011, the Board again denied parole release

and ordered a hold for an additional 24 months. Thereafter, the petitioner moved again for civil contempt alleging the respondent failed to expunge his criminal history from his sentencing minutes which were required to be completely removed from his institutional file. In a Decision and Order dated August 19, 2011, this Court denied petitioner's motion and found upon "review of such redacted sentencing minutes, they contain no material that was required to be expunged by the (November 12, 2009) Decision and Order."

Petitioner now claims the respondent has not complied with the two prior Erie County Supreme Court Orders as the sentencing minutes were only redacted and not expunged. The petitioner relies on Pangburn v. Goord, et al., 98-CV-0309E(Sr.), (United States District Court, W.D.N.Y. dated May 21, 2001) which held a redaction with a marker to cross out information that was ordered expunged "still allows anyone viewing the documents to know there was some form of disciplinary action." Petitioner alleges he sustained prejudice when his redacted sentencing minutes were considered by the Board at the July 21, 2011 hearing. The petitioner maintains the respondent has not complied with the two prior Erie County Supreme Court Orders.

The respondent maintains it has complied with the directives of all prior Decisions and Orders in this matter going back to September 7, 2001. The respondent alleges the March 15, 2006 Order pertained to the expungement of information from the PSI. The respondent claims the petitioner's interpretation of the March 15, 2006 Order is incorrect as it does not direct that all of petitioner's criminal history be completely removed from his institutional file. The respondent contends the two Erie County Supreme Court Orders expressly refer to the expungement of information from the PSI and make no reference to sentencing minutes or any other documents included in petitioner's parole file.

Resettlement of an order is a procedure designed solely to correct errors or omissions as to form or for clarification. (Gormel v. Prudential Ins. Co. of America., 167 AD2d 829 [4th Dept. 1990]). Resettlement which connotes the revising of the order to make it reflect the decision more accurately may not be used to effect a substantive change in or to amplify the prior decision of the court. (Foley v. Roche, 68 AD2d 558 [1st Dept. 1979], appeal denied 56 NY2d 507 [1982]).

The two Erie County Supreme Court Orders pertain to petitioner's "probation report PA 1383." The September 7, 2001 Order directed the respondents to correct and/or amend the probation report "by redacting, striking and/or by other means eliminating from the petitioner's probation report" nine entries relating to violations and misdemeanors from 1977 to 1988. The Order makes no mention of sentencing minutes. The March 15, 2008 Order also pertains to probation report PA 19383. The court directed that it be retyped in order to remove references to nine violation and misdemeanor charges enumerated in the September 7, 2001 Order. The Order further directs that the probation report remove any information collected from the Genesee County Family Court, Department of Social Services and Mental Health Services. This Order does not mention sentencing minutes.

The respondent has complied with the Erie County Orders and has expunged all of the information from the probation report. Petitioner's allegation that the expungement also included the sentencing minutes is without merit. There is no language in any of the prior orders relating to the sentencing minutes. The only copy of petitioner's 1990 criminal sentencing minutes that was considered by the Board at the July 20, 2011 parole hearing was a redacted copy of the minutes. The Board did not review any of the redacted material at the parole interview. Petitioner's claim that all documents and records relating to his criminal history must be sealed

and removed from his criminal file is unfounded. In the August 19, 2010 Decision and Order, this Court determined the petitioner failed to proffer any “direct evidence that his sentencing minutes were not redacted”. This Court also concluded after a review of the redacted sentencing minutes that “they contain no material that was required to be expunged by the Decision and Order (November 12, 2009).” The motion to resettle must be denied as the respondent has complied with the two Orders of the Erie County Supreme Court and with this Court’s November 12, 2009 Decision and Order.

Accordingly, petitioner’s motion is denied.

This Decision and Order is being returned to the attorney for the respondent. 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 relived from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: Albany, New York
April 2, 2012



Joseph C. Teresi, J.S.C.

PAPERS CONSIDERED:

1. Notice of Motion dated January 17, 2012;
2. Affidavit of John Platten dated January 17, 2012 with attached exhibits A-I;
3. Affirmation of Stephen M. Kerwin, Esq. dated February 17, 2012 with attached exhibits A-D;
4. Affidavit of John Platten dated February 27, 2012 with attached exhibits A & B.
6. Affirmation of Kevin P. Hickey, Esq. dated January 31, 2012 with attached exhibits A-E.