

Matter of Saladeen v Callahan
2012 NY Slip Op 32718(U)
August 20, 2012
Supreme Court, Albany County
Docket Number: 6956-11
Judge: George B. Ceresia Jr
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STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In The Matter of ISMAEL SALADEEN,

Petitioner,

-against-

WILLIAM J. CALLAHAN, Administrative Director
of the New York State Police,

Respondents,

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 # 01-12-ST3286 Index No. 6956-11

Appearances: Ismael Saladeen
 Inmate No. 83-C-0722
 Petitioner, Pro Se
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DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

The petitioner, an inmate at Elmira Correctional Facility, has commenced the instant Article 78 proceeding with respect to disclosure of documents under Public Officers Law Article 6, commonly referred to as the Freedom of Information Law ("FOIL"). Specifically,

the petitioner seeks production of unredacted copies of two documents which relate to his DNA profile: (1) a letter dated March 8, 2002 from the New York State Police Forensic Investigation Center, addressed to the Division of Criminal Justice Services (“CJS”), which set forth the DNA profile for Specimen I.D. No. 9929744 (hereinafter, the “FIC letter”); (2) a DNA Databank Specimen Submission Form for Specimen I.D. No. 9929744A. Apparently DNA data, which is the subject of petitioner’s FOIL request, linked the petitioner to an unsolved 1982 murder for which he was ultimately convicted (see People v Saladeen, 67 AD3d 737 [3d Dept., 2005]).

In the Spring of 2002 the petitioner received a copy of the FIC letter, which had been redacted with respect to the identity of the author of the letter, and with respect to the individual at CJS to whom the letter was addressed. By letter dated June 11, 2002 the petitioner made a FOIL request for certain information with respect to the FIC letter, including the names and titles of the author and addressee. The FOIL request was denied on July 2, 2002 on grounds that the demand was interrogatory in nature, i.e., it did not demand production of specific documents, but rather asked questions.¹ The petitioner submitted an appeal of that determination, which was denied on July 30, 2002. On May 21, 2003 the petitioner requested reconsideration, which was denied on June 9, 2003. On December 22, 2005 the petitioner submitted a FOIL request to FIC, with respect to Specimen # 9929744,

¹The June 11, 2002 FOIL request recited, in part, as follows:

“I received the attached document dated March 8, 2002, pursuant to a request I’d made to the Division of Criminal Justice Services. At this time, I am requesting: a. The specific date in March, 2002, that the profile was developed, and b. The name and official title of the person who authored the attached document, and c. The official name and title of the person at the Division of Criminal Justice Services to whom the attached document is addressed.”

requesting ten categories of documents. The request was denied on December 30, 2005. His administrative appeal dated January 6, 2006 was denied on January 23, 2006. He submitted a request for reconsideration on May 25, 2006. It is unclear from the record how that request was resolved.

In a letter January 4, 2010 addressed to William J. Callahan, Administrative Director of the New York State Police, the petitioner again requested an unredacted copy of the FIC letter. In a determination dated February 4, 2010 the demand was denied, on grounds that petitioner's request "has been previously responded to". By letter dated July 18, 2010 the petitioner requested unredacted copies of the FIC letter, and the DNA Database Specimen Submission Form. By letter dated August 12, 2011, addressed to Administrative Director Callahan, petitioner again requested an unredacted copies of the FIC letter and what he referred to as the "DNA submission form".

Turning first to a procedural issue, the petitioner maintains that respondent's answer is untimely served, and that he is therefore entitled to a default judgment. The Assistant Attorney General indicates that he delayed serving an answer beyond the last adjourned date by reason that he believed he had worked out an agreement with the petitioner to resolve the pending proceeding. Notably, the petitioner has not demonstrated how he has been harmed by the brief delay. As such, the Court finds that the adjournments were properly granted, and respondent's late service of his answer and opposing papers should be excused. Moreover, had the respondent failed to serve and file his answer the Court, pursuant to the provisions of the last sentence of CPLR 7804 (e), would have directed the respondent to do so. On these facts, the Court would not grant a default judgment.

Turning to respondent's argument that the petition fails to state a cause of action, a

review of the petition reveals that neither the petition, nor the annexed exhibits, indicate the specific administrative determination for which the petitioner seeks review in the instant proceeding. Rather, they merely allege that the respondent has refused to provide unredacted copies of the petitioner's DNA profile data. As such, the petitioner failed to identify the determination he seeks to challenge here.² Based upon the foregoing, the Court finds that the petition fails to state a cause of action

In addition, with regard to production of the unredacted FIC letter, the proceeding is barred by the four month statute of limitations (see CPLR 217). The reason for this is that production of the letter was denied, most recently, in the February 4, 2010 determination of State Police Administrative Director William J. Callahan. Moreover, as pointed out by the respondent, requests for reconsideration do not, ordinarily, toll or revive the statute of limitations (see Lubin v. Board of Educ. of City of New York, 60 NY2d 974; Matter of Yarbough v Franco, 95 NY2d 342, 347-348 [2000]; Matter of Finger Lakes Racing Association, Inc. v State of New York Racing and Wagering Board, 34 AD3d 895, 896-897 [3rd Dept., 2006]).

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

The Court concludes that the petition must be dismissed.

Accordingly it is

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

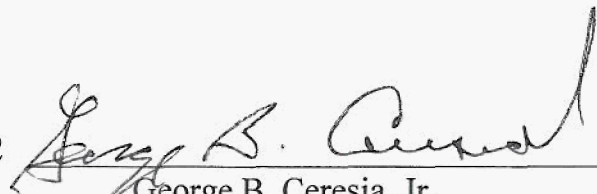
This shall constitute the decision, order and judgment of the Court. The original

²The petitioner's cursory reference to the FOIL application dated August 12, 2011, made in his reply to the respondent's answer, is insufficient.

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 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: August 20, 2012
Troy, New York



George B. Ceresia, Jr.
Supreme Court Justice

Papers Considered:

1. Order To Show Cause dated November 10, 2011, Petition, Supporting Papers and Exhibits
2. Answer dated March 20, 2012, Supporting Papers and Exhibits
3. Petitioner's Reply dated March 25, 2012