

**Matter of Samper v Schiro**

2013 NY Slip Op 30908(U)

April 29, 2013

Sup Ct, New York County

Docket Number: 102687/12

Judge: Alice Schlesinger

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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In the Matter of the Application of  
CARLOS SAMPER,

Petitioner,

Index No. 102687/12  
Motion Seq 001

-against-

DORA B. SCHRIRO, as Commissioner of Correction  
of the City of New York,

Respondent.

For a Judgment pursuant to CPLR Article 78 in the  
nature of mandamus to compel disclosure for a  
record pursuant to FOIL.

-----X  
SCHLESINGER, J.:

Petitioner Carlos Samper commenced this Article 78 proceeding in connection with a Freedom of Information Law (FOIL) request that he filed seeking records relating to his criminal conviction. The petition prepared by counsel, albeit very brief, suggests that an individual named Denise Valdez was a "key purported eyewitness in the case," but Samper believes that Valdez was herself incarcerated at the time of the events in question and therefore could not have witnessed Samper committing any crime. Samper seeks documentation of Valdez' incarceration with the apparent goal of discrediting her testimony. Respondent has opposed the petition, asserting that it has been unable to locate files relating to the incarceration of Ms. Valdez during the relevant time based on the information provided by Samper.

The details relating to the FOIL request are as follows. Samper made his first FOIL request by letter dated November 5, 2011 to Warden Singleton (Answer, Exh 3). There he indicated his understanding that Denise Valdez had been released from

prison on July 27, 1990, and he requested a record confirming the date and the time. In the letter, he also provided certain identifying information about Ms. Valdez, such as her ID number, Social Security number, date of birth, indictment number, arrest date, and bail date. In response, by letter dated December 4, 2011, Records Access Officer Rosa Lugo provided a computer printout indicating that Ms. Valdez had been incarcerated **after** the July 1990 date, from August 16, 1990 through April 15, 1991 (Exh 5).

Mr. Samper followed up by letter dated December 29, 2011 directed to Commissioner Schriro (Exh 1). There he requested that a further search be conducted, as the information provided related to the second arrest of Ms. Valdez and Samper was interested in an earlier arrest. Ms. Lugo responded on January 28, 2012, confirming that a "search of the Inmate Information System does not show that Ms. Valdez was in the custody of the Department on July 27, 1990 under any of the Book and Case number you provided." (Exh 2).

Rather than appeal, Samper sought the assistance of counsel, who wrote a March 14, 2012 letter to Corrections requesting the information relating to Denise Valdez based on an arrest date of May 17, 1990 and a release on bail on or about July 27, 1990 (Exh 6). In response, Records Access Officer Lugo indicated in her May 23, 2012 letter that the Department had located an additional record for Ms. Valdez that reflected an admission date of May 19, 1990 and a discharge date of June 20, 1990, about one month **before** the date in question (Exh 7).

In the interim, Mr. Samper had commenced this Article 78 proceeding. In its Answer, respondent provided copies of all the above documents and asserted that the

proceeding should be dismissed because no other records relating to Ms. Valdez or the July 27, 1990 alleged discharge date could be located based on the information provided by Mr. Samper or his counsel.

Oral argument was held on November 28, 2012, with Mr. Samper participating by telephone; his attorney had ceased responding to letters from the Court or her client. In response to the Court's suggestion, Mr. Samper submitted another letter clarifying his request and providing certain additional information. As confirmed in the December 11, 2012 letter from Ms. Lugo, Mr. Samper was requesting a copy of the release or discharge papers issued to Ms. Valdez (who apparently was also known as Denise Vasquez) on July 27, 1990. Ms. Lugo indicated that the new Book and Case number provided by Mr. Samper related to a completely different incarceration period for the period from April 15, 1991 through August 15, 1991. As those records did not include the July 1990 date of interest, Ms. Lugo agreed to search for the inmate's actual file and produce it for *in camera* inspection.

Ms. Lugo provided the results on her search by letter dated February 1, 2013. There she stated quite emphatically that: "Inmate Denise Vasquez/Valdez was not or never in DOC custody on July 27, 1990 or never discharged on that date, contrary to Mr. Samper's claim and insistence. ... Therefore, no inmate legal file will contain any discharge papers dated July 27, 1990 related to Ms. Vasquez/Valdez." (Emphasis in original).

Attached to Ms. Lugo's letter were two confidential interagency memos from the Rose M. Singer Center Warden confirming that "diligent and thorough searches were conducted for inmate legal files corresponding to" the 1990 and 1991 Book and Case

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numbers provided by Mr. Samper relating to Ms. Valdez. Ms. Lugo again confirmed that the corresponding computerized records for those incarcerations did not include a discharge date of July 27, 1990, and that the actual files could not be located due to the passage of time. Mr. Samper argued in his February 8, 2013 letter that the records had to be wrong. Additionally, he complained about his non-receipt of records never requested here; namely, court orders of the dates when Ms. Valdez was produced to the District Attorney's offices and her mental health records.

### Discussion

The petition must be denied because the Department of Correction has certified that it has repeatedly made a diligent search for the requested records and, while locating computerized records for the inmate, has been unable to locate anything corresponding to the July 1990 date of interest or the actual file. The Department has thus satisfied the requirements of FOIL. *See, He'ron v Office of Dist. Atty., Bronx County*, 96 AD3d 531 (1<sup>st</sup> Dep't 2012), *citing Matter of Rattley v New York City Police Dept.*, 96 NY2d 873 (2001). Due to the passage of over twenty years since Ms. Valdez was incarcerated, the Court finds it credible that the actual files could not be located. Further, the computerized records appear reliable.

As to the information recently requested by Mr. Samper (dates of production to the District Attorney and mental health records for Ms. Valdez), they were not included in the subject FOIL request so cannot be considered here. In any event, the mental health records are privileged, and it is unlikely that the information relating to the inmate's interaction with the District Attorney is available anywhere other than in the files, and those files cannot be located. Further, since the records do not confirm an

incarceration on July 27, 1090, it is unlikely that the files would contain information that is relevant and helpful to Mr. Samper.

Accordingly, it is hereby

ADJUDGED that the petition filed by Carlos Samper, as supplemented following oral argument, is denied and this Article 78 proceeding is dismissed without costs or disbursements.

Dated: April 29, 2013

**APR 29 2013**

  
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J.S.C.  
**ALICE SCHLESINGER**