

Matter of Littlejohn v New York State DOCCS

2016 NY Slip Op 30596(U)

April 6, 2016

Supreme Court, Franklin County

Docket Number: 2015-743

Judge: S. Peter Feldstein

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This opinion is uncorrected and not selected for official publication.

**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF FRANKLIN

X

In the Matter of the Application of
CURTIS LITTLEJOHN, #15-A-0476,
Petitioner,

for Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

**DECISION, ORDER AND
JUDGMENT**

RJI #16-1-2015-0433.61

INDEX # 2015-743

ORI #NY016015J

-against-

NEW YORK STATE DOCCS,

Respondent.

X

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the Petition of Curtis Littlejohn, dated September 11, 2015 and filed in the Franklin County Clerk's office on September 23, 2015. Petitioner, who is an inmate at the Franklin Correctional Facility, purported to challenge on August 11, 2015 determination denying his application to participate in a DOCCS temporary release program. The Court issued an Order to Show Cause on September 29, 2015 and received and reviewed respondent's Answer and Return, verified on November 4, 2015 and supported by the Letter Memorandum of Christopher J. Fleury, Esq., Assistant Attorney General, dated November 4, 2015. The Court also received and reviewed petitioner's Reply thereto, dated November 8, 2015, sworn to on November 10, 2015 and filed in the Franklin County Clerk's office on November 19, 2015.

After the issuance of the original Order to Show Cause of September 29, 2015, petitioner filed a variety of additional documents, as follows:

(1) Undated letter, with exhibits, to S. Peter Feldstein, Acting Supreme Court Justice, filed in the Franklin County Clerk's office on October 15, 2015;

(2) Undated three-page document containing in the headings “Procedural Due Process,” “Abscondance,” and “Conclusion,” filed in the Franklin County Clerk’s office on October 20, 2015;

(3) “Amended” undated three-page document, with exhibits, containing the headings “Procedural Due Process,” “Abscondance,” and “On [sic] Conclusion,” filed in the Franklin County Clerk’s office on November 3, 2015;

(4) Two-page document labeled “ADDENDUM”, with exhibit, dated November 8, 2015 and filed in the Franklin County Clerk’s office on November 19, 2015; and

(5) Proposed Order to Show Cause and Temporary Restraining Order, supported by petitioner’s Declaration in Support of Petitioner’s Motion for a Temporary Restraining Order Preliminary Injunction, dated November 23, 2015, as well as petitioner’s Memorandum of Law in Support of Petitioner’s Motion for a Temporary Restraining and Preliminary Injunction, dated November 23, 2015 and filed in the Franklin County Clerk’s office on December 9, 2015.

On December 16, 2015 petitioner filed an Amended Petition, dated December 10, 2015. Annexed to the Amended Petition is what appears to be an additional copy of the “Amended” undated three-page document (without exhibits) containing the headings “Procedural Due Process,” “Abscondance,” and “On [sic] Conclusion.” See item (3) in preceding paragraph. It appears from the Amended Petition that petitioner purports to challenge the denial of his application to participate in the DOCCS Shock Incarceration Program (rather than the determination denying his application to participate in a DOCCS temporary release program).

Petitioner did not move the Court for leave to file the Amended Petition and the Amended Petition was not filed within any of the time frames designated in CPLR §3025(a) as constituting a basis for the amendment of a pleading without leave of Court. Counsel for the respondent nevertheless consented that petitioner be granted leave to proceed with the Amended Petition. To this end the Court issued a Decision and Order on January 26, 2016 which, in relevant part, directed respondent to serve amended answering papers and authorized petitioner to submit a Reply thereto. The Court has since received and reviewed respondent's Notice of Motion to Dismiss as Time-Barred, supported by the Affirmation of Christopher J. Fleury, Esq., Assistant Attorney General, dated February 18, 2016. The Court has also received and reviewed petitioner's Reply thereto, sworn to on February 26, 2016 and filed in the Franklin County Clerk's office on March 1, 2016.

Notwithstanding petitioner's purported challenge to the August 10, 2015/September 22, 2015 determination(s) denying his application to participate in the DOCCS Shock Incarceration Program, as set forth in the Amended Petition, respondent's motion papers demonstrate that on February 19, 2015 the shock incarceration screening committee at the Downstate Correctional Facility disapproved such application, determining, in effect, that petitioner's participation in the shock program would not be ". . . consistent with the safety of the community, the welfare of the applicant and the selection criteria for the program . . ." 7 NYCRR §1800.3(c). The regulatory scheme (7 NYCRR Part 1800), however, does not provide for an administrative appeal from any determination denying an inmate's application to participate in the DOCCS Shock Incarceration Program.

Notwithstanding the foregoing, by letter dated March 11, 2015¹ petitioner purported to take an “Administration [sic] Appeal” from the shock denial determination. In response thereto petitioner was advised as part of a March 17, 2015 memorandum that there was no administrative appeal process with respect to a shock denial determination.

Although under the above circumstances petitioner’s administrative appeal was without legal effect, the Court finds that such appeal did serve to establish that petitioner had, in fact, received a copy of the February 19, 2015 shock denial determination no later than March 11, 2015. Under the four-month statute of limitations set forth in CPLR §217(1) he had until July 13, 2015 to commence by filing (*see* CPLR §304(a)) a proceeding challenging the shock denial determination². Thus, even if this Court determined that the cause of action asserted by petitioner in the Amended Petition should be deemed to have been interposed as of the date of the filing of the original Petition (September 23, 2015), it would still be time-barred.

In paragraph one of his Reply petitioner indicated that he previously (and timely) commenced a CPLR Article 78 proceeding in Dutchess County (Index No. 1710/2015) challenging the shock denial determination but that such proceeding was dismissed on August 7, 2015 for lack of personal jurisdiction over the respondent. Under the relevant provisions of CPLR §205(a) “[i]f an action is timely commenced and is terminated in any other manner then by . . . a failure to obtain personal jurisdiction over the defendant . . . the plaintiff . . . may commence a new action upon the same transaction or occurrence or

¹ Petitioner’s administrative appeal letter is actually date March 11, 2014, but the reference to 2014 is an obvious error.

² Since July 11, 2015 fell on a Saturday, petitioner would have had to the next business day (Monday, July 13, 2015) to timely commence a proceeding challenging the shock denial determination. *See* Judiciary Law §282-a.

series of transactions or occurrences within six months after the termination . . .”
Therefore, the dismissal of petitioner’s Dutchess County Article 78 proceeding for failure to obtain personal jurisdiction over the respondent therein did not serve as a statutory basis for the commencement of a new proceeding after the expiration of the underlying statute of limitations.

Finally, the Court notes that it is without authority to extend the applicable statute of limitations. *See* CPLR §201.

Based upon all of the above, it is, therefore, the decision of the Court and it is hereby **ORDERED**, that respondent’s motion is granted; and it is further **ADJUDGED**, that the petition is dismissed as time-barred.

Dated: April 6, 2016 at
Indian Lake, New York.

S. Peter Feldstein
Acting Supreme Court Justice