

Matter of Pearson v Idoni
2016 NY Slip Op 31032(U)
June 6, 2016
Supreme Court, Franklin County
Docket Number: 2016-07
Judge: S. Peter Feldstein
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**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF FRANKLIN

X

In the Matter of the Application of
KAYSON PEARSON, #04-A-4176,
Petitioner,

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

**DECISION, ORDER AND
JUDGMENT**

RJI #16-1-2016-0005.02

INDEX # 2016-07

ORI #NY016015J

-against-

TIMOTHY C. IDONI,
Westchester County Clerk

Respondent.

X

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the petition of Kayson Pearson, verified on December 23, 2015 and filed in the Franklin County Clerk's Office on January 6, 2016. Petitioner, who is an inmate at the Upstate Correctional Facility, seeks an order of this Court “. . .compelling Respondent to certify a lack of record pursuant to Judiciary Law §255, and CPLR §4521, that Respondent does not have in his office any record of a 1) Certificate of Conviction, and 2) Certification of Indictment, and granting such other and further relief as the Court may deem just, proper and equitable.”

The Court issued an Order to Show Cause on January 13, 2016 and has received and reviewed respondent's Notice of Motion to Dismiss, supported by the Affirmation of David Polizzi, Esq., Assistant County Attorney, Westchester County, dated April 1, 2016. Respondent's motion to dismiss is also supported by Assistant County Attorney Polizzi's Memorandum of Law dated April 1, 2016. The Court has also received and reviewed

Petitioner's Affidavit in Reply, sworn to on April 15, 2016 and filed in the Franklin County Clerk's office on April 20, 2016.

In his two-pronged motion to dismiss respondent first asserts, in effect, that petitioner's improper Franklin County venue designation represents a fatal jurisdictional flaw. CPLR §506(b), which is applicable to this CPLR Article 78 proceeding pursuant to CPLR §7804(b), provides, in relevant part, as follows: "A proceeding against a body or officer shall be commenced in any county within the judicial district where the respondent made the determination complained of or refused to perform the duty specifically enjoined upon him by law . . . or where the material events otherwise took place, or where the principal office of the respondent is located . . ." This Court notes that Westchester County is located in the 9th Judicial District but Franklin County is located in the 4th Judicial District. Although the Court agrees that the petitioner in this proceeding improperly designated venue in Franklin County, it disagrees with respondent's assertion that petitioner's failure to designate venue in a proper county constitutes a jurisdictional defect. *See Kurfis v. Shores Towers Condominium*, 48 AD3d 300. In this regard the Court notes that CPLR §509 provides as follows: "Notwithstanding any provision of this article, the place of trial of an action shall be the county designated by the plaintiff, unless the place of trial is changed to another county by order upon motion, or by consent . . ." Even if the Court treated respondent's pending motion to dismiss as a motion to change venue pursuant to CPLR §510(1), such motion was not preceded by a written demand for a change of venue as required by CPLR §511(b). Accordingly, the respondent would not be entitled to a change in venue as of right. *See Aaron v. The Steele Law Firm, P.C.*, 127 AD3d 1385. Under the facts and circumstances of this case, the Court would not exercise its discretion to change venue to Westchester County at this juncture.

By letter dated November 12, 2015 petitioner first corresponded with the respondent Westchester County Clerk seeking copies of 12 specified documents purportedly associated with a criminal action (*People v. Pearson*, Case Number 00747-2003). The documents in question were listed in petitioner's letter as follows:

- “1. Certificate of Conviction
2. Transcript of Judgment
3. Bond of Assignee
4. Notice of Pendency
5. Execution of Judicial Sale
6. Partial Satisfaction of Judgment
7. Criminal Index Number
8. Bid Bond
9. Performance Bond
10. Payment Bond
11. Affidavit of Surety
12. Sentence and Commitment”

Petitioner concluded his November 12, 2015 letter as follows: “If unable to locate the above mentioned, please certify the same pursuant to CPLR §§4521 and 4540.”

By letter dated November 18, 2015 respondent replied to petitioner's November 12, 2015 request as follows: “The Westchester County Clerk's office is in receipt of your request for the above mentioned Indictment Number [DA 00747-03]. However, some of the documents that you are seeking are not available on your case. We have attached an itemized print-out of the documents for your review. In the interim, [we] were able to locate your Certificate of Conviction which is enclosed. Please look over the list provided and contact us again if you have any further questions.” Annexed to the respondent's November 18, 2015 letter was a copy of the relevant Westchester County Sentence and Commitment Order, dated June 29, 2004, as well as a computer printout listing each of the documents in petitioner's file, as maintained by the respondent.

By letter dated December 1, 2015 petitioner next corresponded with the respondent Westchester County Clerk seeking copies of 17 specified documents purportedly associated with the same criminal action (*People v. Pearson*, Case Number 00747-2003)¹. The documents in question were listed in petitioner's letter as follows:

- “1. Certificate of Conviction
2. Transcript of Judgment
3. Sentence and Commitment
4. Bond of Assignee
5. Notice of Pendency
6. Execution of Judicial Sale
7. Partial Satisfaction of Judgment
8. Criminal Index Number
9. Bid Bond
10. Performance Bond
11. Payment Bond
12. Affidavit of Surety
13. Consent Order
14. Certification of Indictment
15. Certificate of Disposition
16. Assignment of Trustee
17. Certificate of Trustee”

Petitioner stated the following in his December 1, 2015 letter: “If you are unable to locate the above mentioned, please certify the same pursuant to Judiciary Law §255; and CPLR §§4521 and 4540, along with an Affidavit stating the same.”

By letter dated December 8, 2015 respondent replied to petitioner's December 1, 2015 request as follows: “We are in receipt of your requests for the above-mentioned Indictment numbers [DA00747-03]. We attached an itemized print-out of what is available

¹ Petitioner's December 1, 2015 letter also requested documents with respect to a second criminal action (*People v. Pearson*, Case Number 2529-2003). After this proceeding was commenced respondent advised petitioner that Case Number 2529-2003 appeared to be a Yonkers City Court file number and that any request for documents contained therein should be made to that court. In any event, it does not appear that respondent's actions with respect to the records under Case Number 2529-2003 are at issue in this proceeding.

on your cases. Please review the list of documents and contact us if you have any further questions or concerns.” Annexed to the respondent’s December 8, 2015 letter was a computer printout listing each of the documents in petitioner’s file, as maintained by the respondent.

By letter dated December 10, 2015 petitioner again corresponded with the respondent Westchester County Clerk regarding the records maintained by the respondent with respect to *People v. Pearson*, Case Number 00747-2003. Petitioner first noted, in effect, that the computer printout annexed to respondent’s letter of December 8, 2015, which purports to list each of the documents in petitioner’s file (00747-2003), did not include most of the documents set forth in his December 1, 2015 letter/request. Petitioner went on to state as follows: “If you were unable to find any of the documents I requested . . . and the only documents you could find are the ones listed in the itemized print-out. Then I respectfully demand you perform your duties in accordance with Law, particularly Judiciary Law §255 . . .” By letter dated December 16, 2015 respondent replied to petitioner’s December 10, 2015 letter as follows: “We have received your correspondence for the above mentioned Indictment Number [DA00747-03]. The itemized print-out that was sent to you is **ALL** the documents that our office has on file. We apologize that we are not able to provide [you] with the documents that you are seeking. Please contact the **Westchester County District Attorney’s office** for any further requests.” (Emphasis in original). This proceeding ensued.

Judiciary Law §255 provides, in relevant part, as follows:

“A clerk of a court must, upon request . . . diligently search the files, papers, records, and dockets in his office; and either make one or more transcripts or certificates of change therefrom, and certify to the correctness thereof, and

to the search, or certify that a document or paper, of which the custody legally belongs to him, can not be found.” (Emphasis added).

In the second prong of his motion to dismiss respondent asserts that on April 1, 2016 - after this proceeding had been commenced - “ . . . a copy of the Petitioner’s entire certified file for indictment number 747-2003 along with two letters certifying that records requesting Petitioner’s letters, dated November 12, 2015 and December 1, 2015, are not in the possession of the County Clerk.” The copies of the two certification letters, which are annexed to Assistant County Attorney Polizzi’s Affirmation of April 1, 2016 as Exhibit B thereof, suggest that with the exception of the “Sentence and Commitment” and “Consent Order,” none of the documents identified in petitioner’s two letter requests were found in the records maintained by respondent. Accordingly, respondent argues that this proceeding has been rendered moot and that the petition must therefore dismissed.

In his Affidavit in Reply petitioner’s concedes that respondent’s “compliance with the law” had indeed rendered this proceeding moot. He nevertheless seeks an award of disbursements in the amount of \$15.00 to cover the reduced cost of the filing fees, as set forth in the Order to Show Cause of January 13, 2016. In this regard the following is asserted in paragraphs six and seven of petitioner’s Affidavit in Reply: “Had Respondent simply performed his duties that were enjoined upon him by law, i.e. Judiciary Law §255, there would have been no need for me to commence these proceeding, thus having to pay a filing fee . . . I did nothing wrong, but request documents, which the law gives me a right to do, but yet I’m the only party who has suffered a loss, i.e. \$15.00.”

It is clear to the Court (and to both parties) that any dispute with respect to the respondent’s management of the relevant case record has been rendered moot by the April 1, 2016 release of copies of the record and certification with respect to unavailable

documents. Notwithstanding this fact, the Court, for the reasons set forth below, rejects petitioner's request for an award of disbursements.

The relevant provisions of Judiciary Law §255 arguably required the respondent to certify that a particular document(s) or paper(s) cannot be found in the his records only where the custody of such document(s)/paper(s) "legally belongs" to the clerk. In the case at bar even a casual review of the list of documents sought by petitioner in his November 12, 2015 and December 1, 2015 letters reveals that the majority of such documents patently bore no relationship whatsoever to the record in any criminal action. Indeed, petitioner's request to the respondent for copies of documents such as Bond of Assignee, Notice of Pendency, Execution of Judicial Sale, Partial Satisfaction of Judgment, Bid Bond, Performance Bond, Payment Bond, Affidavit of Surety, Assignment of Trustee and Certificate of Trustee borders on the frivolous since those documents would not be included in the case record. While the Court is inclined to give the petitioner the benefit of the doubt, attributing his requests for patently irrelevant documents to a lack of legal sophistication rather than any deliberate effort to harass the respondent, it is still clear to the Court that the respondent's action in initially providing petitioner with a copy of the relevant Sentence and Commitment Order, together with a printout listing the other documents actually included in the relevant file, was appropriate under the circumstances and should have enabled petitioner to identify and request copies of any documents he perceived necessary without resort to litigation. Accordingly, the Court finds that no discretionary award of disbursements is warranted.

Based upon all of the above, it is, therefore, the decision of the Court and it is hereby **ORDERED**, that respondent's motion to dismiss is granted; and it is further **ADJUDGED**, that the petition is dismissed as moot.

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

S. Peter Feldstein
Acting Supreme Court Justice