

Matter of Loverde v New York State Dept. of Corr. & Community Supervision
2025 NY Slip Op 35456(U)
March 28, 2025
Supreme Court, Albany County
Docket Number: Index No. 900862-25
Judge: Justin Corcoran
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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In the Matter of
BERNARD LOVERDE,

Petitioner,

**DECISION, ORDER
& JUDGMENT**

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules,

Index No. 900862-25

-against-

NEW YORK STATE DEPARTMENT OF CORRECTIONS
AND COMMUNITY SUPERVISION,

Respondent.

(Albany County Supreme Court, Special Term)

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Justin Corcoran, J.S.C.:

Petitioner commenced this CPLR article 78 proceeding seeking to annul respondent's denial of his two applications to participate in the Presumptive Work Release/Comprehensive Alcohol and Substance Abuse Treatment (PWR/CASAT) program.

Petitioner is currently serving concurrent indeterminate terms, with a controlling term of 4 to 12 years, after he was convicted of aggravated vehicular assault in 2021. Petitioner also pleaded guilty under a separate indictment to driving while intoxicated. The sentencing court ordered that petitioner be enrolled in the CASAT program pursuant to Penal Law §60.04(6). On June 5, 2024, the Office of Sentencing Review advised the sentencing court pursuant to Correction Law § 601-a that petitioner was not convicted of one of the enumerated offenses that authorizes court-mandated enrollment in CASAT.

The Central Office of Temporary Release denied petitioner's Presumptive Work Release Application No. 202304728 on May 30, 2024 based on his instant offense, recidivist history, and risk to the community. The decision stated:

"The instant offense aggravated vehicular assault involved Loverde driving while under the influence of alcohol which resulted in an accident and serious injury to the passenger. DWI: previous conviction within 10 years involved Loverde, on a separate date, consuming alcohol resulting in a motor vehicle accident. Legal history includes multiple convictions for: drive while intoxicated & drive while ability impaired by the consumption of alcohol. Programming & disciplinary were reviewed. The instant offense along with legal history rendered Loverde a threat to the safety & well-being of those in the community. Application for PWR/CASAT is therefore denied. Substance abuse is treated, may be addressed at the facility. The inmate may apply for presumptive work release on 08/13/2026."

The Director of Temporary Release affirmed the Central Office reviewer's decision. On June 3, 2024, petitioner's application #2400723 for temporary release was denied for similar reasons.

Petitioner commenced the instant proceeding seeking an order (1) annulling respondent's denial of his application for participation in work release, and (2) directing respondent to approve his application for participation in PWR/CASAT on the ground that he has met the statutory requirements. For the following reasons, the petition is denied and the proceeding is dismissed.

If an incarcerated individual meets certain eligibility requirements, the Correction Law provides for several types of temporary release, including work release. An applicant's participation in a DOCCS temporary release program is a privilege, not a right.

Correction Law §855(9). As such, judicial review of an administrative determination denying an application to participate in the program is "limited to whether the determination violated any positive statutory requirement or denied a constitutional right of the inmate and whether it is affected by irrationality bordering on impropriety." *Matter of DeCapria v Annucci*, 144 AD3d 1305, 1306 (3d Dept 2016) (citations omitted).

The CASAT program consists of three phases and is intended to prepare chemically dependent inmates for life outside of prison. 7 NYCRR §§1950.1, 1950.2. Incarcerated individuals receive treatment in a correctional annex during phase 1, are transferred to a work release facility for phase 2, and participate in an aftercare component under parole supervision in the community during phase 3. 7 NYCRR §1950.2. Generally, incarcerated individuals will receive presumptive work release approval upon successful completion of phase 1. Otherwise, they must be approved for work release before they can participate in the CASAT program. 7 NYCRR §1951.1 (c). However, the Legislature enacted Penal Law §60.04 as part of the Drug Law Reform Act, which, among other things, authorized a sentencing court to direct the enrollment of certain felony drug offenders in CASAT. Penal Law §60.04 (6).

Correction Law §2 (18) establishes that individuals enrolled in the CASAT program pursuant to Penal Law § 60.04 (6) "be governed by the same rules and regulations promulgated by [respondent]..." Pursuant to such rules, respondent must first determine that participation in temporary release "is consistent with the safety of the community and the welfare of the applicant and is consistent with rules and regulations of the department." Correction Law §855 (4); 7 NYCRR 1900.4 (l) (5), (7).

The Temporary Release Committee, in making a temporary release decision, scores an eligible applicant according to a point system based on criminal history and institutional behavior.¹ 7 NYCRR §1900.4(e). The Temporary Release Committee must consider the applicant's score, interview, performance in programs or on work assignments, and any other factor it finds significant. 7 NYCRR §1900.4 (l) (5). The program regulations

¹ Respondent does not dispute that petitioner is an "eligible inmate" within the meaning of Correction Law §851(2) and therefore was entitled to apply to participate in the Temporary Release Program.

provide that “the applicant's ability to profit from participation in temporary release should be weighed against whatever risk to the community or to the integrity of the program ... posed by his/her participation in a temporary release program.” The committee is directed to “review the crime and determine the circumstances involved in the instant offense.” *Id.* The program regulations mandate that “[i]nmates should not be recommended for temporary release programs if their presence in the community or in a temporary release program would pose an unwarranted threat to their own or public safety, if public reaction is such that the inmate's successful participation in the program would be made difficult, if public acceptance of the temporary release program would be jeopardized, or if there is substantial evidence to indicate the inmate cannot successfully complete his/her requested temporary release program.” 7 NYCRR §1900.4 (l) (7).

Petitioner's contention that the sentencing court's CASAT order required his placement in a temporary work release program is misplaced. Penal Law § 60.04(6) authorizes sentencing courts to mandate an individual's enrollment in CASAT if they stand convicted of a “controlled substance or marihuana offense.” Where, as here, defendant is not convicted of controlled substance or marihuana offense, the sentencing court's order “must be viewed as a nonbinding recommendation.” *Matter of Ferreri v. Fischer*, 69 AD3d 1014, 1014 (3d Dept. 2010) citing Penal Law § 60.04 (6).

Contrary to petitioner's assertion that respondent's determinations are conclusory, the Court finds that they explain the factual basis for the decisions and sufficiently permit judicial review.

Petitioner contends that it was irrational for respondent to deny his application based on his lengthy history of alcohol abuse when the PWR/CASAT program is designed to help incarcerated individuals overcome substance abuse issues and transition back into the community upon release. However, as previously discussed, the committee must consider the petitioner's underlying offense and criminal history. Although petitioner may benefit from participation in PWR/CASAT, respondent must also consider the risk posed to the community by his temporary release, which would allow him to leave the correctional facility for up for 14 a hours a day for job training or employment. Corr. Law.

851(3). The record reflects that petitioner's alcohol related offenses, spanning over a decade, were not deterred by probation, jail time, fines, license revocations, or a probation violation. Because it was appropriate to base the determination upon the nature of the instant offenses and the risk that driving while intoxicated poses to the community, petitioner has not established that respondent's determination was irrational or violated his statutory or constitutional rights.

Petitioner also argues that the determination failed to adequately consider his institutional accomplishments. In the context of discretionary parole release consideration, a court may review the Board's ultimate determination on a standard of "irrationality bordering on impropriety," but it cannot "effectively review the Board's weighing process, given that it is not required to state each factor that it considers [nor] weigh each factor equally." *Matter of Hamilton v NY State Div. of Parole*, 119 AD3d 1268, 1271 (3d Dept 2014) quoting *Matter of Comfort v New York State Div. of Parole*, 68 AD3d 1295, 1296 (3d Dept. 2009). Drawing an analogy to the constraints on judicial review of a Parole Board's weighing process, the Court finds no basis to conclude that respondent failed to afford proper weight to petitioner's institutional adjustment. Moreover, the Director of Temporary Relief's decision notes that petitioner's comments, along with available records and facility/program adjustment, were considered. However, respondent concluded that the community risk inherent in petitioner's temporary release outweighed the positive aspects of his institutional records. The Court finds no basis to disturb that conclusion.

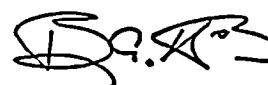
Accordingly, it is hereby **ORDERED and ADJUDGED** that the petition is denied, and this proceeding is dismissed.

ENTER.

Dated: March 28, 2025
Albany, New York



JUSTIN CORCORAN
Supreme Court Justice



03/31/2025

Papers Considered: Documents Nos. 1-17 filed electronically in the NYSCEF docket.

The Court has uploaded the original Decision/Order/Judgment to the case record in this matter as maintained on the NYSCEF website whereupon it is to be filed and entered by the Office of the Albany County Clerk. Respondent is not relieved from the applicable provisions of CPLR 2220 and §202.5b(h)(2) of the Uniform Rules of Supreme and County Courts insofar as it relates to service and notice of entry of the filed document upon all other parties to the action, whether accomplished by mailing or electronic means, whichever may be appropriate dependent upon the filing status of the party.