February 2022

Decision in Art. 78 proceeding - Villaronga, Daniel (2006-10-26)

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

PRESENT: LOUIS B. YORK J.S.C. PART 2
Justice

Villaronga

-v-

N.Y.S. Div. of Parole

INDEX NO. 402225/06

MOTION DATE

MOTION SEQ. NO. 001

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

FILED

OCT 31 2006

NEW YORK
COUNTY CLERK'S OFFICE

Cross-Motion: ☒ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM DECISION.

Dated: 10/26/06

J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 2

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In the matter of the Application of
DANIEL VILLARONGA,

Petitioner,

Index No.: *402225/2006*

For a Judgement pursuant to Article 78
Of the Civil Practice Law and Rules,

- against -

NEW YORK STATE DIVISION OF PAROLE,

Respondent.

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Louis B. York, J.:

In 1988, Petitioner pleaded guilty to second degree murder in New York County and received a sentence of 15 years to life in prison. Currently, Petitioner is incarcerated at the Otisville Correctional Facility, in Orange County. On May 3, 2005, Respondent denied Petitioner's second parole application at the Woodbourne Correctional Facility, in Sullivan County, holding:

> Parole is again denied due to the seriousness of your crime.
>
> . . .
>
> This is your only conviction. You have had satisfactory institutional adjustment. The material submitted to the Board enumerates your many institutional accomplishments and support in the community. However, to hold otherwise would deprecate the seriousness of your crime . . . .

On September 21, 2005, Petitioner filed an administrative appeal challenging Respondent's decision. Respondent denied Petitioner's appeal at its principal office, in Albany County.

On April 24, 2006, Petitioner filed this Article 78 proceeding in New York County, challenging the May 3, 2005 decision of the Respondent, New York County Division of Parole, which denied Petitioner's application for parole. Petitioner argues, in essence, that the Board's

"exclusive reliance on the severity of the offense to deny parole not only contravenes the discretionary scheme mandated by statute, but also effectively constitutes an unauthorized resentencing of the defendant." *Wallman v. Travis*, 18 A.D.3d 304, 307, 794 N.Y.S.2d 381, 386 (1st Dept. 2005). Moreover, it is "the duty of the Board to give fair consideration to each of the applicable statutory factors as to every person who comes before it, and where the record convincingly demonstrates that the Board [failed] to consider the proper standards, the courts must intervene." *Graziano v. Pataki*, No. 06 Civ. 0480(CLB) (S.D.N.Y. July 17, 2006)(avail at 2006 WL 2023082, at *9). Here, the Board allegedly paid lip service to the statutory factors, and although "all of the factors favoring parole, other than the crime itself, had been met," it summarily denied him "parole based on its finding that, because the crime was heinous, parole 'would deprecate the seriousness of [petitioner's] criminal acts and undermine respect for law.'" *Phillips v. Dennison*, Index No. 103509/06, (Sup. Ct. N.Y. County Oct. 12, 2006) (avail at N.Y.L.J. 10/12/06, p. 23, col. 1). Petitioner suggests that the decision "was a foregone conclusion" and that any reviewing court *must* annul the determination, notwithstanding that court's belief as to whether petitioner has served a sufficient sentence for the underlying crime. *See King v. New York State Div. of Parole*, 190 A.D.2d 423, 431-32, 598 N.Y.S.2d 245, 250-51 (1st Dept. 1993), *aff'd*, 83 N.Y.2d 788, 610 N.Y.S.2d 954 (1994).

Respondent has not responded to these compelling arguments yet. Instead, pursuant to CPLR §§ 510 and 511, Respondent served Petitioner with a written demand to change venue to either Albany or Sullivan County. Respondent now cross-moves to change venue to one of these counties. Petitioner has opposed Respondent's demand, stating that New York County, where the underlying crime took place, is an appropriate venue. In addition, petitioner contends that

respondent is forum shopping and courts should not allow this conduct. For the reasons below, the Court grants Respondent's cross-motion.

CPLR § 506 (b) provides that:

> 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 proceedings were brought or taken in the course of which the matter sought to be restrained originated, or where the material events otherwise took place, or where the principal office of the respondent is located.

It is undisputed that, under this statute, Albany and Sullivan Counties are proper bases for venue. According to the first provision of CPLR § 506 (b), venue is proper in Sullivan County, because it is where the Respondent made the parole determination complained of. Under the second provision, venue is proper in Albany County, because it is where Petitioner's administrative appeal was taken. Under the fourth provision, venue is also proper in Albany County, because it is where the Respondent's principal office is located.

The parties dispute whether venue is also proper in New York County, where Petitioner has commenced this proceeding. Petitioner argues that venue is proper in New York County because his underlying crime, trial, and sentencing are "material events" that "otherwise took place" there. Petitioner also argues that principles of statutory construction and interpretation require denial of Respondent's cross-motion.

Petitioner argues that if a parole determination refers to the serious of a crime, venue is proper in the county where the crime occurred. *See Key v. New York State Division of Parole*, 10 Misc.3d 1072, 814 N.Y.S.2d 562 (Sup. Ct. Kings County 2006) (avail at 2006 WL 121938). Contrary to this argument, CPLR § 506 (b) does not permit venue in the counties of the underlying crime, conviction, or sentencing for challenges to parole determinations. Instead,

venue must be placed in the judicial district where the challenged determination took place or the district where respondent's principal office is located. *Howard v. New York State Board of Parole*, 5 A.D.3d 271, 773 N.Y.S.2d 300 (1st Dept. 2004). "[A]lthough convictions and sentences are always material to parole determinations they are not events that have taken place in connection with 'the determination complained of.'" *Wallace v. New York State Board of Parole*, Index No. 400241/06, (Sup. Ct. N.Y. County May 18, 2006)(avail at 5/17/2006 N.Y.L.J. 22, (col. 1)). Otherwise, prisoners who had committed other crimes would obtain "a wide choice of venue options simply because their [prior] convictions were material factors" in the parole board's determination. *Id.*

Petitioner's second argument is that principles of statutory construction and interpretation require dismissal of Respondent's cross-motion. According to Petitioner, to interpret the CPLR § 506 (b) provision "where the material events otherwise took place" as meaning where the denial of parole took place creates redundancy with the provision "where respondent made the determination complained of." (Pet. Mem. at 4). Petitioner is correct that statutory provisions must not be construed so that that they are superfluous. *See* Statutes § 144. However, the provision is not redundant; instead, it applies in circumstances in which the underlying determination itself is called into play. *E.g.*, *Browne v. New York State Board of Parole,* 10 N.Y.2d 116, 122, 218 N.Y.S.2d 33, 36 (1961)(where Parole Board may have miscalculated term of prison sentences, the sentences in which prison terms were computed were "so closely interwoven" with determination as to be material). Here, on the other hand, Petitioner currently challenges Respondent's parole determination, which does not involve the counties in which his crime, conviction, or sentencing occurred.

The Court finds that *Howard v. New York State Board of Parole*, 5 A.D.3d 271, 773 N.Y.S.2d 300 (1st Dept. 2004) is dispositive here. In *Howard*, the petitioner argued that his New York County crime, trial, and sentencing were so closely interwoven with the parole determination that they constituted "material events" that "otherwise took place." *See Wallace v. New York State Board of Parole*, Index No. 400241/06, (Sup. Ct. N.Y. County May 18, 2006) (avail at 5/17/2006 N.Y.L.J. p. 22, col. 1) (quoting Pet.'s Brief to First Dept. in *Howard*). The First Department held that the respondent had waived its venue challenge and decided the issue on this basis. However, it also rejected the petitioner's argument in dicta when it stated that "venue in a case such as this should have been placed in the judicial district where the determination complained of took place or where respondent's principal office is located." *Id.* at 272, 773 N.Y.S.2d at 300. Several subsequent cases in this County have followed this precedent. *See, e.g., Weiss v. Dennison*, Index No. 108904/05 (Sup. Ct. N.Y. County January 19, 2006); *Wallace v. New York State Board of Parole*, Index No. 400241/06, (Sup. Ct. N.Y. County May 18, 2006) (avail at 5/17/2006 N.Y.L.J. p. 22, col. 1); *Gonzalez v. Dennison*, Index No. 402346/05 (Sup. Ct. N.Y. County October 31, 2005).

The Court notes that other well reasoned cases in this County have determined that *Howard* is not binding on the issue of venue. *See, e.g., Crimmins v. Dennison,* 12 Misc. 3d 726, 815 N.Y.S.2d 400 (Sup. Ct. N.Y. County 2006); *Schwartz v. Dennison,* Index No. 115789/2005 (Sup. Ct. N.Y. County May 8, 2006)(avail at 5/8/2006 N.Y.L.J. 19, (col. 1)). However, this Court is persuaded by the thorough discussion and comprehensive analysis conducted by the court in *Wallace v. New York State Board of Parole*, Index No. 400241/06, (Sup. Ct. N.Y. County May 18, 2006)(avail at 5/17/2006 N.Y.L.J. p. 22, col. 1). While a prisoner's underlying crime, conviction, and sentencing are factors that parole determinations reference, they are not

"material events" that "otherwise took place." *Id.* This Court refers the parties to *Wallace* for its analysis of this issue.

For the reasons stated above, venue is proper in either Sullivan County, where the determination complained of took place, or Albany County, where Respondent's principal office is located. Neither party has expressed a preference between these locations; and, in fact, respondent asks for either option in the alternative. The court notes, however, that many courts have accepted the argument Petitioner currently propounds: that Respondent is forum shopping by attempting to transfer venue in all Article 78 parole denial cases to Albany County, where it has received overwhelmingly favorable decisions. *See Crimmins v. Dennison,* 12 Misc. 3d 726, 815 N.Y.S.2d 400 (Sup. Ct. N.Y. County 2006); *see also* Caher, John, "Decisions Split on Right Venue for Parole Cases," 5/15/2006 N.Y.L.J. p. 1, col. 3 (noting that "at a recent hearing (*Matter of William R. Phillips*, 103509/06,) Justice Marcy S. Friedman referred to the 'recent spate of decisions to transfer Article 78 proceedings challenging parole board determinations to Albany' and said that to the extent that they 'reflect an attempt to judge shop, that attempt should not be condoned by the Court.'"). Respondent denies that it is or has been forum shopping; and, here it seeks transfer to either Albany or Sullivan County, without expressing a preference for either venue. As noted above, either county is appropriate under CPLR § 506 (b). Therefore, this Court exercises its discretion and transfers this matter to Sullivan County, one of the two options proffered without preference by Respondent.

Accordingly, it is

ORDERED that the cross-motion to change venue is granted, and it is further

ORDERED that the venue of this action is changed from this Court to the Supreme Court, Sullivan County, and the Clerk of this Court is directed to transfer the papers on file in

this proceeding, Index Number 402225/2006, to the Clerk of the Supreme Court, Sullivan County, upon service of a copy of this order with notice of entry and the payment of appropriate fees, if any, and it is further

ORDERED that Respondent shall have thirty (30) days from the transfer of this proceeding to serve and file an answer.

ORDERED:

Dated: October 26, 2006

Louis B. York, J.S.C.

LOUIS B. YORK
J.S.C.

FILED

OCT 31 2006

NEW YORK
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