(2)

COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

August 22, 2013

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	*Phillips, Antonio v. Erie County Holding Center*
Document Received:	Order to Show Cause
Name of Claimant:	Antonio Phillips ICN #54627 Erie County Holding Center 40 Delaware Avenue Buffalo, NY 14202-3999
Claimant's attorney:	Claimant is proceeding *pro se*.

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Michelle Parker
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enc.

RECEIVED
AUG 19 2013
ERIE COUNTY
DEPARTMENT OF LAW

SUPREME COURT OF THE STATE OF NEY YORK
COUNTY OF Erie

In the Matter of the Application of

Antonio Phillips
Petitioner

AFFIDAVIT IN
SUPPORT OF ORDER
TO SHOW CAUSE

-against-

Index No. _____

Thomas J Diina
Erie county Holding center
Respondent

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

STATE OF NEW YORK
COUNTY OF Erie

I, Antonio Phillips, being duly sworn, depose and say:

1. I am the petitioner in the above-entitled proceeding.
2. I make this affidavit in support of my annexed application for an Order to Show Cause to prosecute the attached petition pursuant to Article 78 of the Civil Practice Law and Rules which challenges I am challenging My time computation.
3. _____

4. Petitioner seeks to proceed by Order to Show Cause rather than by Notice of Petition because This vehicle I choose to use because correctly calculate my time computation

5. Petitioner, being incarcerated, also cannot effect personal service of the

within papers and respectfully requests that timely service by mail be deemed sufficient.

6. Petitioner designates Erie County as place of venue.

7. No previous application for relief requested herein has been made.

8. I have moved by the annexed affidavit for a reduction/waiver of the filing fees.

WHEREFORE, petitioner respectfully requests that this Court enter an order directing Respondent to show cause why a judgement should not be made and entered pursuant to Article 78 of the Civil Practice Law and Rules That I be granted the rate time that was apply to me.

and granting such other and further relief as the Court may deem just and proper.

Antonio Phillips

Antonio Phillips

Sworn to before me this 12th day of August, 2013

NOTARY PUBLIC

LISA JENKINS
COMMISSIONER OF DEEDS
In and For the City of Buffalo, Erie County, NY
My Commission Expires Dec 31, 2014

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF Erie

In the Matter of the Application of

Antonio Phillips
Petitioner

Petition

-against-

Index No._____

Erie County holding center
Respondent,

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

To THE SUPREME COURT OF THE STATE OF NEW YORK FOR
Erie COUNTY:

The petition of Antonio Phillips, complaining of the Respondent Thomas J. Diina, respectfully alleges:

1. Petitioner Antonio Phillips is an inmate at The Erie County holding center 40 Delaware Buffalo N.Y 14202
2. Respondent Thomas J Diina, Superintendent of Erie County holding center, is petitioner's legal custodian and is charged with the overall supervision and administration of Antonio Phillips.
3. This petition challenges my time computation.

4. The within proceeding is brought pursuant to C.P.L.R. Article 78 to challenge the final determination of My time Credit [redacted], dated on June 25.
5. On June as I was sentenced to 1-year consecutive to 9-month. However on 3-18-13 I was detained on the violation of the order of protection. And on 4-03-13 for the original charges for violence case as well. Having been detained on both cases together on 4-03-13.

The petitioner has/has not made a previous application for requested relief.

WHEREFORE, petitioner respectfully requests that judgement be entered pursuant to Article 78 of the Civil Practice Law and Rules:

1. VACATING

2. DIRECTING

3. GRANTING

Antonio Phillips
NAME

Petitioner, pro se.
Dated 8-12-13

VERIFICATION

STATE OF NEW YORK
COUNTY OF Erie

Antonio Phillips, being duly sworn, deposes and says that deponent is the petitioner in the above-encaptioned proceeding, that (he/she) has read the forgoing petition and knows the contents thereof, that the same is true to deponent's own knowledge, except as to matters therein stated upon information and belief, which matters deponent believes to be true.

Antonio Phillips

Sworn to before me this
12th day of August, 2013

NOTARY PUBLIC

LISA JENKINS
COMMISSIONER OF DEEDS
In and For the City of Buffalo, Erie County, NY
My Commission Expires Dec 31 2014

REQUEST FOR JUDICIAL INTERVENTION

Index No._____
Date Purchased_____

Supreme Court Erie County

Antonio Phillips
PLAINTIFF(S):

IAS entry date:
Judge Assigned:

DEFENDANTS(S):

RJI Date:

Timothy B. Howard

NATURE OF JUDICIAL INTERVENTION:

[X] Order to Show Cause
(Clerk enter return date _____)

[ ] Notice of Petition (return_____)

NATURE OF ACTION OR PROCEEDING

SPECIAL PROCEEDINGS
[X] ART. 78

Is this proceeding against a:
[Yes/No] Municipality: No [Yes/No] Public authority: No

[~~Yes~~/No] Does this proceeding seek equitable relief?
[Yes/No] Does this proceeding seek recovery for personal injury?
[Yes/No] Does tihs proceeding seek recovery for property damage?

Estimated time period for case to be ready for trial: 0-12 months

Attorney for Plaintiff(s):Name Address & Phone #

Attorney for Defendant(s): Name Address & Phone #

RELATED CASES:

Title	Index Number	Court	Nature of Relationship

I affirm under penalty of perjury that, to my knowledge, other as noted above, there are and have been no related actions or proceedings, nor has a request for judicial intervention previously been filed in this proceeding.

Dated: 8-12-13 (signature) Antonio Phillips

(print name) Antonio Phillips

Application for INDEX NUMBER
pursuant to section 8018, New York Civil Practice Law & Rules

Title of Action: ARTICLE 78

Antonio Phillips

v.

Thomas J. Dina

INDEX NO.

Name and addess of Attorney for Plaintiff or Petitioner Telephone No.
(PRO SE)
Name and address of Attorney for Defendant or Respondent Telephone No.

A. Nature of Special Proceeding Article78 Proceeding
B. Application for Index Number filed by: Plaintiff
C. Was a previous Third Party Action filed? No

COMPLETE THIS STUB Do Not Detach

Supreme Court, Erie County

Antonio Phillips
v.
Thomas J. Dina

INDEX NUMBER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF Erie

In the Matter of the Application of

Antonio Phillips
Petitioner,

Notice of Petition

-AGAINST-

Index No._____

Thomas J. Dinn
Respondent,

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

To _____

PLEASE TAKE NOTICE that upon the annexed petition of Antonio Phillips verified the _____,20___, and the annexed affidavit of Order to show cause _____ _____, sworn to on the____th day of_____,20___, petitioner will apply to this Court on the ____th day of _____20___, or as soon thereafter as counsel may be heard, for a judge ment granting the relief requested in the annexed Petition.

PLEASE TAKE FURTHER NOTICE that you must serve a verified answer, any supporting affidavits and documents, and a certified transcript of the record of the proceeding at least five days before this application is made.

Petitioner designates Erie County as the place of trial. The basis of venue is _____ _____.

Antonio Phillips
signature
Antonio Phillips
print name
Dated: 8-12-, 2013

At a Term of the Supreme Court of the State of New York, held in and for the County of Erie on the ___th day of _____, 20__.

Present: Hon. _____, Justice

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

In the Matter of the Application of
Antonio Phillips,
Petitioner,

ORDER TO SHOW CAUSE

-against-

Index No. _____

Thomas J. Diina,
Respondent,

For a Judgement Pursurant to Article 78
of the Civil Practice Law and Rules

Upon the annexed affidavit in support of an Order to Show Cause of Antonio Phillips, verified on the ____th day of _____ 20__, the Verified Petition, and _____ sworn to on ___th day of_____,20___. It is

ORDERED that respondant Thomas J. Diina show cause at a Term of this Court, to be held in the County of Erie on the ___th day of _____ 20___ , or as soon thereafter as counsel may be heard, why a judgement should not be made and entered in this matter pursuant to Article 78 of the Civil Practice Law and Rules:

1. VACATING and setting aside Respondent's determination of That im, 20[illegible], Challenging time computation.

2. Directing Respondant to Correctly Calculate.

3. Granting such other and further relief as the Court may deem just and proper. It is further

ORDERED that pending the hearing of this special proceeding and pursuant to section 7805 of the N.Y. Civil Practice Law and Rules, Respondent and all other officers, employees, agents, attorneys and persons working in active concert or participation with Respondent are stayed and prohibited from taking action related to or enforcing Respondent's determination of_____,20___. It is further

ORDERED that service of a copy of this order, together with the papers upon which it is granted, upon both the Respondent Thomas J. Dina and the Attorney General, by mail, on or before _____, 20___, shall be deemed sufficient.

ENTER:

_____

JUSTICE OF THE SUPREME COURT

State of New York,
Supreme Court County Of Erie.

In the Matter of:

Antonio Phillips
Petitioner,

-against-
Thomas J. Diina
Respondent,

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

Affidavit in Support of
Application for Fee
Reduction/Waiver Pursuant to
N.Y.C.P.L.R. 1101(f)

Index No. _____

I, Antonio Phillips, being duly sworn, hereby declare as follows:

1. I am the petitioner in the above-entitled proceeding, I am an inmate in a state/county correctional facility Erie County holding center, and I submit this affidavit in support of my application for a reduction of the filing fees pursuant to N.Y.C.P.L.R. 1101(f) (and that an attorney be assigned to represent me).

2. I currently recieve income from the following sources, exclusive of correctional facility wages:
Ø

3. I own the following valuable property (other than miscellaneous personal property):

List Property:	Value:
Ø	Ø

4. I have no savings, property, assets, or income other than as set forth herein.

5. I am unable to pay the filing fee necessary to prosecute this proceeding.

6. No other person who is able to pay the filing fee has a beneficial interest in the result of this proceeding.

7. The facts of my case are described in my claim and other papers filed with,

Antonio Phillips inmate number 54627, request and authorize the agency holding me in custody to send to the Clerk of the Court certified copies of the correctional facility trust fund account statement (or the institutional equivalent) for the past six months.

I further request and authorize the agency holding me in custody to deduct the filing fee from my correctional facility trust fund account (or the institutional equivalent) and to disburse those amounts as instructed by the Court. This authorization is furnished in connection with the above entitled case and shall apply to any agency into whose custody I may be transferred.

I UNDERSTAND THAT I MAY HAVE TO PAY THE ENTIRE FEE IF THE COURT DENIES MY REQUEST FOR A FEE REDUCTION. MOREOVER, I UNDERSTAND THAT THE FEE DETERMINED BY THE COURT WILL BE PAID IN INSTALLMENTS BY AUTOMATIC DEDUCTIONS FROM MY CORRECTIONAL FACILITY TRUST FUND ACCOUNT EVEN IF MY CASE IS DISMISSED.

Antonio Phillips
(signature)

the court.

8. I have made no prior request for this relief in this case.

Antonia Phillips
(signature)

Sworn to before me
this 12th day of August, 2013

Notary Public Authorization

LISA JENKINS
COMMISSIONER OF DEEDS
In and For the City of Buffalo, Erie County, NY
My Commission Expires Dec 31 2014

AFFIDAVIT OF SERVICE

State of New York
County of Erie
City of Buffalo

I, Antonio Phillips, being duly sworn, deposes and says that on the 13 day of August, 2013, I forwarded via the United States Postal Service copies of the following documents: Article 78 And Affidavit of Service

to the parties indicated below:

Frank A. Sedita III
District Attorney of Erie County
25 Delaware Avenue
Buffalo, N.Y 14202

Thomas Diina
40 Delaware Ave
Buffalo, N.Y 14202

Chief Clerk
Erie County Court building
92 Franklin Street
Buffalo, N.Y 14202

Attorney General
The Capitol
Albany, N.Y 12224

Antonio Phillips
Defendant, Pro Se

Sworn to before me this
13 day of August, 2013.

NOTARY PUBLIC

RANDALL KLINGER
COMMISSIONER OF DEEDS
In and For the City of Buffalo, Erie County, NY
My Commission Expires Dec. 31, 2014
8-13-13