MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

November 13, 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:	*Figueroa, Jose v. Timothy B. Howard, Sheriff for Erie County*
Document Received:	Order to Show Cause
Name of Claimant:	Jose Figueroa 06B3034 Groveland Correctional Facility P.O. Box 50 Sonyea, New York 14556
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.

NOV 12 2013

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF : ERIE

IN THE MATTER OF APPLICATION OF

JOSE FIGUEROA

Petitioner,

-against-

TIMOTHY B. HOWARD, Sheriff
For Erie County

Respondent.

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

ORDER TO SHOW CAUSE

Index No. _____

Upon the annexed affidavit in support of an Order to Show Cause of JOSE FIGUEORA, verified on the ___ day of Septemebr, 2013, the Verified Petition, it is

ORDERED that Respondent TIMOTHY B. HOWARD show cause at a Term of this Court to be held in the Supreme Court located at Erie County Court Building, 25 Delaware Ave, Buffalo, New York 14202 on the 21 day of October, 2013 at 10:00 a.m., or as soon thereafter as counsel may be heard, why a judgment should no be made and entered in this matter pursuant to Article 78 of the Civil Practice Law and Rules:

DIRECTING Respondent to credit the petitioner with all jail time credit from October 25, 2005 to October 26, 2006

GRANTING, such other and further relief as the Court may deem just and proper. It is further

ORDERED that a copy of this order, together with the papers upon which it is granted, upon both Respondent and County Attorney Jonathan J. Miller by mail on or before October 7th, 2013 shall be deemed sufficient.

ENTER:

_____

JUSTICE OF THE SUPREME COURT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF : ERIE

IN THE MATTER OF APPLICATION OF

JOSE FIGUEROA

Petitioner,

-against-

TIMOTHY B. HOWARD, Sheriff for Erie County

Respondent.

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

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AFFIDAVIT IN SUPPORT OF ORDER TO SHOW CAUSE

Index No. _____

STATE OF NEW YORK)
COUNTY OF LIVINGSTON)ss:.

JOSE FIGUEROA, being duly sworn, deposes and says:

1. I am the petitioner in the above-entitled proceeding.

2. I make this affidavit in support 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 the jail time credit from October 25, 2005 to October 26, 2006 that the Respondent Timothy B. Howard has failed to credit the petitioner with.

3. Petitioner seeks to proceed by Order to Show Cause rather than by Notice of Petition because, the Petitioner should be receive a favorable decision from this Court could be released for the New York State Department of Corrections.

4. Petitioner designates Erie County as place of venue.

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

7. I have moved by the annexed affidavit for a reduction or waiver of filing fees.

WHEREFORE, petitioner respectfully requests that this Court enter an order directing Respondent to show cause why a judgment should not be made and entered pursuant to Article 78 of the Civil Practice Law and Rules Crediting the petitioner with all jail time credit from the 25th day of October. 2005 to the 26th day of October, 2006 and granting such other and further relief as this Court may deem just and proper.

Sworn to before me this
24th day of September, 2013

Notary Public

JAMES L. AUSTIN JR.
NOTARY PUBLIC STATE OF NEW YORK
#01AU6137639
MY COMMISSION EXPIRES 12/5/13
CATTARAUGUS CO.

Petitioner Signature

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF : ERIE

IN THE MATTER OF APPLICATION OF

PETITION
Index No._____

JOSE FIGUEROA
Petitioner,

-against-

TIMOTHY B. HOWARD, Sheriff
For Erie County
Respondent.

For a Judgment 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 JOSE FIGUEROA, complaining of Respondent TIMOTHY B. HOWARD respectfully alleges:

1. The petitioner is an inmate at Groveland Correctional Facility, P.O. BOX 50, Sonyea New York 14556

2. Respondent is Sheriff of the County of Erie within the State of New York and is charged with overall Supervision of the County Correctional Facility.

3. The petition challenges the jail time credit that the Erie County Holding Center failed to apply to the petitioner's credit for time spent in custody from October 25, 2005 to October 26, 2006.

4. The within proceeding is brought pursuant to Article C.P.L.R. Article 78 to challenge the withholding of jail time credit.

STATEMENT OF THE CASE

5. Petitioner was arrested in the County of Erie for the crime of AUO First Degree pursuant to VTL 511, DWI pursuant to VTL 1192-3 and Reckless Driving pursuant to VTL 1212 as a result of theses charges the petitioner received a sentence by the Supreme Court of Erie County to a term of One to Three Years and was sentenced on November 5, 2003. The defendant remand in custody from 4/24/2003 to 5/07/03. The petitioner was released on Parole on October, 25, 2004 and remained on Parole till October, 25, 2005.

6. The petitioner was arrested on October 25, 2005 for the crime of Attempted Robbery and as a result of this crime the petitioner was violated by the New York State Division of Parole. I.d Exhibit (A).

7. The petitioner asserts that the New York State Division of Parole elected not to hold a Parole Final Hearing on the new arrest for Robbery and placed the petitioner on the K-Calendar until final disposition of the pending case.

8. The petitioner states that he remained in the custody of the Sheriff for Erie County from October 25, 2003 till November 14, 2006 i.d Exhibit (B) Time Computation.

9. The petitioner asserts that when he arrived at the New York State Department of Corrections he was credited for 282 days jail time credit. i.d Exhibit (B) Jail Time Credit.

10 The petitioner asserts that he was sentenced on the Robbery Conviction on October, 26, 2006 to a term of Three Years Determinate Sentence with Post Release Supervision of Five Years.

11. The petitioner was released on Parole for this crime on August 25, 2008 and remained on parole until June 17, 2013 and was violated for violating conditions of his parole. The petitioner received a One Year sentence from the Administrative Law Judge and was returned to the Department of Corrections and upon completing this one year violation the petitioner was re-paroled on June, 17, 2011 and remained on Parole until January 28, 2013 and it was determined that the petitioner was to be held to his maximum expiration date of January 29,2014. i.d. Exhibit (B) Maximum Expiration Date.

12. The petitioner also states that there was no Delinquency date issued by the Final Hearing Administrative Law Judge i.d. Exhibit (C) Parole Final Hearing Papers.

13. The petiticner asserts that his first release Certificate of Release to Parole Suypervision showed that his sentence expired on the 30 day of January 2014. i.d. Exhibit (D) this is incorrect the petitioner asserts that he was sentenced on October 26, 2006 and yet his release date shows for his Maximum Expiration January 2014.

14. The petitioner asserts that as of October 26, 2006 to October 26, 2014 would be a total of 8 years that would satisfy the Three Year Sentence as well as the Five Years Post Release Supervision.

15. The petitioner also asserts that the Erie County Sheriff Department failed to credit his jail time credit from his arrest on October, 25, 2005 till October 26, 2006 a total of 366 days. The Jail Time credit he received was a total of 282 days see. Time Computation Sheet reflecting Jail Time Credit 282 days.

16. The petitioner asserts that given the fact he is missing jail time credit of 64 days causes the defendant to serve a sentence past the sentence his release date and that his maximum release date should be recalculted to reflect a release date in 2014, not January of 2015.

17. The petitioner asserts that there was at no time any delinquency date applied to the petitioner at any af the parole violation hearings.

VERIFICATION

STATE OF NEW YORK)

COUNTY OF LIVINGSTON) SS.:

I, JOSE FIGUEROA, being duly sworn deposes and says:

That I am the Petitioner/Relator in the proceeding within, and that I have read the foregoing PETITION, and supporting papers, and know the contents thereof, that the same is true to my own knowledge, except as to matters therein stated upon information and belief, which matters I believe to be true.

Petitioner/Relator

DIN. # 06-B-3034

Sworn to before me this

24th day of Sept., 2013.

NOTARY PUBLIC

JAMES L. AUSTIN JR.
NOTARY PUBLIC STATE OF NEW YORK
#01AU6137639
MY COMMISSION EXPIRES 12/5/13
CATTARAUGUS CO.