

STATE OF NEW YORK
ERIE COUNTY SUPREME COURT

██████████,
Petitioner

v.

ERIE COUNTY CHIEF CLERK,
Respondent.

VERIFIED PETITION

Index No.

For a judgment
pursuant to Article 78 of
the Civil Practice Law and Rules

1. This Article 78 proceeding seeks a judgment annulling the determination of the Erie County Chief Clerk in assigning the case of *The People of the State of New York v. ██████████ ██████████* to Hon. ██████████ and directing the Chief Clerk to assign the case using a random assignment procedure.

Background of the Case

2. The events that are subject to this proceeding occurred on October __, 2022.
3. Under the indictment referenced above, the petitioner was charged with one count of criminal possession of a weapon in the second degree (Penal Law § 265.03[3]). Although he had been charged with reckless endangerment in the second degree (Penal Law § 120.20) in ██████████ Town Court, he was not indicted on this or any other charge alleged to have harmed or endangered another person.
4. The true bill of indictment was received by the Erie County Chief Clerk's Office. The Office is part of the New York State Unified Court System and has sole authority to assign cases to court parts in Erie County and Supreme Court.
5. Shortly thereafter, the Chief Clerk's Office received a letter from Assistant District Attorney ██████████,

indicating that “the Indictment for [REDACTED] (ECDA Legacy No. _____) is a Domestic Violence case and should be accordingly assigned.”

6. The Chief Clerk’s Office assigned the case to Hon. [REDACTED], the judge assigned to the Integrated Domestic Violence (IDV) part of Erie County Supreme Court, in accordance with the wishes of the District Attorney’s Office.

The Legal Standard

7. An Article 78 proceeding may challenge a determination by a body or officer which is final and not reviewable by appeal to a court to some other body or officer (CPLR 7801[1]).
8. A “body or officer includes every court, tribunal, board, corporation, officer, or other person, or aggregation of persons, whose action may be affected by a proceeding under this article” (CPLR 7802[a]).
9. The Chief Clerk is an officer subject to an Article 78 proceeding.
10. One of the questions that can be raised in an Article 78 proceeding is “whether a determination was made in violation of lawful procedure” (CPLR 7803[3]).
11. The statute is consistent with the Fourteenth Amendment to the Constitution of the United States, which provides that “[n]o State shall ... deprive any person of life, liberty, or property, without due process of law” (US Const Amend XIV [1868]). “[T]he Due Process Clause gives all Americans, whoever they are and wherever they happen to be, the right to be tried by independent and unprejudiced courts using established procedures and applying valid pre-existing laws” (*Duncan v. State of La.*, 391 US 145, 169 [1968], Black, J., concurring).
12. The determination in this case is final, as the proceedings in front of Justice Haendiges have already commenced, and the petitioner, as the defendant in the criminal case, has standing to challenge the Chief Clerk’s determination.

13. Where, as here, an Article 78 proceeding is brought to review a determination, “the judgment may annul or confirm the determination in whole or in part, or modify it, and may direct or prohibit specified action by the respondent” (CPLR 7806).

Domestic Violence Cases

14. “[IDV] parts of the Supreme Court and Domestic Violence Parts of the Supreme or County Court may be established in one or more counties by order of the Chief Administrator of the Courts” (22 NYCRR 41.1[a]).

15. By administrative order of the [REDACTED], an IDV Part was established in Erie County, and Justice [REDACTED] has been appointed to preside over the Part.

16. Under the Rules of the Chief Administrative Judge, IDV Parts are devoted to the hearing and determination of “cases that are simultaneously pending in the courts if one of them is a domestic violence case in a criminal court and the other is a case in Supreme or Family Court that involves a party or witness in the domestic violence case,” while Domestic Violence Parts are devoted to the hearing and determination of “domestic violence cases pending in a criminal court in the county if necessary to best utilize available court and community resources for domestic violence cases” (22 NYCRR 41.1[a][1], [2]).

17. Where no Domestic Violence Part is established in a county, “the Chief Administrator may also provide that domestic violence cases pending in a criminal court in the country shall be eligible for disposition in the [IDV] Part if necessary to best utilize available court and community resources for domestic violence cases” (22 NYCRR 41.1[a]).

18. The rules do not define “domestic violence case,” but the common-sense definition is a case charging at least one offense which alleges harm or endangerment to a “member of the defendant’s same family or household,” as that term is defined in CPL 530.11(1).

A Violation of Lawful Procedure

19. Using this definition, the case against the petitioner, who is charged only with simple possession of an AR-15 style rifle, is not a domestic violence case.
20. As such, the determination by the Chief Clerk's Office to assign the case to IDV Part was made in violation of lawful procedure. The determination should be annulled, and the Chief Clerk should be directed to assign the case using a random assignment procedure.

VERIFICATION

STATE OF NEW YORK)
COUNTY OF ERIE) ss.
CITY OF BUFFALO)

 [REDACTED] an attorney licensed to practice in the courts of this State,
affirms the truth of the following statements under penalties of perjury pursuant to CPLR 2106(a).

1. I am the attorney for the petitioner in this Article 78 proceeding.
2. I make this Verification pursuant to [REDACTED]
3. I have read the attached Verified Petition and know its contents.
4. The statements in the Verified Petition are true to my own knowledge, or upon information and belief. As to the statements that are based upon information and belief, I believe those statements to be true.

[REDACTED]

DATED: December __, 2022
 Buffalo, NY

Sworn and subscribed to me
This __ day of December, 2022.

NOTARY PUBLIC