STATE OF VERMONT

**SUPERIOR COURT**
**Caledonia Unit**

**CIVIL DIVISION**
**Docket No. 162-8-19 Cacv**

**SHANNON EDWARDS**
**v.**
**MICHAEL TOUCHETTE, COMMISSIONER**



**DECISION: Motion to Dismiss for Improper Venue, Motion #2**

A hearing was held on September 15, 2020 on the above referenced motion filed on behalf of Respondent. Petitioner Shannon Edwards and his Attorney Kelly Green and Attorney Jared C. Bianchi for the Respondent all participated by Webex.

Shannon Edwards is an inmate who has filed a Rule 75 Petition for Review of Governmental Action in relation to disciplinary action taken against him by the Department of Corrections in the prison where he is incarcerated. He filed the case in Caledonia County alleging residence at the Northeast Correctional Complex in St. Johnsbury, which is in Caledonia County and is the prison where the events underlying the disciplinary action and the disciplinary hearing occurred. The Respondent is the Commissioner of the Department of Corrections.

The Commissioner has filed a Motion to Dismiss on grounds of improper venue. He alleges that neither party is a resident of Caledonia County, and that therefore venue is improper in this court. The issue is whether Petitioner is a resident of Caledonia County such that venue is proper in the Caledonia Unit.

The applicable venue statute is 12 V.S.A. §402, which provides that "[a]n action before a superior court shall be brought in the unit in which one of the parties resides, if either resides in the State; otherwise, on motion, the complaint shall be dismissed." There is no dispute that the Respondent Commissioner was sued in his official capacity for the State of Vermont, and that his situs is in Montpelier in Washington County.

The Commissioner argues that:

- the "residence" of a prison inmate equates to his "domicile,"
- there is a rebuttable presumption that the inmate's pre-incarceration place of residence was and continues to be his domicile unless and until he (1) intends to give up the old domicile, and (2) actually acquires a residence in a new locality, and
- the inmate has the burden to prove change of domicile from his pre-prison domicile.

with domicile"). Clearly context is important in determining whether residence is synonymous with domicile.

The Legislature chose to make "residence" rather than "domicile" the deciding factor in determining venue (unless otherwise provided by a specific statute), and "residence" means the place where one "actually lives." Prison inmates under sentence "actually live" in the prison in which they are incarcerated. It is where they eat, sleep, and spend their days. It is where they may work, receive medical care and mail, and may become subject to disciplinary procedures, such as in this case. While some prisoners may, as a matter of fact, maintain a home in a community outside prison to which they expect to return, thus maintaining either a residence or domicile in a county other than where they are imprisoned, others may have neither an independent residence nor a domicile at all.

An inmate serving a sentence has no control over choice of where to live on a daily basis. Inmates are placed in one of several prisons throughout the state or out of state, and the Commissioner changes placement at times for purposes of population management. An inmate may have no ability or intention to return to where they were living before and no intent (or ability to have an intent) to establish a domicile anywhere else because incarceration precludes establishing a residence outside of prison as a practical matter.[1]

The Legislature did not choose to determine venue based on "domicile," but rather chose actual residence as the criterion. The Legislature has made different choices in different statutes with respect to where prisoners must do certain things, depending on the nature of the act and related circumstances. For example,

- Prisoners are not allowed to use "the place of involuntary confinement" as their residence for the purpose of qualifying to vote, but they retain the right to vote by early voter absentee ballot at their "last voluntary residence." 28 V.S.A. § 807. This makes sense because it clarifies and ensures the right to vote for prisoners previously registered to vote by clarifying where they can do so, while avoiding logistical problems and confusion for town clerks and the prisoners themselves if they were to seek to register from prison.
- A petition for post conviction relief must be filed in the county in which the sentence was imposed. 13 V.S.A. § 7131. This makes sense because the pertinent respondent is the State's Attorney of the county and the events most likely occurred in that county.
- A petition for a writ of habeas corpus must be filed in the county in which the incarcerated person is being confined. 12 V.S.A. § 3953. This makes sense because it is where the prisoner is physically present and can conveniently be brought to court for examination by the court of the legal authority for confinement.

[1] This is especially the case for prisoners serving life sentences and also for many serving long sentences.

When an inmate files a Rule 75 Review of Governmental Action, there is no special venue statute. Thus, the general venue statute, 12 V.S.A. §402, applies. The Legislature has chosen to specify the place where a party resides as a proper place of venue.

The Respondent relies on a trial court decision that suggests the possibility that "residence" and "domicile" may be interchangeable for purposes of 12 V.S.A. §402. *Gero v. Pallito,* Docket No. S0048-11 CnC (Vt. Super. Decision March 30, 2011). However, as Petitioner's counsel points out, the court never "reached a definitive conclusion" on the issue, *id.* at 6. It was a preliminary trial court opinion with no holding and the issue became moot when Petitioner did not take advantage of the opportunity to pursue opposing the motion to dismiss. *Gero v. Pallito,* Docket No. S0048-11 CnC (Vt. Super. Decision May 11, 2011, at 1).

The issue is squarely before this court in this case, and this court holds that the Legislature plainly selected actual residence, as a matter of fact, as opposed to an inferred "domicile" as the basis for determination of venue. For this court to substitute the legal meaning of "domicile" for the legal meaning of "resides" would be to rewrite the statute enacted by the Legislature and change the law. A prison inmate resides in the prison facility in which he or she is placed by the Commissioner, as that is where the inmate actually lives on a daily basis as a matter of fact. The statute plainly calls for residence as a matter of current actual fact at the time of filing.

In addition to the plain language of the statute, policy considerations support such a conclusion. As noted above, an inmate may have no ability to choose either a residence or a domicile. A prior address from the time of arrest may not even have been an actual residence or a domicile at all such that treating it as such would be an inference only and may be a fiction.[2] Use of such a fiction would have the effect of funneling most prisoner Rule 75 cases to the Washington Unit in Montpelier, some distance away from the location of the prisoner, the witnesses, and the events that occurred. The overarching concept of venue favors a case being heard in the place where at least one involved party is physically present, where the events are likely to have occurred, where witnesses are likely to be available, and where at least one party can appear for hearing in a local courthouse.[3]

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[2] The undersigned is aware that when persons are arrested and first appear in court and apply for appointed counsel, the address they put on the *in forma pauperis* application sometimes varies from the address in law enforcement records.

[3] While the respondent in a Rule 75 prisoner case is the Commissioner of the Department of Corrections, he or she is not the party who comes to court. He or she has made an appellate ruling, probably from Montpelier and based on documentation, at the end of a process of exhaustion of administrative remedies. The actual events, and in this case the disciplinary hearing, took place in the local prison where the inmate was residing.

For the foregoing reasons, the court determines that "residence," rather than "domicile," is the basis for determining whether venue is proper, and that an inmate resides where he or she is involuntarily confined. It is not disputed that Mr. Edwards actually resided in the prison in St. Johnsbury when he filed this case in Caledonia County.

Therefore, the Defendant's Motion to Dismiss is *denied.*

The attorneys shall submit a stipulation to a pretrial scheduling order by October 2, 2020.

Dated this 25th day of September, 2020.

Mary Miles Teachout

Hon. Mary Miles Teachout
Superior Court Judge