

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

STEPHEN G. CRANE, J.P.
DANIEL D. ANGIOLILLO
EDWARD D. CARNI
WILLIAM E. McCARTHY, JJ.

2007-05890

DECISION, ORDER & JUDGMENT

The People, etc., ex rel. William A. Gerard, on behalf of Anthony Colarusso, petitioner, v James A. Kralik, etc., et al., respondents.

(Ind. No. 285-99)

William A. Gerard, Palisades, N.Y., petitioner pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Roseann B. MacKechnie of counsel), for respondent George B. Alexander, Chairman, New York State Division of Parole.

Writ of habeas corpus in the nature of an application for the release of Anthony Colarusso from the Rockland County Jail.

ADJUDGED that the writ is sustained, without costs or disbursements; and it is further,

ORDERED that the respondent James A. Kralik, the Superintendent of the Rockland County Jail, is directed to immediately release the detainee, Anthony Colarusso, upon service upon him, or his representative, of a certified copy of this decision, order and judgment.

Pursuant to a promise made at the time of the detainee's guilty plea, the sentencing court sentenced him to a determinate prison term of five years upon his conviction of robbery in the second degree. Neither the sentencing minutes nor the court's order of commitment mentioned the imposition of any period of post-release supervision. Therefore, the sentence actually imposed by the

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court never included, and does not now include, any period of post-release supervision (*see People v Martinez*, 40 AD3d 1012; *People v Howell*, 40 AD3d 882; *People v Royster*, 40 AD3d 885; *People v Guerrero*, 39 AD3d 878, 879; *People v Brown*, 39 AD3d 659, 660; *People v Sebastian*, 38 AD3d 576, 576; *People v Wilson*, 37 AD3d 855, 856; *People v Noble*, 37 AD3d 622, 622; *see also Hill ex rel. Wampler v United States*, 298 US 460; *Earley v Murray*, 451 F3d 71, *reh denied* 462 F 3d 147; *but see People ex rel. Garner v Warden Rikers Is. Correctional Facility*, 40 AD3d 243; *People ex rel. Joyner v New York State Div. of Parole*, 15 Misc 3d 1133[A]; *cf. People v Lingle*, 34 AD3d 287; *People v Sparber*, 34 AD3d 265). Accordingly, because the detainee is currently incarcerated due to his alleged violation of the terms of the post-release supervision improperly added to his sentence by the New York State Division of Parole, the detainee is entitled to immediate release from custody (*cf. Earley v Murray*, 451 F 3d 71).

CRANE, J.P., ANGIOLILLO, CARNI and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court