

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

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HOWARD MILLER, J.P.  
MARK C. DILLON  
RUTH C. BALKIN  
WILLIAM E. McCARTHY, JJ.

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2008-02692

DECISION, ORDER & JUDGMENT

The People, etc., ex rel. William A. Gerard,  
on behalf of Rosendo Rivera, petitioner, v James  
A. Kralik, etc., respondent.

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

Andrew M. Cuomo, Attorney General, New York, N.Y. (Andrew Meier of counsel),  
for respondent.

Writ of habeas corpus in the nature of an application for the release of the detainee,  
Rosendo Rivera, 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, Rosendo Rivera, upon service upon him,  
or his representative, of a certified copy of this decision, order and judgment.

On May 2, 2000, pursuant to his plea of guilty, the detainee was sentenced to a  
determinate prison term of two years upon his conviction of assault 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. Nonetheless, as a result of a Notice of Violation issued by the New York  
State Division of Parole (hereinafter the Division of Parole), the detainee has been arrested and is now  
being held in the Rockland County Jail for violating a period of post-release supervision imposed in  
connection with his May 2, 2000, conviction. Upon this Court's remittal of this matter to the  
Supreme Court, Rockland County, for a hearing and report on the issue of whether the detainee is

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being held solely based on an alleged violation of the terms of post-release supervision or whether there are independent charges against him which form the basis of his detention, the parties stipulated that the detainee is being held solely based on an alleged violation of the terms of post-release supervision.

The Division of Parole has no authority to impose a period of post-release supervision, or any other component of a sentence (*see Matter of Garner v New York State Dept. of Correctional Servs.*, 10 NY3d 358). Consequently, 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 Division of Parole, the detainee is entitled to immediate release from custody (*see People ex rel. Gerard [Colarusso] v Kralik*, 44 AD3d 804).

MILLER, J.P., DILLON, BALKIN and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court