

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

D34877
C/ct

_____AD3d_____

Submitted - March 28, 2012

WILLIAM F. MASTRO, A.P.J.
REINALDO E. RIVERA
MARK C. DILLON
DANIEL D. ANGIOLILLO, JJ.

2012-02701

DECISION, ORDER & JUDGMENT

The People, etc., ex rel. Steven W. Levine, on behalf of William M. Burg, petitioner, v Adrian H. Anderson, Dutchess County Sheriff, et al., respondents.

Thomas N. N. Angell, Poughkeepsie, N.Y. (Steven W. Levine, petitioner pro se, of counsel), for petitioner.

Writ of habeas corpus in the nature of an application to release the detainee from incarceration on the ground that the detainee is incarcerated due to his alleged violation of the terms of postrelease supervision that was illegally imposed on him.

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

ORDERED that the Warden of the facility at which the detainee is incarcerated, or his or her representative, is directed to immediately release the detainee upon service upon him or her, or his or her representative, of a certified copy of this decision, order, and judgment.

The detainee is currently incarcerated due to his alleged violation of the terms of the postrelease supervision which was imposed in a resentencing on August 3, 2010. Since that period of postrelease supervision was illegally imposed and has been vacated (*see People v Burg*, _____ AD3D _____ [decided herewith]), the detainee is entitled to immediate release from custody (*see People ex rel. Gerard v Kralik*, 51 AD3d 1045).

MASTRO, A.P.J., RIVERA, DILLON and ANGIOLILLO, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court

April 17, 2012

PEOPLE EX REL. LEVINE, on behalf of BURG v ANDERSON