

People ex rel. Woelfle v Poole
2007 NY Slip Op 30050(U)
March 8, 2007
Supreme Court, Seneca County
Docket Number: 0039163
Judge: Dennis F. Bender
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PEOPLE ex rel. JAMES WOELFLE,
DIN #: 04-B-0890,

Petitioner,

DECISION AND JUDGMENT

-against-

Index No. 39163

**THOMAS POOLE, SUPERINTENDENT OF
FIVE POINTS CORRECTIONAL FACILITY,**
Respondent.

The petitioner, James Woelfle, filed an application for writ relief alleging he was not timely transferred to the Willard Drug Treatment Campus following his final parole revocation hearing which resulted in the revocation of his parole but restoration to parole following successful completion of the Willard program. A Return was filed by the respondents through Assistant Attorney General James L. Gelormini, Esq.

It is not disputed that the petitioner's final parole revocation hearing was held on October 17, 2006, that DOCS was thereafter provided with notice that the petitioner was "state ready" on December 14, 2006, that the petitioner was transferred to a DOCS facility on December 19, 2006, and that he arrived at Willard on January 10, 2007. It is also not disputed that a new parole violation was filed as a result of the petitioner's refusal to participate in the Willard Program, and that the sole expressed reason for such refusal was the length of time it took to deliver him to Willard.

This court has previously ruled that a parolee restored to parole supervision at Willard Drug Treatment Campus should be transferred to the campus within 40 days from the day he receives his final parole revocation and restoration determination absent exigent circumstances. (People ex rel. Michael Johnson v. Williams, Index No. 37426, Seneca County Decision dated May 15, 2006.) Here, 85 days passed. This court has also ruled on various occasions that a parolee's right to relief continues despite the filing of a parole violation petition predicated upon a parolee's refusal to participate in the Willard program if the only stated reason for such refusal was the untimely deliver of the parolee to the Willard Campus.

The respondent cites Ayers v. Coughlin, 72 NY 2d 346, a case which has previously been cited by this court, to support its argument that the commencement date for the determination of whether transfer was timely should commence when DOCS is advised that the parolee is “state ready”. In Ayers, the Court of Appeals “conclude[d] the Supreme Court’s order that transfer [from county facilities to DOCS] of inmates be accomplished within the 10 days of State-readiness comports with the mandate of CPL 430.20 (1)”. Id at 355. CPL 430.20 (1) requires transfer to occur “forthwith”. In the matter before this court, only 27 days passed from when DOCS was notified of the petitioner’s state readiness until when he was delivered to Willard, and thus, says the respondent, the judicially prescribed 40 day standard is satisfied. Due process concerns were not however, addressed in Ayers, and were not in fact at issue in the case. The prisoners in question were not being transferred to parole supervision with a relatively brief stay at the Willard Campus, but to state prison. The length of the prisoners’ respective total periods of incarceration were unaffected by how long it took DOCS to take control of them. The dispute in Ayers rather, was between DOCS and local jails, the later of which objected to being required to continue housing state ready inmates. Liberty interests were not addressed, the sole focus of the appeal was “when the State must accept State prisoners from county jails.” Id at 349-350.

As noted in the respondent’s Memorandum of Law, any period of time fixed is an equitable remedy fashioned by the court. In that regard, this court’s concern, and the focus of analysis in the within matter, is upon the length of and lack of explanation for the extent of pre-transfer detention. While DOCS acted promptly in this case when made aware of the petitioner’s state readiness, no explanation was given for the length of detention of him prior to that date. As this court has consistently held, retention for inordinate amounts of time without exigent circumstances raises due process concerns. It is of no moment with whom the fault for the delay lays. The restraint of the parolee’s liberty is the same. (See People ex. Rel. Davis v. Superintendent of WDTC, 11 Misc. 3d 1072(A).)


This Court finds its previously announced ruling that 40 days from the time of the final parole revocation determination until receipt at Willard is a reasonable time frame. (The State of

New York ex rel. Michael T. Johnson, et al., supra). According, the detention of the petitioner is illegal he having been detained for 85 days from the date his parole was revoked and restored until he was transferred to the Willard campus, and no good cause for such delay has been shown.

NOW THEREFORE, it is

ADJUDGED AND ORDERED, that James Woelfle is entitled to be released forthwith, which the Court interprets to mean within 10 days of this Judgment from the Willard Drug Treatment Campus to community-based parole supervision. The Petitioner is responsible for reporting to approved housing as soon as practicable following his release and to comply with all other conditions of his parole supervision.

Dated: March 8, 2007



HON. DENNIS F. BENDER
Acting J.S.C.