

Matter of Santiago v Santor

2007 NY Slip Op 32018(U)

June 20, 2007

Supreme Court, Franklin County

Docket Number: 0000117/2007

Judge: S. Peter Feldstein

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF FRANKLIN
X

In the Matter of the Application of
IVAN SANTIAGO, #05-B-1781,
Petitioner,

For a Judgment Pursuant to Article 70
Of the Civil Practice Law and Rules

DECISION AND JUDGMENT
RJI #16-1-2007-0047.020
INDEX # 2007-0117
ORI # NY016015J

-against-

RALPH SANTOR, Superintendent,
Chateaugay Correctional Facility, and
NEW YORK STATE DIVISION OF PAROLE,
Respondent.

X

This is a habeas corpus proceeding that was originated in Supreme Court, Bronx County, by the petition of Ivan Santiago, sworn to on December 6, 2006. By order dated January 10, 2007, the Supreme Court, Bronx County directed that venue be transferred to Franklin County. The papers originally filed in Bronx County were received in the Franklin County Clerk's office on January 22, 2007, and in chambers on January 26, 2007. Petitioner, who is an inmate at the Chateaugay Correctional Facility, is challenging his continued incarceration in the custody of the New York State Department of Correctional Services. The Court issued an Order to Show Cause on January 29, 2007, and has received and reviewed undated correspondence from the petitioner, filed in the Franklin County Clerk's office on February 9, 2007. The Court has also received and reviewed respondents' Return, dated March 9, 2007. The Court has received no Reply thereto from the petitioner.

On December 11, 2000, the petitioner was sentenced in Supreme Court, Kings county, to an indeterminate sentence of 2½ to 7 years upon his conviction of the crime of Attempted Murder 2°. The petitioner was released from DOCS custody to parole

supervision on December 16, 2005. The petitioner was arrested in connection with unrelated criminal charges on August 16, 2006. On August 31, 2006, the petitioner was issued a Notice of Violation/Violation of Release Report charging that he violated the conditions of his release in four separate respects. Parole violation charge number three alleges “. . . that on 08/16/06 at approximately 00:20 hours . . . he [petitioner] failed to abide by his curfew of 9:00PM to 7:00AM.” Parole violation charge number four alleges that the petitioner “. . . failed to immediately notify his parole officer of his arrest of 08/16/06.” The petitioner waived a preliminary hearing on August 31, 2006.

A contested final parole revocation hearing was conducted with respect to parole violation charges three and four on November 15, 2006. By Parole Revocation Decision Notice dated November 18, 2006, the administrative law judge sustained parole violation charges three and four, revoked petitioner’s parole with a delinquency date of August 16, 2006, and recommended that petitioner be held to the maximum expiration date of his sentence. On December 11, 2006, that recommendation was affirmed by a single parole commissioner. Petitioner’s notice of appeal dated December 13, 2006, was received in the Division of Parole Appeals Unit on December 20, 2006. In the meantime, this proceeding was commended on December 15, 2006. By letter dated December 21, 2006, the Appeals Unit acknowledged receipt of petitioner’s notice of appeal and established April 20, 2007, as the latest date for petitioner to submit documents perfecting the appeal. The petitioner then submitted an additional notice of appeal, dated December 26, 2006. Accompanying that second notice of appeal was a one-page handwritten document detailing alleged errors in the parole revocation process. By letter dated December 29, 2006, the Appeals Unit requested that the petitioner to notify them, in writing, if it was his wish that the letter attached to the December 26, 2006, notice of appeal be considered the document

perfecting his appeal. The December 29, 2006, letter stated that if the Appeals Unit was so notified, it would begin to process petitioner's administrative appeal. "Otherwise," the letter concluded, "you will continue to have until April 20, 2007 to file the document that you wish this office to consider in reviewing your case." By letter dated January 11, 2007, the petitioner informed the appeals unit that he did not want the aforementioned document attached to the second notice of appeal to be considered the document perfecting his administrative appeal.

Citing Executive Law §259-i(3)(f)(i) and 9 NYCRR §8005.17(a), the petitioner argues that his "... right to a Final Hearing determination in 90 days" was violated. The Court finds, however, that the petitioner has misconstrued the law on this point. Executive Law §259-i(3)(f)(i) provides, in relevant part, that final "[r]evocation hearings shall be scheduled to be held within ninety days of the probable cause determination." In the case at bar that statutory period commenced when the petitioner waived his right to a preliminary hearing on August 31, 2006. *See People ex rel Gray v. Campbell*, 241 AD2d 723. "However, the statute [Executive Law §259-i(3)(f)(i)] does not require that a decision be rendered within the 90-day period, only that the hearing be held within said 90 days." *People ex rel Ruiz v. Leonardo*, 175 AD2d 964. Accordingly, the Court finds that petitioner's final parole revocation hearing was timely held on November 15, 2006. In addition, since the petitioner apparently received a copy of the Parole Revocation Decision Notice on December 26, 2006 - approximately six weeks after his final parole revocation hearing and approximately two weeks after the delinquent time assessment recommendation of the ALJ was affirmed by board action - the Court further finds that the petitioner received notification of the results of his final parole revocation hearing

within a reasonable time after the final hearing. *See People ex rel Clanton v. Smith*, 55 NY2d 671.

At this juncture the Court notes that on February 9, 2007, after this proceeding had been commenced but before the respondents had served and mailed their Return, the petitioner filed an undated letter to the Court, with exhibits, in the Franklin County Clerk's office. In that letter the petitioner purported to raise additional procedural and evidentiary challenges to the parole revocation process. In the absence of an amended petition, however, the Court finds that these additional issues are not properly before the Court. However, even if such issues were properly raised the Court finds that habeas corpus relief would be unavailable since the petitioner's administrative appeal was still pending at that time. *See People ex rel King v. Lacy*, 252 AD2d 701, *lv den* 92 NY2d 811.

Based upon all of the above, it is, therefore, the decision of the Court and it is hereby

ADJUDGED, that the petition is dismissed.

DATED: June 20 , 2007 at
Indian Lake, New York

S. Peter Feldstein
Acting Supreme Court Judge