

**Matter of Watkins v New York State Dept. of  
Correctional Servs.**

2007 NY Slip Op 32881(U)

September 17, 2007

Supreme Court, Albany County

Docket Number: 0113607/2007

Judge: George B. Ceresia

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.



commenced the instant CPLR Article 78 proceeding seeking to prohibit the respondent Department of Correctional Services (DOCS) from imposing a five-year period of post-release supervision as part of his sentence. DOCS opposes the petition, seeking its dismissal.

After the jury rendered a guilty verdict on two counts of burglary in the first degree and three counts of robbery in the first degree, on March 5, 2002, the Supreme Court, Dutchess County (Hayes, J.), sentenced the petitioner to five-determinate terms of nine years of imprisonment, to be served concurrently. The Sentence and Commitment Report lacks any indication that a period of post-release supervision was imposed. According to the petitioner, the sentencing court also did not indicate that a five-year period of post-release supervision would be imposed.<sup>1</sup>

After receiving a Time Computation Sheet showing a five-year period of post-release supervision, on December 11, 2006, the petitioner filed an “Inmate Grievance Complaint,” seeking to have that period removed. On December 27, 2006, the Inmate Grievance Review Committee denied the grievance. Upon further administrative review, on January 17, 2007, the Inmate Grievance Program Central Office Review Committee (CORC) unanimously denied the petitioner’s request. The CORC noted that the petitioner’s “commitment for his determinate term is silent regarding post-release supervision so it is deemed to include the applicable period of post-release supervision pursuant to statutes and state case law” (CORC Determination [1-17-07], Petition, Exhibits).

---

<sup>1</sup> Neither party submitted the sentencing minutes to this Court.

By order to show cause signed February 20, 2007 (McNamara, J.), the petitioner commenced this CPLR Article 78 proceeding in which he seeks a writ of prohibition. The petitioner challenges DOCS's "illegal decision" to impose a five-year period of post-release supervision, arguing such a condition was not present in his original sentence. The petitioner seeks to have the DOCS' "determination of 5th March, 2002" set aside (Petition). Further, the petitioner seeks an order "directing [DOCS] to honor the sentence imposed by the [sentencing court] and issue the petitioner a sentence computation sheet reflecting such changes" (*id.*).

In opposition, DOCS seeks dismissal of the petition. DOCS contends that, when, as here, the sentence is silent regarding post-release supervision, DOCS applies the period of post-release supervision required by Penal Law § 70.45 (2). In so doing, DOCS contends that it is not performing a judicial function but merely enforcing a statutorily required part of the petitioner's determinate sentence (Munkwitz Affirmation, ¶ 9). Thus, DOCS argues that the petitioner should remain subject to the five-year period of post-release supervision and urges this Court to dismiss the petition.

At the time the petitioner was sentenced, Penal Law § 70.45 (2) provided for a five-year period of post-release supervision for a violent felony offender, such as the petitioner, with the proviso that the sentencing court, "at the time of the sentence, may specify a shorter period of post-release supervision of not less than two and one-half years upon a conviction for a class B or class C violent felony offense" (former Penal Law § 70.45 [2]; Penal Law

§ 70.02; see also People v Hill, 39 AD3d 1, 10 [1st Dept 2007], lv granted 2007 NY App Div Lexis 2797 [March 13, 2007]). As the submissions of both parties demonstrate, the applicability of the post-release supervision provision in Penal Law § 70.45 in various situations has been the subject of much litigation and resulting court decisions (see e.g. Earley v Murray, 451 F3d 71 [2d Cir 2006]; People v Catu, 4 NY3d 242 [2005]; People v Hill, supra; People v Sparber, 34 AD3d 265 [1st Dept 2006], lv denied 8 NY3d 885 [2007]; People v Munck, 4 AD3d 627 [3d Dept 2004], lv denied 2 NY3d 803; Matter of Quinones v State of New York Dept. of Corrections, 14 Misc 3d 390 [Sup Ct., Albany County, 2006]).

The resolution of this instant proceeding, however, turns on the appropriateness of the relief sought by the petitioner. As noted earlier, the petitioner seeks a writ of prohibition. In Matter of Schumer v Holtzman (60 NY2d 46 [1983]), the Court of Appeals explained:

“It is familiar law that an article 78 proceeding in the nature of prohibition will not lie to correct procedural or substantive errors of law, nor may it issue against legislative, executive or ministerial action. Prohibition may be maintained solely to prevent or control a body or officer acting in a judicial or quasi-judicial capacity from proceeding or threatening to proceed without or in excess of its jurisdiction and then only when the clear legal right to relief appears and, in the court’s discretion, the remedy is warranted. Thus, customarily, the proceeding is initiated to control or inhibit courts or Judges” (id. at 51).

Relying, in part, on Matter of Schumer, the Third Department affirmed the dismissal of an article 78 proceeding in which the petitioner sought to prohibit the responding Department of Correctional Services and its Commissioner from imposing a period of post-release supervision (see Matter of Deal v Goord, 8 AD3d 769, 769-770 [3d Dept 2004],

appeal dismissed 3 NY3d 737, reconsideration denied 4 NY3d 795 [2005]). The Third Department explained:

“Petitioner, who acknowledges that he is not challenging either his judgment of conviction or his sentence, seeks to prohibit respondents from imposing a period of postrelease supervision. Inasmuch as petitioner was sentenced to a determinate sentence for his commission of a violent felony in 1999, ‘a period of postrelease supervision was automatically included’ in his sentence by statute. Since respondents are enforcing a statutorily-required part of petitioner’s sentence, they have not performed any judicial function, making prohibition an unavailable remedy” (id. at 769-770, quoting People v Lindsey, 302 AD2d 128, 129 [3d Dept 2003], lv denied 100 NY2d 583; see Matter of Garner v New York State Dept. of Correctional Servs., 39 AD3d 1019, 1019 [3d Dept 2007]).

In Matter of Garner, the Third Department again affirmed the dismissal of a petition seeking to prohibit the responding Department of Correctional Services officials from imposing that part of an inmate’s sentence which constituted a five-year period of post-release supervision (see Matter of Garner v New York State Dept. of Correctional Servs., supra). Relying on Matter of Deal, the Third Department held: “As respondents are only enforcing, not imposing, a part of petitioner’s sentence which was automatically included by statute, they have not performed any judicial function, making prohibition an unavailable remedy” (id.).

Likewise here, DOCS is “only enforcing, not imposing, a part of petitioner’s sentence which was automatically included by statute,” and, thus, DOCS has “not performed any judicial function, making prohibition an unavailable remedy” (id.; see Matter of Deal v Goord, supra). Accordingly, dismissal of this proceeding is warranted.

The Court has reviewed and considered petitioner's remaining arguments and finds them to be without merit.

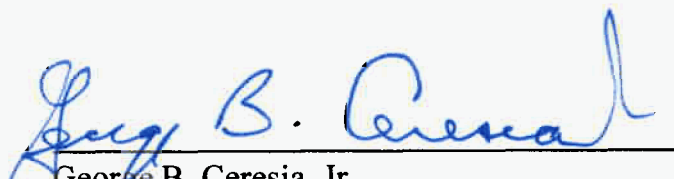
Therefore it is

**ORDERED and ADJUDGED**, that the petition be and hereby is dismissed, without costs.

This shall constitute the decision, order and judgment of the Court. All papers are returned to the attorney for the Respondent who is directed to enter this Decision/Order/Judgment without notice and to serve petitioner with a copy of this Decision/Order with notice of entry.

**ENTER**

Dated: September 17, 2007  
Troy, New York

  
George B. Ceresia, Jr.  
Supreme Court Justice

Papers Considered:

1. Order To Show Cause dated February 20, 2007;
2. Petition verified April 12, 2007; with accompanying Exhibits;
3. Answer dated April 27, 2007, with accompanying Exhibits A-D;
4. Affirmation of Kelly L. Munkwitz, Esq., affirmed April 27, 2007;
5. Reply verified May 15, 2007.