

White v State of New York

2009 NY Slip Op 31927(U)

July 9, 2009

Supreme Court, Albany County

Docket Number: 1401-08

Judge: George B. Ceresia

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

ADRIAN WHITE,

Plaintiff,

-against-

STATE OF NEW YORK, et al,

Defendant.

All Purpose Term

Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding
RJ: 01-08-092294 Index No. 1401-08

Appearances: Adrian White, 06-R-5163
Plaintiff, pro se
Bare Hill Correctional Facility
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DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

In this action for a judgment declaring that Penal Law § 70.45 (3) is invalid, the defendant State of New York moves pursuant to CPLR 3212 for summary judgment dismissing the complaint.¹ Plaintiff Adrian White, an inmate at the Bare Hill Correctional

¹ Although the action names the “State of New York, et al,” the only named defendant appears to be the State of New York.

Facility, does not submit any additional opposition to the motion but had earlier submitted a reply to defendant's answer which raises certain opposition to defendant's position.

Plaintiff is currently serving a determinate sentence of seven years for Burglary, Second Degree, as a second violent felony offender. At the time of plaintiff's sentencing on November 21, 2006 and as reflected in the "Amended Sentence & Commitment," the Sentencing Court imposed the statutorily mandated five-year period of post-release supervision in addition to the seven-year determinate term of imprisonment. The record indicates that, assuming plaintiff earns the full amount of good time credit, his earliest Conditional Release date is October 2, 2011 (see de Simone Letter [dated 5-10-08], Scott Affirmation, Exhibit C).

On or about February 21, 2008, plaintiff commenced this declaratory judgment action.

The complaint, in part, alleges:

I have never been informed of any condition(s), as being part of my sentence of post-release supervision, nor was I made aware that there would be administratively imposed condition(s) in relation to my post-release supervision, for which Penal Law § 70.45 (3) allows.

My complaint is that Penal Law § 70.45 (3) allows for delegation of a Judicial function to a non-judicial officer and is, therefore, constitutionally unsound as it violates the "Separation of Powers" doctrine of the Constitutions of the United States and the State of New York (Complaint at ¶¶ 8-9, id., Exhibit A).

Following joinder of issue, defendant now moves pursuant to CPLR 3212 for summary judgment dismissing the complaint. On this motion, defendant contends that the complaint was never properly filed with the County Clerk's office although served on defendant.² In

² This argument appears unfounded since an abstract from the County Clerk's office shows that a Request for Judicial Intervention was filed on February 21, 2008 followed by the filing of the Order of Poor Person, granted, along with summons and complaint, among other

addition, defendant argues that the complaint should be dismissed since it is not ripe for judicial review, fails to state a cause of action, and plaintiff has failed to join necessary parties – namely, the Department of Correctional Services and the Division of Parole.

As to the ripeness issue, “[p]ursuant to CPLR 3001, the Supreme Court may render a declaratory judgment as to the rights of the parties when there is a justiciable controversy. A justiciable controversy must involve a present, rather than hypothetical, contingent or remote, prejudice to the plaintiff. The dispute must be real, definite, substantial and sufficiently matured so as to be ripe for judicial determination” (Waterways Dev. Corp. v Lavalle, 28 AD3d 539, 540 [2d Dept 2006], Prodell v State of New York, 211 AD2d 966, 967 [3d Dept 1995]). Here, contrary to defendant’s argument, the instant declaratory judgment action is ripe for judicial review (see Prodell, 211 AD2d at 967-968). While it concerns a period of post-release supervision which plaintiff will not serve at the earliest until October 2, 2011, the event is sure to happen (cf American Ins. Assoc. v Chu, 64 NY2d 379, 385-386 [1985], cert denied 474 US 803; Lewis v City of Gloversville, 246 AD2d 804, 805 [3d Dept 1998]). Furthermore, the complaint alleges a facial constitution violation as opposed as to challenging the constitutionality of Penal Law § 70.45 (3) as applied to him.

As to defendant’s argument that the complaint fails to state a cause of action, the Court agrees. The gravamen of plaintiff’s complaint is that Penal Law § 70.45 (3) violates the separation of powers doctrine by allowing a non-judicial officer to set conditions of post-release supervision, which plaintiff contends is a judicial function. Plaintiff effectively

documents, on April 14, 2008. Service of the summons and complaint upon defendant occurred after those filings.

argues that the conditions of post-release supervision are part of a sentence, which only the judiciary can impose. Thus, plaintiff maintains that by not allowing the judiciary to set forth the conditions of the post-release supervision in his sentence and leaving them for the Division of Parole to set, by enacting Penal Law § 70.45 (3), the Legislature has usurped the judicial function of sentencing.

The Court first notes that “statutes enjoy a presumption of constitutionality and that ‘unconstitutionality must be demonstrated beyond a reasonable doubt’” (People v North Street Book Shoppe, Inc., 139 AD2d 118, 119 [3d Dept 1988], lv denied 72 NY2d 1048). In passing Penal Law § 70.45, the “Legislature has mandated that a sentence imposed upon a violent felon . . . ‘shall include, as part thereof, a period of post-release supervision.’ The purpose is to ensure that such offenders are appropriately monitored upon their reintroduction into society” (People v Sparber, 10 NY3d 457, 463 [2008]; see State of New York v Myers, 22 Misc 3d 809, 812 [Sup Ct, Albany County, 2008]). In relevant part, section 3 of that statute provides:

The board of parole shall establish and impose conditions of post-release supervision in the same manner and to the same extent as it may establish and impose conditions in accordance with the executive law upon persons who are granted parole or conditional release . . . Upon release from the underlying term of imprisonment, the person shall be furnished with a written statement setting forth the conditions of post-release supervision in sufficient detail to provide for the person’s conduct and supervision.

Settled Court of Appeal’s precedents “have emphasized that sentencing is a uniquely judicial responsibility” (People v Sparber, 10 NY3d at 464; see People v Farrar, 52 NY2d 302, 305 [1981]). Here, the record shows that the Sentencing Court imposed a period of post-release supervision on plaintiff as part of his sentence (see People v Sparber, 10 NY3d

at 464). And, as plaintiff contends, conditions for that post-release supervision were not set forth. However, Penal Law § 70.45 (3) clearly places the responsibility for setting the conditions of that post-release supervision with the Division of Parole. Further, the Legislature derives the power to place this responsibility with that division from article XVII, section 5 of the New York State Constitution. Therefore, contrary to plaintiff's argument, there has not been a violation of the separation of powers doctrine by the Legislature allowing the Division of Parole to set the conditions of post-release supervision (cf Matter of Browne v County of Nassau, 37 NY2d 75, 80 [1975]; People v Schehr, 1 AD3d 719, 720 [3d Dept 2003], lv denied 1 NY3d 601 [2004]). Moreover, the Court notes, while a sentencing court may set a term of imprisonment, it does not supervise an inmate's custody once it issues a commitment order. Likewise, here, it would make little sense to have a sentencing court impose conditions of post-release supervision as part of the sentence. As the Court of Appeals has noted, while the constitution grants the three branches of government the authority to exercise their power "within a given sphere[,] . . . the functions of government can [not] be neatly boxed into judicial, executive and legislative categories. . . . [T]he fluid functioning of government requires that the interaction among the branches be allowed some 'play in its joints'" (Saratoga County Chamber of Commerce, Inc. v Pataki, 100 NY2d 801, 821-822 [2003] [quoted sources omitted]).

For the reasons discussed above, the Court grants defendant's motion for summary judgment dismissing the complaint. Otherwise, the Court has reviewed the parties' remaining arguments and finds them either lacking in merit or unnecessary to reach given the Court's determination. Accordingly, it is

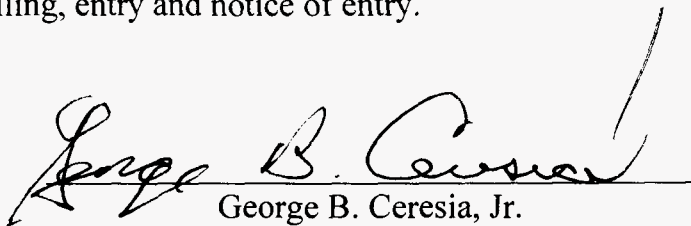
ORDERED that defendant's motion for summary judgment is granted; and it is further

ORDERED, ADJUDGED AND DECLARED, that Penal Law § 70.45 (3) does not violate the Separation of Powers Doctrine; and it is further

ORDERED that the complaint is dismissed in its entirety.

This shall constitute the decision, order and judgment of the Court. The original decision/order/judgment is returned to the attorney for respondent. All other papers are being delivered by the Court to the Supreme Court Clerk for transmission to the County Clerk, or directly to the County Clerk. The signing of this decision/order/judgment shall not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry and notice of entry.

Dated: July 9, 2009
Troy, New York


George B. Ceresia, Jr.
Supreme Court Justice

Papers Considered:

1. Notice of Motion dated March 4, 2009;
2. Affirmation of Adele Taylor Scott, Esq., affirmed March 4, 2009, with accompanying Exhibits A-D.