

Matter of Bradley v New York State Div. of Parole

2010 NY Slip Op 30626(U)

March 22, 2010

Supreme Court, New York County

Docket Number: 400531/09

Judge: Joan M. Kenney

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JOAN M. KENNEY
Justice

PART 8

BRADLEY, ANDY C.

INDEX NO. 400531/09

MOTION DATE _____

MOTION SEQ. NO. 02

MOTION CAL. NO. _____

N.Y.S. BOARD OF PAROLE

- v -

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...	_____
Answering Affidavits -- Exhibits	_____
Replying Affidavits	_____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

~~UNFILED JUDGMENT~~
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1419).

MOTION IS DECIDED IN ACCORDANCE WITH THE ATTACHED MEMORANDUM DECISION.

Dated: 3/22/10

Joan M. Kenney
J.S.C.
JOAN M. KENNEY

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 8

-----X
In the Matter of the Application of
ANDY C. BRADLEY,

Petitioner,

Index No. 400531/09

For a Judgment Pursuant to Article 78
of the Civil Practice Laws and Rules

DECISION AND ORDER

-against-

NEW YORK STATE DIVISION OF PAROLE

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk
and notice of entry cannot be served based hereon. To
obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
1430).

KENNEY, JOAN, M., J.S.C.

For Petitioner:
Andy C. Bradley, *Pro Se*
Ulster Correctional Facility, P.O. Box 800
Napanoch, New York 12458

For Respondent:
The New York State Attorney General's Office
120 Broadway
New York, New York 10271
By: Julinda Dawkins, Esq.

Papers considered in review of this motion to dismiss:

Papers	Numbered
Order To Show Cause, Petition, and Affidavit in Support	1-3
Notice of Cross Motion, Affirmation, Exhibits	4-12

Motion sequences 002 and 003 are consolidated for disposition.

In motion sequence 002, *pro se* petitioner Andy C. Bradley (Bradley), moves this Court, by order to show cause in this CPLR Article 78 proceeding, to compel respondent, the New York State Division of Parole (DOP), to answer Bradley's appeal of DOP's October 24, 2007, decision to revoking his parole. Bradley also seeks a review of the October 24, 2007, decision because it violates his due process rights. Bradley's appeal was perfected on May 19, 2008.

In motion sequence 003, Bradley moves for review of the Department of Correctional

Services' (DCS), alleged failure to transfer him to the Willard Drug Treatment Campus (Willard), within the 10-day time period, he contends is prescribed by New York Criminal Procedure Law section 410.91. This motion sequence seeks the identical relief sought in motion sequence 002.

Respondent cross-moves to dismiss the CPLR Article 78 petition on the grounds of collateral estoppel and mootness.

Background

On February 7, 2002, Bradley was convicted of selling a controlled substance, and sentenced to four and a half to nine years in state prison. After serving some period of time, Bradley was released on parole.

On August 3, 2007, Bradley appeared for a final parole revocation hearing before an Administrative Law Judge (ALJ). Bradley was charged with technical rule violations for failure to report from March 9, 2007 to July 14, 2007. Bradley pled guilty to this charge, and the Administrative Law Judge mandated that Bradley attend Willard's drug treatment program. Bradley agreed. There is no evidence that Bradley filed an appeal of the August 3, 2007 decision. Bradley was sent to Rikers Island Correctional Facility, where he waited for his transfer to Willard. It is undisputed that DCS never transferred Bradley to Willard within 10 days, of the ALJ's decision. Bradley argues that his transfer to Willard was required under the New York Criminal Procedure Law.

Bradley filed a Writ of Habeas Corpus in the New York Supreme Court, Seneca County. The Supreme Court, Seneca County, dismissed the Writ because it held that the 10-day transportation requirement CPL§ 410.91 did not apply to parole revocation cases. See, Exhibit C annexed to the cross motion.

Ultimately, Bradley failed to complete the treatment program at Willard. Bradley appeared for another parole revocation hearing on October 24, 2007, because he did not complete the program at Willard.. Bradley pled guilty to the charge that he failed to complete drug treatment program, and the ALJ's disposition was that Bradley would serve an 11 month re-imprisonment (a/k/a, time assessment). On May 19, 2008, Bradley filed and perfected an appeal of the October 24, 2007 decision.

On November 18, 2008, Bradley's parole was revoked yet again, and a five month time assessment was imposed. On March 5, 2009, Bradley filed this Article 78 proceeding. Bradley also moved this Court to compel respondent to answer his perfected appeal. On May 5, 2009, DOP's Appeals Unit issued a decision affirming the ALJ's decision dated October 24, 2007. On May 19, 2009, the Honorable Marilyn Shafer, now a retired Judge of the Supreme Court, New York County, denied Bradley's motion, without prejudice, due to his failure to file an affidavit of service. On August 18, 2009, Bradley's parole was revoked for the fourth time, and a seven month time assessment was imposed. Bradley now moves this court, to compel DOP to answer his appeal, to review the October 24, 2007 hearing and determination, and to review the Department of Correctional Services' alleged failure to transfer him to Willard within a certain time period.

Analysis

The portion of Bradley's motion seeking to compel respondent's Appeals Unit to answer his appeal of the ALJ's October 24, 2007 decision is denied as moot. The Appeals Unit issued a decision on May 5, 2009.

Bradley also seeks judicial review of the October 24, 2007, decision which revoked his parole. Bradley asserts that he has a right to judicial review, because the Appeals Unit failed to issue

its findings within four months of the date the appeal was perfected. Bradley correctly argues that 9 NYCRR section 8006.4 (c), affords him the right to deem his administrative remedy exhausted. Which triggers Bradley's right to seek judicial review of the underlying determination from which the appeal was taken. However, Bradley's challenge of the October 24, 2007 hearing is moot as a result of the succeeding parole revocation hearings.

A challenge to a parole revocation determination is moot, because a later parole revocation determination supercedes the revocation determination at issue. Further it has been held that any judicial review and determination would not have an impact on Bradley's rights. *People ex rel. Tyler v. Senkowski*, 271 AD2d 740 (3rd Dept 2000); *see also Matter of Bennett v Kelly*, 251 AD2d 776 (3rd Dept 1998). Since Bradley's parole revocations in November 2008, and August 2009, were subsequent to the parole revocation of October 24, 2007, any determination made by this court would not impact any of the rights of the parties.

Finally, Bradley seeks a review of the Department of Correctional Services' alleged failure to transfer him to Willard within the 10 day time period allegedly prescribed by New York Criminal Procedure Law section 410.91. This issue was already litigated before the Supreme Court, Seneca County, and therefore, Bradley is precluded, by the doctrine of collateral estoppel, from relitigating this issue before this Court. "Under the doctrine of collateral estoppel, or issue preclusion, a party is precluded from relitigating an issue which has been previously decided against him in a prior proceeding where he had a full and fair opportunity to litigate such issue." *Franklin Dev. Co., Inc. v Atlantic Mut. Ins. Co.*, 60 AD3d 897, 899 (2nd Dept 2009) (internal quotation marks and citations omitted).

Accordingly, it is

ORDERED that petitioner's motions, sequences 002 and 003, brought by order to show cause, are denied; and it is further

ORDERED and ADJUDGED that respondent's cross motion to dismiss the petition is granted, and the proceeding is hereby dismissed.

Dated: March 22, 2010

ENTER:



Hon. Joan M. Kenney
J.S.C.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 147B).