

**Matter of Jones v New York State Div. of Parole**

2010 NY Slip Op 31583(U)

June 18, 2010

Supreme Court, New York County

Docket Number: 104666/10

Judge: Joan B. Lobis

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

PRESENT

PART

*Justice*

INDEX NO.

MOTION DATE

MOTION SEQ. NO.

MOTION CAL. NO.

The following papers, numbered 1 to 11, were read on this motion to/for

Notice of Motion/Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits

Replying Affidavits

PAPER NUMBERED

Cross Motion: Yes  No

Upon the foregoing papers, it is ordered that the *petition*

BE GRANTED IN ACCORDANCE WITH  
ACCOMPLISHING DECISION AND ORDER

Dated

*4/18/10*

*JSA*

*JSA*

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

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

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY: IAS PART 6**

-----X  
In the Matter of the Claim of  
MATTHEW JONES under CPLR Article 78 and  
42 U.S.C. § 1983 and of FATIMA JONES,  
under 42 U.S.C. § 1983

Petitioners,

Index No. 104666/10

- against -

THE NEW YORK STATE DIVISION OF PAROLE,  
and ANDREA EVANS as Chairwoman of the  
New York State Division Of Parole

Decision, Order, and Judgement

**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  
418).

Respondents.

-----  
JOAN B. LOBIS, J.S.C.:

Petitioners Matthew and Fatima Jones bring this special proceeding by order to show cause, pursuant to Article 78 of the C.P.L.R. and 42 U.S.C. § 1983, seeking to annul the New York State Division of Parole's (the "Division") imposition of a "special condition" on Mr. Jones' parole prohibiting him from living with his wife Fatima Jones and limiting the amount of hours that Mr. Jones can spend with Mrs. Jones. For the reasons discussed below, the petition is denied.

On September 20, 2007, Mr. Jones was arrested for repeatedly kicking and punching an individual in the face and body in concert with an unapprehended individual in a Manhattan bar. The assault caused serious injuries to the victim, including a two large gashes on the victim's head. Mr. Jones eventually pled guilty to Assault in the Second Degree. On September 2, 2008, Mr. Jones was sentenced to two and one-half (2 ½) years in prison and two (2) years of post-release supervision.

In September 2009, Mr. Jones appeared before the Division. The Division noted

that Mr. Jones was arrested on several occasions in Florida, including two arrests for domestic violence. Mr. Jones admitted to the Division to "grabbing" his then girlfriend on July 16, 2004 and to pushing the same girlfriend into a shallow end of a pool a little over a month later on August 20, 2004. He was convicted on charges that stemmed from both arrests. The Division noted that Mr. Jones "is a violent individual and will need to be strictly monitored upon release", but, nevertheless, recommended that he be released to parole supervision.

Mr. Jones was released from the Ogdensburg Correctional Facility in New York on November 6, 2009, but was transferred to a Florida prison to serve a three month term for an outstanding parole violation related to one of the domestic violence arrests. Mr. Jones finished that term in February 2010, moved to a halfway house in Brooklyn, and began his parole. One of the special conditions of Mr. Jones' parole prevented him from residing "with any partner without prior written permission of the parole officer." This condition prevented Mr. Jones from staying with his wife overnight, however, he was free to visit her during the day until about 7:30 p.m.

On or about April 9, 2010, Mrs. Jones, who married Mr. Jones in October 2008, underwent surgical breast cancer treatment. According to a note from her doctor, the surgery would be painful and cause significant physical limitations. Petitioners commenced this action on or about April 13, 2010, seeking a temporary stay of the special condition due to Mrs. Jones' surgery. The stay was granted on April 13, 2010 and extended on April 19, 2010 until April 27, 2010. On that date, a hearing was conducted by the undersigned to determine if the stay was still warranted. Mr. Jones and his parole officer, Dologes Murray, testified at the hearing. Mr. Jones

testified to his observations of his wife and her physical condition. Officer Murray testified that Mr. Jones was prevented from living with his wife without written approval due to his history of violence and for his wife's protection. After the hearing, the stay was lifted, because Mrs. Jones, though sick, did not require the kind of intensive around the clock care that Mr. Jones initially alleged. Petitioners' 42 U.S.C. § 1983 claim was also dismissed without prejudice.

Petitioners argue that it is arbitrary and capricious and an abuse of discretion to prevent Mr. Jones from living with his wife. They argue that the special condition is not rationally related to his conviction; unwarranted in light of Mrs. Jones' illness; and an unconstitutional burden on their marital relationship. Respondents argue that the Division has broad discretion with regard to conditions on parolees and that the condition is rationally related to Mr. Jones' violent criminal history. They further argue that similar restrictions have been upheld in New York.

In an Article 78 proceeding, the court's review of an administrative action is limited to a determination of whether that administrative decision was made in violation of lawful procedures, whether it is arbitrary or capricious, or whether it was affected by an error of law. In re Pell v. Board of Educ., 34 N.Y.2d 222, 231 (1974). "The arbitrary or capricious test chiefly 'relates to whether a particular action should have been taken or is justified \* \* \* and whether the administrative action is without foundation in fact.'" Id. (citation omitted). Under 9 N.Y.C.R.R. § 8003.2, the Division is free to impose special conditions on a parolee. "If the condition is rationally related to the inmate's past conduct and future chances of recidivism, [the court] has no authority to substitute its own discretion for that of the individuals in charge of designing the terms

of a petitioner's parole release." In re Williams v. New York State Div. of Parole, 71 A.D.3d 524 (1st Dep't 2010) (citations omitted). The Division can limit a parolee's contact with a marital partner so long as it "does not impose a complete impediment to [the] fundamental right to family life." Id.

There is no basis to annul the special condition. Mr. Jones' criminal history—including a brutal assault on a bar patron in September 2008 and two assaults on a girlfriend in 2004—provided a rational of a basis for the Division to conclude that Mr. Jones has a propensity for violence and that there is a likelihood of recidivism. Given these circumstances, it was not arbitrary and capricious for the Division, which has expertise in criminal behavior, to conclude that the special condition was the best way to protect Mrs. Jones, deter future violent conduct, and aid in Mr. Jones' rehabilitation.

The special condition does not impose a complete impediment on petitioners' married life. Mr. Jones is free to spend time with his wife every day for most of the day. The cases that petitioners cite in support of their petition involve special conditions that are either vague or extremely restrictive and are, thus, inapposite. See United States v. Reeves, 591 F.3d 77 (2d Cir. 2010) (condition that parolee, convicted of possessing child pornography, inform any person with whom he forms a "significant romantic relationship" of his criminal history and identify this person to the parole board found vague and overbroad); Tremper v. Ulster County Dept. of Probation, 160 F. Supp. 2d 352 (N.D.N.Y. 2001) (in decision granting a preliminary injunction, condition that parolee have essentially no contact with the father of her children found to be likely

unconstitutional). The special condition, by its own terms, is not ironclad and the Division has admitted that it will automatically review the special condition after one year of its imposition and, under the right circumstances, could review the special condition prior to that time. Accordingly, it is

ADJUDGED that the petition is denied and the proceeding is dismissed, without costs and disbursements.

Dated: June 18, 2010

  
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JOAN B. LOBIS, 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