

Matter of Brown v Evans

2010 NY Slip Op 32110(U)

August 10, 2010

Sup Ct, Franklin County

Docket Number: 2010-438

Judge: S. Peter Feldstein

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**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF FRANKLIN

X

In the Matter of the Application of
JAMES KENNETH BROWN III, #97-B-2746,
Petitioner,

for Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

DECISION AND JUDGMENT

RJI #16-1-2010-0156.30

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ORI #NY016015J

-against-

ANDREA D. EVANS, Chief Executive
Officer, NYS Division of Parole, and
Chairwoman, NYS Board of Parole,
and **BRUCE S. YELICH**, Superintendent,
Bare Hill Correctional Facility

Respondents.

X

This proceeding was originated by the Petition for a Writ of Habeas Corpus of James Kenneth Brown III, filed in the Franklin County Clerk's office on March 30, 2010. Petitioner, who is an inmate at the Bare Hill Correctional Facility, purported to challenge his continued incarceration in the custody of the New York State Department of Correctional Services. More specifically, petitioner asserted that the delinquent time assessment imposed following his November 5, 2008 final parole revocation hearing expired on February 17, 2010.

The Court issued an Order to Show Cause on April 2, 2010 and as a part thereof petitioner's habeas corpus proceeding was converted into a proceeding for judgment pursuant to Article 78 of the CPLR. An Amended Order to Show Cause was issued on April 27, 2010. The Court has since received and reviewed respondents' Answer, verified on May 28, 2010. By Letter Order dated June 8, 2010 petitioner's application for

judgment on default was denied. Correspondence from petitioner in the nature of a Reply, dated June 7, 2010, was received directly in chambers on June 9, 2010.

On September 10, 1997 petitioner was sentenced in Oneida County Court, to an indeterminate sentence of 7 to 14 years, upon his conviction of the crime of Arson 2°. Petitioner was first released from DOCS custody to parole supervision in September of 2006. His parole, however, was subsequently revoked but restored at the Willard Drug Treatment Campus. Petitioner was released from Willard back to community-based parole supervision in January of 2007 but he again violated the conditions of release and was returned to DOCS custody as a parole violator. Petitioner was most recently released to parole supervision on June 11, 2008. On October 20, 2008, however, he was served with a Notice of Violation/Violation of Release Report charging him with violating the conditions of release in 11 separate respects. The Notice of Violation/Violation of Release Report was served on petitioner at the Rensselaer County Jail where he was apparently held in connection with new criminal charges. Parole Violation Charge #5 alleged that “[o]n 10/17/08, James Brown violated Rule #11 of the conditions of his release in that he was found in possession of a quantity of controlled substance, specifically, marijuana, which was found in his bedroom . . .” A final parole revocation hearing was conducted on November 5, 2008, at which time petitioner pled guilty to Parole Violation Charge #5 and the remaining charges were withdrawn with prejudice. Petitioner’s parole was revoked and a 16-month delinquent time assessment, anticipated to expire on February 17, 2010, was imposed. In imposing such time assessment the presiding Administrative Law Judge noted that felony rape charges were pending against petitioner.

On May 27, 2009 petitioner was convicted in Justice Court, Town of Nassau, of the crimes of Sexual Misconduct (Penal Law §130.20(1)) and Endangering the Welfare of a Child, both misdemeanors. By reason of his Sexual Misconduct conviction, however,

petitioner is a “sex offender” under the provisions of Correction Law §168-a(1) and (2)(a)(i). It appears that petitioner was received back into DOCS custody on June 25, 2009. He was approved for re-release to parole supervision upon the expiration of his delinquent time assessment on February 17, 2010, but conditions were imposed as follows:

“[Petitioner] WILL PROPOSE A RESIDENCE TO BE APPROVED BY THE DIVISION OF PAROLE AND WILL ASSIST THE DIVISION IN ANY EFFORTS IT MAY MAKE ON [petitioner’s] BEHALF TO DEVELOP AN APPROVED RESIDENCE.

[Petitioner] WILL RESIDE ONLY IN THE RESIDENCE APPROVED BY THE DIVISION OF PAROLE.”

In addition to asserting that the Department of Correctional Services continues to hold him in custody “beyond its legal authority” after the expiration of the 16-month delinquent time assessment imposed following the November 5, 2008 final parole revocation hearing, petitioner suggests that DOCS officials have confused him with another inmate named “James Brown” (96-A-4838), who was sentenced in Suffolk County Court on June 13, 1996 to a controlling, aggregate indeterminate sentence of 20 to 40 years upon his convictions of the crimes of Rape 1^o, Sodomy 1^o and Burglary 2^o. In support of that suggestion petitioner asserts that upon inquiry into his own incarceration he received , pursuant to a F.O.I.L. request, a copy of the Sentence & Commitment Order of the other “James Brown.”

“The imposition of a special [parole] condition is discretionary in nature and ordinarily beyond judicial review as long as it is made in accordance with law and no positive statutory requirement is violated . . . If the condition is rationally related to the inmate’s past conduct and future chances of recidivism, Supreme Court has no authority to substitute its own discretion for that of the individuals in charge of designing the terms

of petitioner's parole release." *Williams v. New York State Division of Parole*, 71 AD3d 524, 525 (citations omitted). *See Ahlers v. New York State Division of Parole*, 1 AD3d 849. Courts have regularly applied the rationality standard in upholding special conditions requiring convicted sex offenders to secure residences approved by the Division of Parole prior to release from DOCS custody to parole supervision. *See Breedon v. Donelli*, 26 AD3d 660, *Lynch v. West*, 24 AD3d 1050, *Billups v. New York State Division of Parole*, 18 AD3d 1085 and *People ex rel Wilson v. Keane*, 267 AD2d 686. The Court finds that the imposition of the "suitable residence" condition in the case at bar was rational in view of petitioner's arson conviction with multiple parole violations, together with his recent conviction of a misdemeanor sex offense committed while under parole supervision from the arson conviction. The Court, moreover, finds nothing in the petition which can be construed as a challenge to the rationality of the application of the "suitable residence" condition to any particular residence proposed by petitioner. *Compare Dickman v. Trietley*, 268 AD2d 914.

Finally, the Court finds nothing in the record before it to support any inference that parole officials erroneously considered the disturbing criminal record of the other "James Brown" when the "suitable residence" condition was imposed on petitioner. Nor is there anything in the record to suggest that information pertaining to the other "James Brown" was erroneously transmitted by parole officials to any person/entity considering an offer of housing to petitioner. Although petitioner's allegation that the wrong Sentence and Commitment Order was supplied to him in response to a F.O.I.L. request is disturbing, there is no reference to the other "James Brown" in the remainder of the relevant record in this proceeding. To the extent petitioner points out in his Reply that Exhibit O, annexed to respondents' Answer, includes both his own inmate information as well as inmate information pertaining to the other "James Brown," the Court notes that Exhibit

O was specifically identified/labeled by counsel as “DOCS Inmate Information printout for petitioner (James Kenneth Brown III) (DIN # 97-B-2746) and inmate James Brown (DIN #96-A-4838) . . .” This exhibit, illustrating respondents’ recognition of the two similarly-named inmates, should in no way be construed as indicative of any confusion on part of the respondents with respect to the separate identities of the petitioner and the other “James Brown.”

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: August 10, 2010 at
Indian Lake, New York.

S. Peter Feldstein
Acting Supreme Court Justice