Matter of Alvalle v Rabsatt

2010 NY Slip Op 32129(U)

July 23, 2010

Sup Ct, St. Lawrence County

Docket Number: 132848

Judge: S. Peter Feldstein

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STATE OF NEW YORK
SUPREME COURT **COUNTY OF ST. LAWRENCE**

- **X**

In the Matter of the Application of
JONATHAN ALVALLE,#05-A-4316,
Petitioner,

for Judgment Pursuant to Article 70
of the Civil Practice Law and Rules

-against-

DECISION AND JUDGMENT
RJI #44-1-2010-0060.06
INDEX #132848
ORI # NY044015J

CALVIN O. RABSATT, Superintendent,
Riverview Correctional Facility, and
NEW YORK STATE DIVISION OF PAROLE,
Respondents.

- **X**

This proceeding was originated by the Petition for a Writ of Habeas Corpus of Jonathan Alvalle, filed in the St. Lawrence County Clerk's office on January 29, 2010. Petitioner, who is an inmate at the Riverview Correctional Facility, is challenging his continued incarceration in the custody of the New York State Department of Correctional Services. The Court issued an Order to Show Cause on February 8, 2010 and an Amended Order to Show Cause on March 23, 2010. Additional communication from the petitioner, dated April 22, 2010, was filed in the St. Lawrence County Clerk's office on April 23, 2010. The Court has since received and reviewed respondents' Return, dated May 21, 2010, as well as petitioner's responding correspondence dated June 1, 2010. By Letter Order dated June 8, 2010 respondents were directed to supplement their Return by submitting a copy of the document perfecting petitioner's administrative appeal from the revocation of his parole. In response thereto chambers received correspondence from counsel for the respondents, dated June 22, 2010, with three exhibits. Additional undated correspondence from petitioner was received directly in chambers on June 28, 2010.

On August 16, 2005 petitioner was sentenced in Rockland County Court, as a second felony offender, to a determinate term of 5 years, with 5 years post-release supervision, and a concurrent indeterminate sentence of 2 to 4 years upon his convictions of the crimes of Robbery 2° and Burglary 3°. He was received into DOCS custody on August 25, 2005 and conditionally released therefrom to post-release parole supervision on February 2, 2009. On October 23, 2009, however, petitioner was served with a Notice of Violation/Violation of Release Report charging him with violating the conditions of his release in two separate respects. One parole violation charge alleged that petitioner was in possession of a knife and the other alleged that he was in possession of small arms ammunition. A preliminary hearing was waived and the final parole revocation hearing was conducted on December 15, 2009. Following the final hearing both parole violation charges were sustained, petitioner's parole was revoked with a delinquency date of October 23, 2009 and a 16-month delinquent time assessment was imposed.

In paragraph four of the petition the following is alleged:

> " . . . the Division of Parole violated the petitioner's rights to due process of law, by not affording him the opportunity to appeal the hearing officer's decision from his final revocation hearing. The Division of Parole violated petitioner's fourth amendment right to [against?] illegal search and seizures, when his parole officer searched his premises without his consent or the consent of petitioner's Grandmother. The search was without suspicion of a parole violation or a warrant."

Notwithstanding the above-quoted allegations, the petitioner does not specify how he was denied an opportunity to appeal the results of the final parole revocation hearing.

Respondents allege that petitioner's notice of appeal from the parole revocation determination was received by the Division of Parole Appeals Unit on January 21, 2010, along with his request for a copy of the final hearing minutes. According to the respondents, the Appeals Unit informed petitioner that the last day for him to perfect his

administrative appeal was May 19, 2010, and the petitioner actually perfected such appeal on April 22, 2010. Citing, *inter alia*, *People ex rel DeMarta v. Sears*, 31 AD3d 918, respondents argue that "[h]abeas corpus relief is not available, as Petitioner's administrative appeal has not been decided, nor has the [four-month] time period in 9 NYCRR §8006.4(c) expired." Respondents also argue that "[p]etitioner's contention that he was not permitted to appeal, is unsubstantiated and unfounded."

Notwithstanding the foregoing, the respondents did not annex a copy of the document perfecting petitioner's administrative appeal to their Return. In his Reply correspondence of June 1, 2010 petitioner asserts that parole authorities did not provide him with a copy of the minutes of the final hearing until March 22, 2010, and that his "brief" was filed with the Division of Parole Appeals Unit "shortly thereafter." The petitioner, however, did not annex a copy of his "brief" to the Reply correspondence.

By Letter Order dated June 8, 2010 respondents were ". . . directed to supplement their Return by submitting . . . a copy of the document perfecting petitioner's administrative appeal . . ." In response thereto respondents submitted, as an exhibit accompanying counsel's correspondence of June 22, 2010, a copy of a letter from petitioner to the Division of Parole dated April 8, 2010. In that letter petitioner states as follows: "Please be advise that I am being held unlawfully. Due to the fact on my current charge . . . in which I never possess. nor was I there at the time this incedent took place. moreso be aware, Docket # was dismissed without prejudice. further, <u>the petitioner has filed a appeal</u> as well as a writ of habeas corpus. Therefore, I respectfully ask that the appeal be granted and I be release and reinstated back to parole supervision [sic throughout.]" (Emphasis added). The second exhibit annexed to counsel's letter is a copy of an April 13, 2010 letter from the Appeals Unit to petitioner. In that letter the Appeals Unit references petitioner's above-quoted letter of April 8, 2010 and requests clarification

as to whether such letter was intended to serve as the document perfecting petitioner's administrative appeal. The final exhibit annexed to counsel's letter is a copy of petitioner's letter of April 19, 2010 to the Division of Parole, which states as follows: "A letter which you received on April 12, 2010. That was signed and dated April 8, 2010. Please be aware that I am requesting that the letter be att to my appeal which you already received. My appeal has been perfected. Therefore, my appeal as well as the letter can be placed as one."

In his additional undated correspondence received directly in chambers on June 28, 2010 petitioner asserts, in somewhat cryptic fashion, as follows:

> "I am writing . . . this brief letters in regards to the court order, dated jun 8, 2010. Directing the respondents to supplement their return with a copy of the documents perfecting Petitioner's administrative appeal, as referenced in paragraph 12 of the return. I have received their reply, Please be advise that their reply at anytime releave's the respondents from producing the petitioners actual appeal. In which Exhibit E clearly states that the Division of Parole has failed to process the petitioner's administrative appeal, In which I don't have control of. furthermore, Petitioner respectfully request that this court at any time holds the petitioner accountable for the Division negligence. And that this court takes full action to the petitioners rights and grant the writ habeas corpus on due process of law, and illegal search and seizure, in which violates both state and federal constitutional rights [sic throughout.]"

The Court initially observes that it is not at all certain that the Division of Parole Appeals Unit and the petitioner are on the same wavelength with regard to identification of the document/brief intended to perfect petitioner's administrative appeal. Indeed, petitioner's response to the Appeals Unit's letter of April 13, 2010 strongly suggests that such document/brief was submitted prior to the letter of April 8, 2010. Be that as it may, this habeas corpus proceeding was commenced when the petition was filed in the St. Lawrence County Clerk's office on January 29, 2010, a mere eight days after petitioner's notice of administrative appeal, dated January 16, 2010, was received by the Division of

Parole Appeals Unit. Since it is petitioner's position that he did not submit the document/brief perfecting his administrative appeal until soon after March 22, 2010, it is absolutely clear that this proceeding was commenced before petitioner exhausted administrative remedies through the administrative appeals process set forth in 9 NYCRR Part 8006.

A habeas corpus proceeding brought by parole violator to challenge one or more aspects of the underlying parole revocation process is subject to dismissal where the violator fails to first exhaust administrative remedies. *See People ex rel DeMarta v. Sears*, 31 AD3d 918, *lv den* 7 NY3d 715 *and People ex rel Bariteau v. Donelli*, 24 AD3d 1065. At the time petitioner commenced this proceeding his administrative appeal had not been perfected and, therefore, the four-month window for the Appeals Unit to issue its findings and recommendation, as set forth in 9 NYCRR §8006.4(c), had not yet opened, much less closed. For this reason the Court finds that the petition must be dismissed, subject to petitioner's right to refile upon the exhaustion of administrative remedies. *See People ex rel Howe v. Travis*, 18 AD3d 1052. Notwithstanding the foregoing, the Court strongly advises the parties to be in further communication with each other regarding identification of the specific document/brief intended by petitioner to perfect his administrative appeal.

Based upon all of the above, it is, therefore, the decision of the Court and is hereby **ADJUDGED**, that the petition is dismissed.

Dated: July 23, 2010 at
Indian Lake, New York

S. Peter Feldstein
Acting Justice, Supreme Court