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| <b>Matter of Reid v Sears</b>  |
| 2011 NY Slip Op 31405(U)   |
| May 20, 2011   |
| Sup Ct, St. Lawrence County  |
| Docket Number: 135413  |
| Judge: S. Peter Feldstein  |
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**STATE OF NEW YORK  
SUPREME COURT**

**COUNTY OF ST. LAWRENCE**

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In the Matter of the Application of  
**DOUGLAS E. REID, #00-A-2421,**

Petitioner,

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

**DECISION AND JUDGMENT  
RJI #44-1-2011-0095.05  
INDEX #135413  
ORI # NY044015J**

-against-

**LAWRENCE SEARS**, Superintendent,  
Ogdensburg Correctional Facility, and  
**NYS DIVISION OF PAROLE,**

Respondents.

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This proceeding was apparently commenced by the filing of the *pro se* Petition for Writ of Habeas Corpus of Douglas E. Reid in Bronx County on or about October 2, 2010. The *pro se* petition, however, was subsequently replaced by the Amended Petition for a Writ of Habeas Corpus of Simone Petromelis, Esq., assigned counsel in Bronx County, on behalf of Douglas E. Reid, dated and verified on November 17, 2010. Mr. Reid will hereinafter be referred to as the petitioner. By Order of the Supreme Court, Bronx County, dated January 12, 2011, venue was transferred to this Court. The transfer of venue was necessitated by the fact that petitioner was no longer held in local custody in Bronx County but, rather, had been received into State DOCS custody at the Ogdensburg Correctional Facility in St. Lawrence County. It also appears that assigned counsel in Bronx County was relieved of her assignment. The papers originally filed in Bronx County, including the Amended Petition, were received in the St. Lawrence County Clerk's office on February 7, 2011 and in chambers on February 14, 2011.

This Court issued an Order to Show Cause on February 16, 2011 and has received and reviewed respondents' Return, including Confidential Exhibit I, dated March 31, 2011.

The Court has also received and reviewed petitioner's Reply thereto, filed in the St. Lawrence County Clerk's office on April 12, 2011.

On March 29, 2000 petitioner was sentenced in Supreme Court, Westchester County, as a second felony offender, to a controlling determinate term of 11½ years, with 5-years post-release supervision, upon his convictions of the crimes of Burglary 1°, Aggravated Criminal Contempt, Criminal Contempt 1° and Assault 3°. He was conditionally released from DOCS custody to post-release parole supervision on March 19, 2009. On September 1, 2010, however, petitioner was served with a Notice of Violation/Violation of Release Report charging him with violating the conditions of his release in four separate respects. The first three charges alleged that petitioner used/possessed cocaine without proper medical authorization on July 22, 2010, August 3, 2010 and August 10, 2010, respectively. Parole Violation Charge #4 alleged that on September 1, 2010 petitioner “. . . failed to comply with the written special condition given to him on 8/10/10 . . . directing that he enter and complete Edgecombe Residential Treatment Program.” A preliminary hearing was waived and the final parole revocation hearing was initially scheduled for September 9, 2010.

Petitioner appeared with counsel on September 9, 2010 and at the outset of the hearing the presiding Administrative Law Judge (ALJ) stated that the Violation of Release Report set forth five parole violation charges. Petitioner immediately stated that he had only received four parole violation charges and it was quickly determined that an amended version of the Violation of Release Report contained an additional parole violation charge. Counsel for the petitioner acknowledged, on his behalf and on behalf of petitioner, receipt of the amended report at that time. Parole Violation Charge #5 alleged that on September 1, 2010 petitioner threatened a correction officer (presumably at Edgecombe) stating “I am not your child, if you ever speak to me like that again, I will

punch you in your fucking face.” The parole revocation proceedings were adjourned to October 7, 2010. This proceeding was apparently commenced in Bronx County on October 2, 2010.

On October 7, 2010 a different legal aid attorney appeared before the ALJ on behalf of petitioner but petitioner, through no fault of his own, was not produced. The representative of the Division of Parole stated for the record, however, that the Division would not be proceeding on the charge that petitioner threatened the correction officer. The final hearing was then adjourned to October 26, 2010. The petitioner appeared with counsel before the ALJ on October 26, 2010. Settlement discussions were fruitless and the matter was adjourned for a contested hearing on November 19, 2010. The Amended Petition was dated and verified on November 17, 2010, two days prior to the scheduled contested final hearing.

A contested final parole revocation hearing was conducted on November 19, 2010 with petitioner and counsel present throughout. At the beginning of the hearing the representative of the Division announced that he would only be proceeding with Parole Violation Charges #1, #2 and #3. Parole Violation Charges #4 and #5 were withdrawn with prejudice. At the conclusion of the hearing petitioner was found guilty of the three remaining charges, his parole was revoked with a sustained delinquency date of July 22, 2010 and a 12-month delinquent time assessment was imposed. The record before the Court contains no reference to any administrative appeal.

The only claim asserted in the Amended Petition is that petitioner’s “. . . constitutional and statutory rights to being served written notice of a final hearing containing all of the charges against him that the Division intends to bring, 14 days in advance of his final hearing, were violated.” In this regard it is asserted that petitioner did not become aware of the fifth Parole Violation Charge until the September 9, 2008

appearance and that he did not receive the amended Violation of Release Report until September 23, 2010 via legal mail.

The Court finds no 14-day notice (Executive Law §259-i(3)(f)(iii)) violation where, as here, the final hearing was originally convened without adequate notice on September 9, 2010 but adjourned for notice with the contested hearing ultimately conducted on November 19, 2010 with more than adequate notice of all parole violation charges having been provided to both petitioner and counsel. In this regard it is noted that notwithstanding the various adjournments, the contested final parole revocation hearing was held within 90 days of petitioner's waiver of a preliminary hearing, as required by Executive Law §259-i(3)(f)(i). It is also noted that the Amended Petition only alleged a notice violation with respect to Parole Violation Charge #5 and that charge was withdrawn with prejudice.

In his Reply petitioner appears to argue that there was some kind of "agreement" whereby the Division of Parole would not initiate parole revocation proceedings with respect to the incidents of drug use alleged in the first three parole violation charges. According to petitioner, these lapses into drug use were the precipitating factors in his placement of Edgecombe and the parole violation charges with respect thereto were only brought upon his removal from Edgecombe. It is noted that petitioner's failure to complete the Edgecombe program, as well as the circumstances underlying his removal from such program, were the subjects of the withdrawn Parole Violation Charges #4 and #5. According to petitioner, the withdrawal of Parole Violation Charges #4 and #5 effectively ". . . nullified the division of paroles [sic] agreement not to violate the petitioner for his lapse into drug use . . ."

Ignoring, for argument sake, the fact that the record herein includes no evidence of any binding "agreement" whereby the Division was to forego the issuance of parole

violation charges with respect to the three incident of petitioner's drug use, the argument advanced by petitioner in his Reply simply goes beyond the scope of the single claim set forth in the underlying Amended Petition which, as noted previously, was dated and verified prior to the contested final parole revocation hearing of November 19, 2010. To the extent petitioner sought to challenge the evidentiary or legal basis of the ALJ's determination sustaining Parole Violation Charges #1, #2 and #3 despite the prior withdrawal of Parole Violation Charges #4 and #5, he could only do so, after exhausting administrative remedies through the administrative appeals process, by the filing of a petition articulating such a challenge

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:** May 20, 2011 at  
Indian Lake, New York

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S. Peter Feldstein  
Acting Justice, Supreme Court