STATE OF NEW YORK
SUPREME COURT **COUNTY OF FRANKLIN**

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In the Matter of the Application of
MILTON SANCHEZ,#12-A-5654,
Petitioner,

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

DECISION AND JUDGMENT
RJI #16-1-2013-0050.18
INDEX # 2013-133
ORI # NY016015J

-against-

BRUCE S. YELICH, Superintendent,
Bare Hill Correctional Facility,
Respondent.

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This proceeding was originated by the Petition for a Writ of Habeas Corpus of Milton Sanchez, verified on February 1, 2013 and filed in the Franklin County Clerk's office on February 7, 2013. Petitioner, who was an inmate at the Bare Hill Correctional Facility when this proceeding was commenced but is now held at the Willard Drug Treatment Campus, is challenging his continued incarceration in the custody of the New York State Department of Corrections and Community Supervision. More specifically, petitioner is challenging the failure of DOCCS officials to timely transfer him to Willard after a sentence of parole supervision (Criminal Procedure Law §410.91) was allegedly imposed. The Court issued an Order to Show Cause on February 25, 2013 and has received and reviewed respondent's Return, dated April 5, 2013, as well as petitioner's Reply thereto, dated April 14, 2013 and filed in the Franklin County Clerk's office on April 18, 2013.

On December 13, 2012 petitioner was sentenced in Suffolk County Court upon his convictions of crimes alleged in two underlying indictments. With respect to the charges set forth in indictment 145-2012, petitioner was sentenced to four concurrent indeterminate sentences of 1⅓ to 4 years each upon his convictions of the crimes of

Criminal Possession of Stolen Property 4° (two counts) and Illegal Possession of a Vehicle Identification Number (two counts). The Sentence and Commitment Order generated in connection with the convictions under indictment 145-2012 specified that the resulting merged sentence was to be executed as a sentence of parole supervision pursuant to Criminal Procedure Law §410.91.

The sentencing record with respect to indictment 2102-2012 is problematic. The transcript of the sentencing proceedings indicates that petitioner was sentenced to three definite terms of 1 year each upon his convictions of the crimes of Criminal Possession of Stolen Property 4° (two counts) and Aggravated Unlicensed Operation of a Motor Vehicle 3°. According to the transcript, such sentences were directed " . . . to run concurrent with the previously imposed sentences [indictment 145-2012] and with each other." Notwithstanding the foregoing, the original Sentence and Commitment Order generated in connection with the convictions under indictment 2102-2012 specified three concurrent indeterminate sentences of 1 to 3 years each, to run concurrently with the sentences imposed in connection with indictment 145-2012. The original Sentence and Commitment Order, however, made no mention of CPL §410.91.

Petitioner was received into DOCCS custody with the two Sentence and Commitment Orders on December 21, 2012. At that time DOCCS officials properly determined that petitioner was ineligible for a Willard placement because the Sentence and Commitment Order issued in connection with the convictions under indictment 2102-2012 specified indeterminate sentences of imprisonment but did not direct that they be executed as a sentences of parole supervision pursuant to CPL §410.91.

On January 18, 2013 an Amended Sentence and Conviction Order was issued in connection with the convictions under indictment 2102-2012. The amended order specified the imposition of three definite sentences of 1 year each, to run concurrently

with the sentences associated with the charges set forth in indictment 145-2012. Although the amended order did not mention CPLR §410.91, this Court notes that a sentence of parole supervision under that statute is only permissible with respect to certain indeterminate and/or determinate sentences. In addition, it would appear that the definite sentences imposed in connection with the charges set forth in indictment 2102-2012 would be satisfied by petitioner's service of the merged indeterminate sentence imposed in connection with the charges set forth in indictment 145-2012. *See* Penal Law §70.35.

The record before this Court is not clear as to precisely when DOCCS officials were provided with a copy of the Amended Sentence and Commitment Order of January 18, 2013. In paragraph seven of respondent's Return the following is asserted:

> "While the amended Sentence & Commitment is dated January 18, 2013, DOCCS did not receive the same until some time between January 24, 2013 and January 31, 2013. On January 24, 2013, DOCCS contacted the sentencing Court to inquire about the mistake on the original Sentence & Commitment. After receipt of the amended Sentence & Commitment, DOCCS made a notation on the same: '1/31/13 cc: p, g, offender.' Thus, it must follow that DOCCS was not in possession of the amended Sentence & Commitment until at least January 24, 2013 and no later than January 31, 2013."

Although the respondent's Return does not specify precisely how DOCCS officials became aware of the "mistake" in the original Sentence and Commitment Order associated with the charges set forth in indictment 2102-2012, this Court finds it significant that DOCCS officials were so aware. The respondent, moreover, concedes, at least tacitly, that petitioner should have been transferred to Willard immediately upon receipt of the amended order. Nevertheless, petitioner was not transferred to Willard until April 4, 2013. While acknowledging that petitioner's detention at the Bare Hill Correctional Facility from the time the Amended Sentence and Commitment Order was

received until April 4, 2013 was "an unfortunate oversight by DOCCS," respondent takes the position that the length of time involved (63 to 70 days) is not unreasonable under the circumstances and that petitioner is therefore would not entitled to immediate release to community parole supervision but, rather, only to an order directing his immediate transfer to Willard. Since the petitioner has already been transferred to Willard, respondent argues that the petition should be dismissed as moot.

Under the relevant provisions of CPL §410.91(1), " . . . if the court directs that the sentence be executed as a sentence of parole supervision, it shall remand the defendant for immediate delivery to a reception center operated by the state department of corrections and community supervision, in accordance with section 430.20 of this chapter and section six hundred one of the correction law, for a period not to exceed ten days. An individual who receives such a sentence shall be placed under the immediate supervision of the department of corrections and community supervision and must comply with the conditions of parole, which shall include an initial placement in a drug treatment campus [Willard] for a period of ninety days at which time the defendant shall be released therefrom."

Petitioner was received into DOCCS custody on December 21, 2012, eight days after he was sentenced. There are, therefore, no timeliness concerns with respect to petitioner's initial delivery from local to State DOCCS custody. As noted previously, moreover, it is clear that DOCCS officials did not err in determining that petitioner could not be transferred to Willard prior to the issuance/receipt of the Amended Sentence and Commitment Order. This Court, however, has grave concerns with respect to the essentially unexplained length of time that elapsed between such receipt (as early as January 24, 2013 but no later than January 31, 2013) and petitioner's transfer to the Willard Drug Treatment Campus more than two months later, on or about April 4, 2013.

Under these circumstances the Court finds that petitioner is entitled to immediate release from Willard to community-based parole supervision. *See People ex rel Loster v. Willard Drug Treatment Campus*, 11 Misc 3d 1088(A), 2006 NY Slip Op 50766(U). While this Court might have more flexibility to determine the reasonableness of pre-Willard confinement in DOCCS custody, without direct reference to the time frames set forth in CPL §410.91, where the Willard placement is directed as part of a "revoke and restore" disposition at a final parole revocation hearing (*see* 9 NYCRR §8005.20(c)(2)), petitioner's pre-Willard confinement in the case at bar is subject to the time frames set forth in CPL §410.91(1).

Based upon all of the above, it is, therefore, the decision of the Court and it is hereby

ADJUDGED, that the petition is granted, without costs or disbursements, but only to the extent that the New York State Department of Corrections and Community Supervision is directed to release petitioner from the Willard Drug Treatment Campus program to community-based parole supervision, within two (2) weeks of the date of this Judgment, subject to such conditions of release as are deemed appropriate.

DATED: June 10, 2013 at
Indian Lake, New York

S. Peter Feldstein
Acting Supreme Court Judge