

People v Warden

2013 NY Slip Op 31549(U)

June 14, 2013

Supreme Court, Kings County

Docket Number: 03279/2013

Judge: Miriam Cyrulnik

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM PART 33

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THE PEOPLE OF THE STATE OF NEW YORK ex rel.
TRAVIS COOK, Warrant # 655834, BC #141-12-13973,
NYSID #9625398-L,

Petitioner,

-against-

WRIT OF HABEAS CORPUS
Index No. 3279/2013

WARDEN, Brooklyn Detention Complex,
NYS Department of Corrections and Community Service,

Respondents

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Miriam Cyrulnik, J.S.C.:

Petitioner moves for a Writ of Habeas Corpus challenging the legality of his continued detention. He seeks an order vacating, with prejudice, the parole violation warrant lodged against him and his immediate release from the custody of the respondent. Respondent opposes. In determining this motion, the court has reviewed petitioner's Petition for a Writ of Habeas Corpus, respondent's Affirmation in Opposition and petitioner's Reply Affirmation.

Petitioner argues that, among other errors, he was deprived of due process at his final parole hearing, which took place over several dates between November 1, 2012 and January 4, 2013. Petitioner asserts that improper communication between respondent NYS Department of Corrections and Community Service (hereinafter DOCCS) and the Chief Administrative Law Judge (hereinafter CALJ) resulted in the unnecessary recusal of the presiding Administrative Law Judge and the substitution of the CALJ. Petitioner further asserts that the rulings of the CALJ were illegal and prejudicial and deprived him of his due process rights, requiring vacatur of the parole warrant and his release from custody.

Respondent argues, as a threshold matter, that petitioner is barred from moving for habeas corpus relief because he has not exhausted all available administrative remedies and because the granting of the writ would not result in his immediate release from custody; petitioner has a pending criminal case in Kings County Criminal Court. In the alternative, respondent argues that the time assessment imposed upon petitioner was not excessive, illegal or arbitrary given that petitioner is a “Category 1” parole violator; that petitioner’s due process rights were not violated; and that the only relief available to petitioner is a new hearing on the sole issue of the time assessment.

The court will consider the procedural issues first.

It is well-settled that habeas corpus relief is unavailable where a petitioner has failed to exhaust his administrative remedies and errors claimed by the petitioner could have been addressed by administrative appeal¹ (*see People ex rel. Charleston v. N.Y.S. Division of Parole*, 280 AD2d 348 [1st Dept 2001]; *People ex rel. Victory v. Herbert*, 277 AD2d 933 [4th Dept 2000], *lv denied* 96 NY2d 705 [2001]; *People ex rel. Davis v. NYS Board of Parole* [3d Dept 1999], *lv denied* 93 NY2d 819 [1999]; *People ex rel. Vazquez v. Travis*, 236 AD2d 745 [3d Dept 1997], *appeal dismissed* 91 NY2d 847 [1997]).

Furthermore, the appellate courts have consistently held that a petitioner’s assertion of constitutional claims in support of habeas corpus relief does not automatically entitle him to exemption from the requirement that he exhaust all administrative remedies (*see People ex rel. Pettijohn v. LaClair*, 78 AD3d 1395 [3d Dept 2010]; *People ex rel. Giguere v. Barkley*, 70 AD3d 1321 [4th Dept 2010], *lv denied* 14 NY3d 710 [2010]; *People ex rel. Epps v. Warden, Rikers Island*

¹ The court notes that, although petitioner’s papers are silent as to his administrative appeal, his Notice of Appeal of the Chief Administrative Law Judge’s decision was filed with DOCCS on February 12, 2013. Petitioner’s appeal must be perfected by June 12, 2013 (*see* DOCCS Acknowledgment of Notice of Appeal attached to respondent’s Affirmation in Opposition as Exhibit “N”).

Correctional Facility, 46 AD3d 352 [1st Dept 2007], *lv denied* 10 NY3d 707 [2008]; *People ex rel. Bratton v. Mellas*, 28 AD3d 1207 [4th Dept 2006], *lv denied* 7 NY3d 705 [2006]; *People ex rel. Wethington v. Beaver*, 306 AD2d 945 [4th Dept 2003]; *People ex rel. McDaniel v. Travis*, 288 AD2d 940 [4th Dept 2001], *lv denied* 97 NY2d 613 [2002]; *People ex rel. Scott v. Babbie*, 248 AD2d 909 [3d Dept 1998], *lv denied* 92 NY2d 803 [1998]).

Finally, even where a petitioner’s constitutional claim “might otherwise ‘justify a departure from the general rule requiring exhaustion of administrative remedies’..., habeas corpus relief nonetheless is unavailable as such claims, even if meritorious, would not entitle petitioner to immediate release”(citations omitted) (*People ex rel. Gonzalez v. Wayne County Sheriff*, 96 AD3d 1698, 1699 [4th Dept 2012], *lv denied* 2013 N.Y. Slip Op. 71639 [April 25, 2013]; *see also People ex rel. D’Adamo v. Artus*, 85 AD3d 1459 [3d Dept 2011], *lv denied* 17 NY3d 714 [2011]; *People ex rel. Pettijohn v. LaClair*, 78 AD3d 1395 [2010], *supra*; *People ex rel. Ariola v. Sears*, 53 AD3d 1001 [3d Dept 2008], *lv denied* 11 NY3d 710 [2008]; *People ex rel. Wethington v. Beaver*, 306 AD2d 945 [2003], *supra*; *People ex rel. Greany v. Travis*, 269 AD2d 666 [3d Dept 2000], *lv denied* 94 NY2d 765 [2000]; *People ex rel. Joyce v. N.Y.S. Division of Parole*, 240 AD2d 638 [3d Dept 1998]; *People ex rel. Scott v. Babbie*, 248 AD2d 909 [1998], *supra*).

The crux of petitioner’s argument is that his constitutional claim enables him to forego the administrative appeal process to seek habeas corpus relief. Petitioner primarily relies upon *Watergate II Apts. v. Buffalo Sewer Auth.* (46 NY2d 52 [1978]), which, while acknowledging the requirement that a party exhaust administrative appeals before resorting to judicial intervention, recognized a qualification in the event of constitutional challenge. This qualification, however, is not absolute and the case law related to parole revocation cited by petitioner does not establish that the mere making of a constitutional claim automatically entitles him habeas corpus relief.

In the case at bar, petitioner did not exhaust his administrative remedies before moving for habeas corpus relief. Although a constitutional claim is among petitioner's asserted grounds for such relief, he has failed to demonstrate that it cannot be addressed in the course of an administrative appeal. In fact, as petitioner has filed a Notice of Appeal with DOCCS, petitioner's motion may properly be denied (*see People ex rel. Pettijohn v. LaClair*, 78 AD3d 1395 [2010], *supra*; *People ex rel. Ariola v. Sears*, 53 AD3d 1001 [2008], *supra*; *People ex rel. Greany v. Travis*, 269 AD2d 666 [2000], *supra*).

Finally, it is undisputed that, in addition to this parole violation proceeding, petitioner has a pending matter in Kings County Criminal Court.² Bail was set at \$5000 bond over \$2500 cash and he remains incarcerated in that case. The case law unequivocally requires that petitioner be eligible for immediate release if habeas corpus relief is to be granted. According to petitioner, he has chosen not to pay the bail in light of his incarceration on the parole violation. Despite petitioner's claim that the bail amount is small and that he can pay it at will, it is clear that granting habeas corpus relief will not result in petitioner's immediate release from custody. The court cannot consider petitioner to be without custodial hold, based upon his bare assertion that he can and will pay the Criminal Court bail.

Accordingly, in light of petitioner's failure to exhaust the administrative remedies available to him; his failure to demonstrate that his legal and constitutional claims cannot be addressed by the administrative appeal of which he has given notice; and the fact that habeas corpus relief will not entitle him to immediate release from custody, petitioner's motion is denied.

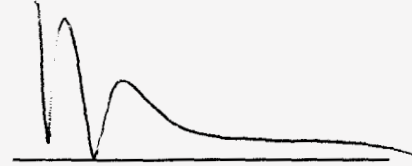
Having denied petitioner's motion on procedural grounds, the court need not address

² The pending Criminal Court matter, Docket No. 2012KN084216, stems from petitioner's October 10, 2012 arrest. Petitioner is scheduled to appear in DV1 on July 11, 2013.

petitioner's substantive claims.

This constitutes the Decision and Order of the Court.

Dated: June 14, 2013

A handwritten signature in black ink, consisting of several loops and a long horizontal tail, positioned above a horizontal line.

J.S.C.

ENTERED
JUN 13 2013
NANCY T. SUNSHINE
COUNTY CLERK