Matter of Guillory v Fischer
2013 NY Slip Op 32633(U)
September 20, 2013
Supreme Court, Albany County
Docket Number: 1646-13
Judge: Jr., George B. Ceresia

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In The Matter of PATRICK GUILLORY,

Petitioner,

-against-

BRIAN FISCHER,

Respondents,

For A Judgment Pursuant to Article 78
of the Civil Practice Law and Rules.

Supreme Court Albany County Article 78 Term
Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding
RJI # 01-13-ST4532 Index No. 1646 -13

Appearances: Patrick Guillory
Inmate No. 09-B-0714
Petitioner, Pro Se
Wyoming Correctional Facility
3203 Dunbar Road
P.O. Box 501
Attica, New York 14011-0501

Eric T. Schneiderman
Attorney General
State of New York
Attorney For Respondent
The Capitol
Albany, New York 12224
(Colleen D. Galligan,
Assistant Attorney General
of Counsel)

DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

The Interstate Agreement On Detainers Act (see Criminal Procedure Law ["CPL"] § 580.20; 18 USC Appendix 2), contains a procedure which, as relevant here, enables an inmate incarcerated in one state, who has a detainer warrant lodged against him from a sister

state, to be brought to trial on the criminal charges in the sister state. The purpose of the enactment is to promote speedy trials, to "encourage the expeditious and orderly disposition of such charges", and aid in prisoner treatment and rehabilitation (CPL § 580.20, art I). The procedure requires the inmate incarcerated in the what is referred to as the "sending state" to cause a notice to be sent to the prosecutor in the "receiving state" (see CPL § 580.20 art III [a]). The notice must indicate the inmate's place of imprisonment, and make a request for final disposition of the criminal charges (id.). Thereafter, the receiving state has 180 days to acquire custody of the inmate, transport the inmate to the receiving state, and bring the inmate to trial (id.).

The petitioner is an inmate currently housed in Wyoming Correctional Facility. In 2009 the petitioner, then housed at Mid-State Correctional Facility, learned that a detainer warrant had been lodged against him in this state, arising from criminal charges pending against him in the State of Minnesota. The petitioner contacted Carol J. Hayes, the Inmate Records Coordinator of Mid-State Correctional Facility, who on June 29, 2009 forwarded petitioner's Notice of Request for Trial, Certificate of Inmate Status and Offer to Deliver Temporary Custody to the Hennepin County, Minnesota, District Attorney (see id.). It does not appear that Minnesota took any steps to bring the petitioner to trial on the pending charges. Thereafter, on March 11, 2010 the petitioner submitted a request to the respondent to remove the Minnesota detainer warrant from his inmate record. In support of his request, the petitioner enclosed a letter dated June 2, 2004 from Patricia M. Olive, Senior Clerk of District Court of Minnesota which recited:

"I have looked up your name on our computer system. The only

> thing you have is an extradition to Texas, in October 2002. There is no Theft anywhere in our system. Unless you went under a different name, you are not in our system"

The petitioner also included correspondence from Hennepin County Assistant District Attorney Judith L. Cole, dated June 13, 2008 which recited:

> "You recently wrote a letter to our office referencing a Theft in the Third Degree. We show nothing in the Hennepin County court records regarding a theft. The only records are for a fugitive from justice complaint which brought about your extradition to the State of Texas in 2002 and a speeding ticket in 2001. You do not reference any case number or specific police department. Further, Minnesota law does not have an offense with the title Theft in the Third Degree."

In response to petitioner's March 11, 2010 request for removal of the detainer, IRC Carol J. Hayes and Clerk Susan Woodman conducted an investigation into petitioner's claim that there was no Minnesota warrant pending against him. On August 27, 2010 the Records Department at Mid-State Correctional Facility received a letter from Assistant Hennepin County Attorney, Judith L. Cole dated August 23, 2010. In that letter Ms. Cole enclosed copies of two warrants related to a Timothy Hunter a/ka/a Patrick Guillory. Assistant County Attorney Cole explained that both warrants relate to the same offense, a burglary at Wixon Jewelers in Bloomington, Minnesota on the evening of January 3, 2009. According to Ms. Cole, the warrants note that the glass on the front door of the jewelry store was smashed and that there appeared to be blood on the broken glass. The first warrant, dated June 29, 2005 was issued to a John Doe. The second warrant, dated April 10, 2007, Ms. Cole states ,was issued to petitioner Patrick Guillory under his alias Timothy Hunter. The second warrant notes that the petitioner was identified using DNA from the blood he left behind on broken

Directive 2010, art VI, B). "If the inmate still disputes the accuracy or completeness of the information after investigation and determination, the inmate may appeal the determination of the custodian to the Inspector General, Department of Correctional Services, State Campus, Building 2, Albany, NY 12226." (7 NYCRR § 5.52; see also DOCCS Directive 2010, art VI, B).

As the respondent points out, the petitioner does not allege in the petition that he exhausted his administrative remedies. "[I]t is hornbook law that one who objects to the act of an administrative agency must exhaust available administrative remedies before being permitted to litigate in a court of law" (Watergate v Buffalo Sewer, 46 NY2d 52, 57 [1978], citing Young Men's Christian Assn. v Rochester Pure Waters Dist., 37 NY2d 371, 375; see also Town of Oyster Bay v Kirkland, 19 NY3d 1035, 1038 [2012]; Matter of East Lake George House Marina v Lake George Park Commission, 69 AD3d 1069, 1070 [3rd Dept., 2010]; Matter of Connor v Town of Niskayuna, 82 AD3d 1329, 1330-1331 [3d Dept., 2011]; Matter of Connerton v Ryan, 86 AD3d 698, 699-700 [3d Dept., 2011]). "This doctrine furthers the salutory goals of relieving the courts of the burden of deciding questions entrusted to an agency (see, 1 NY Jur, Administrative Law, §5 pp 303-304), preventing premature judicial interference with the administrators' efforts to develop, even by some trial and error, a co-ordinated, consistent and legally enforceable scheme of regulation and affording the agency the opportunity, in advance of possible judicial review, to prepare a record reflective of its 'expertise and judgement'" (Watergate v Buffalo Sewer, supra, citing, Matter of Fisher [Levine], 36 NY2d 146, 150, and 24 Carmody-Wait 2d, NY Prac, §145:346). As stated in Watergate v Buffalo Sewer (supra), the exhaustion rule need not be

followed in certain limited circumstances, such as where an agency's action is challenged as either unconstitutional or wholly beyond its grant of power, where resort to an administrative remedy would be futile, or where its pursuit would cause irreparable injury (see, id.).

In paragraph 10 of the petition the petitioner alleges that he first learned that the Minnesota detainer warrant was still included in his inmate record on April 5, 2013. The petitioner would have had no reason to take an appeal of the determination of IRC Carol Hayes which removed the Minnesota warrant from his inmate record. However once the warrant was re-entered into his inmate record, he was required to submit an application to IRC in order to initiate the administrative process set forth in 7 NYCRR Part V. In this instance, the petition does not allege that the petitioner submitted a request pursuant to 7 NYCRR § 5.50 to the IRC of the Greene Correctional Facility[1]. Moreover, in paragraph 12 of the petition the petitioner indicates that no administrative appeal has been taken under 7 NYCRR § 5.51. In this respect, because the petition fails to allege that the petitioner exhausted his administrative remedies, the petition fails to state a cause of action.

The specific relief which the petitioner seeks is an order directing the respondent to remove from his inmate record the warrant of the State of Minnesota and any notation that Greene Correctional Facility will contact the State of Minnesota upon his release. As the respondent points out, the relief sought by petitioner is in the nature of mandamus to compel. The Court is mindful that mandamus is an extraordinary remedy, available, as against an administrative officer, only to compel the performance of a duty enjoined by law (see,

---

[1]Greene Correctional Facility is the Facility at which the petitioner was housed at the time he commenced the instant CPLR Article 78 proceeding.

Cuomo, 61 NY2d 525, 539, 540). It is only appropriate where the right to relief is "clear" and the duty sought to be enjoined is performance of an act commanded to be performed by law, purely ministerial and involving no exercise of discretion (Mtr Hamptons Hosp v.Moore,52 NY2d 88, 96 [1981]; Matter of Legal Aid Socy. Of Sullivan County v Scheinman, 53 NY2d 12, 16; Matter of Maron v Silver, 58 AD3d 102, 124-125 [3rd Dept., 2008], lv to app denied 12 NY3d 909). "'The general principle [is] that mandamus will lie against an administrative officer only to compel him [or her] to perform a legal duty, and not to direct how he [or she] shall perform that duty'" (Klostermann v Cuomo, supra, p. 540, quoting People ex rel. Schau v McWilliams, 185 NY 92, 100). The Court finds that review and correction of inmate records involves the exercise of discretion, and therefore mandamus does not lie.

Lastly, as the respondent points out, CPL § 580.20 recites in art V (c)

> "If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, *the appropriate court of the jurisdiction where the indictment, information or complaint has been pending* shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect." (CPL § 580.20, emphasis supplied)

Thus, only a court in the receiving state may issue an order dismissing the charges pending in the receiving state (CPL § 580.20, art V [c]); People ex rel. Kinkade v Finnerty, 128 Misc2d 515, 518 [Suffolk County Court, 1985]). Until that occurs, "the continued subsistence of properly attested indictments must be assumed by the courts of the sending

state" (People ex rel. Kinkade v Finnerty, supra, 518). In this respect, because there is no evidence of a final disposition of the criminal charges in Minnesota, the Court finds that the petition fails to state a cause of action.

For all of the foregoing reasons, the Court concludes that the petition must be dismissed.

Accordingly it is

ORDERED and ADJUDGED, that the petition be and hereby is dismissed.

This shall constitute the decision, order and judgment of the Court. The original decision/order/judgment is returned to the attorney for the respondents. All other papers are being delivered by the Court to the County Clerk for filing. The signing of this decision/order/judgment and delivery of this decision/order/judgment does not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry and notice of entry.

ENTER

Dated: September 20, 2013
Troy, New York

George B. Ceresia, Jr.
Supreme Court Justice

Papers Considered:

1. Order To Show Cause dated March 28, 2013, Petition, Supporting Papers and Exhibits
2. Answer Dated July 19, 2013, Supporting Papers and Exhibits
3. Affirmation of Colleen D. Galligan, Assistant Attorney General dated July 19, 2010[2]
4. Petitioner's Reply sworn to August 21, 2013

[2]An obvious typo with respect to the date.