

Matter of Munroe v Rabsatt

2014 NY Slip Op 30351(U)

January 27, 2014

Sup Ct, St. Lawrence County

Docket Number: 142312

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
IAN MUNROE, #00-A-3183,

Petitioner,

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

DECISION AND JUDGMENT

RJI #44-1-2013-0772.47

INDEX # 142312

ORI # NY044015J

-against-

CALVIN RABSATT, Superintendent, Riverview
Correctional Facility, and **TINA STANFORD**,
Chairwomen, New York State Board of Parole,
Respondents.

X

This proceeding was originated by the Petition for Writ of Habeas Corpus of Ian R. Munroe, verified on October 28, 2013 and filed in the St. Lawrence County Clerk's Office on October 30, 2013. Petitioner, who is an inmate at the Riverview Correctional Facility, is challenging his continued incarceration in the custody of New York State Department of Corrections and Community Supervision. The Court issued an Order to Show Cause on November 4, 2013 and has received and reviewed respondents' Answer and Return, verified on December 12, 2013, as well as petitioner's Reply thereto, filed in the St. Lawrence County Clerk's office on December 19, 2013.

On June 19, 2000 petitioner was sentenced in Clinton County Court to a controlling aggregated determinate term of 15 years upon his convictions of the crimes of Sexual Abuse 1^o (11 counts), Sodomy 1^o (10 counts), Rape 1^o and Endangering the Welfare of a Child. No period of post-release supervision was imposed at the time of sentencing and by order dated June 30, 2011 the Clinton County Court denied the People's request for the belated imposition of a period of post-release supervision.

Petitioner was received into DOCCS custody on June 20, 2000 certified as entitled to 251 days of jail time credit. At that time DOCCS officials calculated the original maximum expiration and conditional release dates of his determinate sentence(s) as October 8, 2014 and August 16, 2012, respectively. Petitioner was conditionally released from DOCCS custody to parole supervision on August 16, 2012 but was subsequently declared delinquent as of August 27, 2012. As of that delinquency date petitioner still owed 2 years, 1 month and 11 days to the originally calculated October 8, 2014 maximum expiration date of the underlying determinate sentence(s). He was ultimately returned to DOCCS custody as a conditional release violator on November 8, 2012, credited with 71 days of parole jail time. Running 2 years, 1 month and 11 days from November 8, 2012 (the date petitioner was returned to DOCCS custody), less 71 days of parole jail time, DOCCs officials now calculate the adjusted maximum expiration and conditional release dates of petitioner's 2000 determinate sentence(s) as October 8, 2014 and June 18, 2014, respectively.

In this proceeding petitioner argues, in effect, that since no period of post-release supervision was ever imposed in connection with his 2000 determinate sentence(s), he was illegally subjected to parole supervision after meeting the criteria for receiving his full good time allowance and being conditionally released from DOCCS custody. According to petitioner, he “. . . should have been released on Aug 16 2012 with no form of supervision/parole. I was forced to stay in New York against my will on supervision by the Dept of Parole, or stay in prison for another 2¹/₄ years. Subsequently my violation, and revoked supervision is illeagle [sic].” Petitioner's arguments to the contrary notwithstanding, the Court finds no basis to direct petitioner's release from incarceration or to disturb DOCCS's current calculation of his maximum expiration and conditional release dates, as detailed above.

Penal Law §70.40(1)(b) provides, in relevant part, as follows: “A person who is serving one or more than one . . . determinate sentence of imprisonment shall, if he or she so requests, be conditionally released from the institution in which he or she is confined when the total good behavior time allowed to him or her, pursuant to the provisions of the correction law [1], is equal to the unserved portion of his or her term . . . The conditions of release, including those governing post-release supervision, shall be such as may be imposed by the state board of parole in accordance with the provisions of the executive law. Every person so released shall be under the supervision of the state department of corrections and community supervision for a period equal to the unserved portion of the term . . . or period of post-release supervision.”

Although determinate sentences were first introduced into the New York Penal Law as part of the Sentencing Reform Act of 1995, that legislation did not include any provision for additional periods of post-release supervision as part of or in conjunction with the imposition of determinate sentences. Penal Law §70.45, relating to post-release supervision, was added by L 1998, ch 1, §15 and was made effective with respect to determinate sentences imposed in connection with criminal offenses committed on or after September 1, 1998. *See* L 1998, ch 1, § 44. The original version of Penal Law §70.45(1), which was still in effect at the time of petitioner’s 2000 sentencing, provided, in relevant part, that “[e]ach determinate sentence also includes, as a part thereof, an additional period of post-release supervision.” Following the enactment of Penal Law §70.45, however, it was apparently not at all unusual for courts to impose determinate sentences on defendants for crimes committed on or after September 1, 1998 without

¹ Correction Law §803(1)(c) provides that “[a] person serving a determinate sentence of imprisonment may receive time allowance against the term of his or her sentence not to exceed one-seventh of the term imposed by the Court.”

pronouncing the imposition of a period of post-release supervision. DOCCS (then DOCS) officials, in turn, calculated such defendants' sentences as including the statutorily-mandated period of post-release supervision.

Finding, in effect, that Penal Law §70.45 automatically imposed the period of post-release supervision even if not stated by the sentencing court, the Appellate Division, Third Department, initially upheld the DOCCS practice of administratively adding the period of post-release supervision to the judicially-imposed determinate sentence. See *Garner v. New York State Department of Correctional of Services*, 39 AD3d 1019 and *Deal v. Goord*, 8 AD3d 769. On April 29, 2008, however, the appellate-level decision in *Garner* was reversed by the New York State Court of Appeals. *Garner v. New York State Department of Correctional Services*, 10 NY3d 358, *rev'g* 39 AD3d 1019. Citing *People v. Sparber*, 10 NY3d 457, the Court of Appeals in *Garner* found “. . . that the sentencing judge - and only the sentencing judge - is authorized to pronounce the PRS [post-release supervision] component of a defendant's sentence.” 10 NY3d 358 at 362.

In order to address the upheaval and uncertainty that followed the decision of the Court of Appeals in *Garner*, Penal Law §70.85 and Correction Law §601-d were added by L 2008, ch 141, §§2 and 5, effective June 30, 2008. Correction Law §601-d established a procedural mechanism whereby certain DOCCS inmates subject to determinate sentences without judicially-imposed periods of post-release supervision² could be returned to court for re-sentencing. Under the provisions of Penal Law §70.85, however, the sentencing court, with the consent of the district attorney, was authorized to “. . . re-impose the originally imposed determinate sentence of imprisonment without any term

² Correction Law §601-d was made applicable “. . . only to inmates in the custody of the commissioner [New York State Department of Correctional Services], and releasees under the supervision of the division of parole, upon whom a determinate sentence was imposed between September first, nineteen hundred ninety-eight, and the effective date of this section [June 30, 2008] . . .”

of post-release supervision, which then shall be deemed a lawful sentence.” The provisions of Penal Law §70.45(1) notwithstanding, it thus became statutorily permissible for some DOCCS inmates - like petitioner - to remain subject to determinate terms of imprisonment for crimes committed on or after September 1, 1998 without any additional periods of post-release supervision.

When petitioner was conditionally released from DOCCS custody on August 16, 2012 there was no pretense that he was being released to any Penal Law §70.45 period of post-release supervision. Rather, after serving six-sevenths of his 15-year determinate term, petitioner was conditionally released to parole supervision pending the originally-calculated October 8, 2014 maximum expiration date of his underlying determinate sentence(s). The Court finds such conditional release to be in full compliance with the previously-quoted provisions of Penal Law §70.40(1)(b). Upon an adjudicated violation of any condition(s) of his release, petitioner was properly subject to being returned to DOCCS custody as a conditional release violator, subject to the delinquent time assessment imposed, with his maximum expiration and conditional release dates adjusted in accordance with law.³ Although clearly in a different context, the Court of Appeals has recognized, in effect, that a judicially-imposed determinate term of imprisonment lacking a judicially-imposed additional period of post-release supervision should not be considered to be completed simply because the inmate serving such sentence is conditionally released from DOCCS custody after serving six-sevenths of the term of the

³ Since petitioner in the case at bar apparently received parole jail time credit covering the entire period of his delinquency, the maximum expiration date of his underlying determinate sentence(s) did not change from the originally calculated October 8, 2014 despite the conditional release violation. Subtracting 3 months and 20 days (1/7 of the 2 years, 1 month and 11 days owed by petitioner to the originally-calculated October 8, 2014 maximum expiration date as of the August 27, 2012 delinquency date) from the adjusted October 8, 2014 maximum expiration date, DOCCS officials properly calculated petitioner’s adjusted conditional release date as June 18, 2014.

judicially-imposed determinate sentence. *See People v. Lingle*, 16 NY3d 621, 631 n. This Court specifically rejects petitioner's untenable contention that upon reaching his conditional release date he was, under the facts and circumstances of this case, entitled to unconditional conditional release.

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: January 27, 2014 at
Indian Lake, New York

S. Peter Feldstein
Acting Supreme Court Judge