Matter of Muniz v Uhler
2014 NY Slip Op 33134(U)
February 2, 2014
Supreme Court, Franklin County
Docket Number: 2014-531
Judge: S. Peter Feldstein

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

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In the Matter of the Application of
ALBISO C. MUNIZ,#08-B-3028,
Petitioner,

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

DECISION, ORDER AND JUDGMENT
RJI #16-1-2014-0283.55
INDEX # 2014-531
ORI # NY016015J

-against-

DONALD G. UHLER, Superintendent,
Upstate Correctional Facility,
Respondent.

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This proceeding was originated by the Petition (denominated Writ of Habeas Corpus to Inquire for Writ of Habeas Corpus into the Cause of Detention) of Albiso C. Muniz, sworn to on July 7, 2014 and filed in the Franklin County Clerk's office on July 11, 2014. Petitioner, who was an inmate at the Upstate Correctional Facility but is now confined at the Woodbourne Correctional Facility, is challenging his continued incarceration in the custody of the New York State Department of Corrections and Community Supervision. The Court issued an Order to Show Cause on August 8, 2014 and has received and reviewed respondent's Return, including *in camera* materials, dated September 9, 2014 and supported by the Affirmation of Terrence X. Tracy, Esq., Counsel to the New York State Board of Parole, dated August 29, 2014 (hereinafter the Tracy Affirmation). The Court has also received and reviewed petitioner's Reply Addendum, sworn to on September 16, 2014 and received directly in chambers on September 23, 2014.

On October 21, 2014 Michael E. Cassidy, Esq., Prisoner's Legal Services of New York, entered his appearance on behalf of the petitioner[1]. A hearing, originally scheduled for October 28, 2014, was adjourned to October 31, 2014 pending settlement negotiations. On October 30, 2014 DOCCS officials transferred petitioner from the Upstate Correctional Facility (in Franklin County) to the Woodbourne Correctional Facility (in Sullivan County). The October 31, 2014 hearing was adjourned pending assessment of the impact of petitioner's transfer on this proceeding.

The Court has since received and reviewed respondent's Notice of Motion to Change Venue, supported by the Affirmation of Glen Francis Michaels, Esq., Assistant Attorney General, dated November 6, 2014. The Court also received and reviewed petitioner's opposing papers in the form of the Reply Affirmation of Michael E. Cassidy, Esq., dated November 12, 2014. By Letter Order dated November 14, 2014 the Court directed the litigants to submit additional materials with respect to one specific issue. In response thereto the Court has received and reviewed the Affirmation of Glen Francis Michaels, Esq., Assistant Attorney General, dated November 19, 2014, as well as the Reply Affirmation of Michael E. Cassidy, Esq., dated November 20, 2014.

On April 2, 2009 petitioner was sentenced in Chemung County Court, as a second felony offender, to a controlling determinate term of 7 years, with 5 years post-release supervision, upon his convictions of the crimes of Rape 2°, Petit Larceny and Criminal Mischief 4°. He was subsequently received into DOCCS custody and there is no dispute that the maximum expiration date of the 7-year determinate sentence was reached on July 2, 2014. Upon reaching the maximum expiration date of his determinate sentence

[1] By letter dated November 24, 2014 petitioner advised chambers that he " . . . would like to relieve Mr. Michael Cassidy and PLS from representing me." Notwithstanding the foregoing, the Court finds no reason to delay the issuance of this Decision, Order and Judgment.

petitioner was entitled to be released from DOCCS custody to post-release parole supervision, subject to conditions set forth by the New York State Board of Parole. *See* Penal Law §70.45(3). " . . . [N]otwithstanding any other provision of law, the board of parole may impose as a condition of post-release supervision that for a period not exceeding six months immediately following release from the underlying [determinate] term of imprisonment the person [post-release supervision releasee] be transferred to and participate in the programs of a residential treatment facility as that term is defined in subdivision six of section two of the correction law." Penal Law §70.45(3). Correction Law §2(6), in turn, defines a residential treatment facility (RTF) as "[a] correctional facility consisting of a community based residence in or near a community where employment, education and training opportunities are readily available for persons who are on parole or conditional release and for persons who are or who will soon be eligible for release on parole who intend to reside in or near that community when released." In this proceeding petitioner does not dispute the authority of the Board of Parole to mandate an RTF placement - in accordance with the above-quoted provisions of Penal Law §70.45(3) - as a condition of post-release supervision.

This proceeding was commenced on July 11, 2014 when the Petition of Albiso C. Muniz, sworn to on July 7, 2014, was filed in the Franklin County Clerk's office. *See* CPLR §304(a). At that time petitioner remained incarcerated in DOCCS custody at the Upstate Correctional Facility. The principal argument advanced in this proceeding is that such continued incarceration is unlawful since the July 2, 2014 maximum expiration date of petitioner's underlying determinate sentence had already passed.

After first asserting that the circumstances underlying petitioner's Rape 2° conviction subjected him to the provisions of Executive Law §259-c(14), the following is

alleged in paragraph 7 of the Tracy Affirmation, which was submitted in conjunction with respondent's September 9, 2014 Return:

> "Because Mr. Muniz was not able to propose a residence within the community that is outside of the Penal Law definition of 'school grounds' (Penal Law §220.00(14)) as the maximum expiration date of his sentence was approaching, on or about June 19, 2014 . . . [DOCCS] staff, on behalf of and pursuant to the delegation of the authority confirmed by Parole Board Chairwoman Tina M. Stanford . . . imposed a special condition pursuant to Penal Law §70.45(3) that directed Mr. Muniz's transfer to and participation in the programs of a residential treatment facility until such time as a residence has been approved and such address has been verified to be outside the Penal Law definition of school grounds."

Accordingly, in paragraph 8 of the Tracy Affirmation the following is asserted: " . . . [R]ecognizing that Mr. Muniz is now serving his period of post-release supervision [at the Upstate Correctional Facility], in accordance with Penal Law §70.45(3), DOCCS staff had furnished Mr. Muniz with the written conditions governing his post-release supervision . . . It cannot be said, therefore, that the petitioner's placement in a residential treatment facility is illegal or unlawful so as to allow for habeas corpus relief."

The previously-referenced October 30, 2014 transfer of petitioner from the Upstate Correctional Facility to the Woodbourne Correctional Facility rendered moot any issue as to whether or not the Upstate Correctional Facility qualified as an RTF so as to support petitioner's continued incarceration thereat as a condition of his post-release supervision. The Court notes that the Woodbourne Correctional Facility - unlike Upstate - is classified under DOCCS regulations as a medium security correctional facility to be used, *inter alia*, as a "residential treatment facility." 7 NYCRR §100.50(c)(2). Still unresolved at that time, however, was the issue of whether or not the Woodbourne Correctional Facility functioned as an RTF for petitioner on programmatic and/or geographic bases.

Turning to respondent's pending motion for a change in venue, the Court notes that CPLR §7004(c) provides, in relevant part, that " . . . [a] writ [of habeas corpus] to

secure the discharge of a person from a state institution shall be made returnable before a justice of the supreme court . . . being or residing within the county in which the person is detained . . ." Citing, *inter alia*, *Greene v. Supreme Court, State of New York, Westchester County, Special Term, Part I*, 31 AD2d 649, respondent argues that the transfer of petitioner from the Upstate Correctional Facility in Franklin County to the Woodbourne Correctional Facility in Sullivan County suspended the jurisdiction of this Court to continue the proceeding. Notwithstanding the foregoing, the respondent noted a "limited exception" to the *Greene* suspension of jurisdiction rationale that had been identified by this Court in *Chaney v. Evans*, 2013 NY Slip Op 31025(U). In *Chaney* there were no disputed issues of facts to be resolved and thus it was determined that there was no need for the production of Mr. Chaney at a hearing. In *Chaney* this Court went on to find as follows: "All pleadings have been fully submitted and no hearing is to be scheduled. All that remains is for the Court to issue its decision. Under such circumstances the Court finds that form would be elevated over substance, to the detriment of the petitioner, if the Court were to require the transfer of venue to Columbia County at this juncture. The Court, therefore, will consider the merits of the petition." (Footnote omitted).

In his motion papers the respondent argues that the facts and circumstances of this case are distinguishable from those in *Chaney*. In paragraphs 12, 15 and 16 of Assistant Attorney General Michaels' November 6, 2014 Supporting Affirmation, the following is asserted:

> "In this matter Petitioner is contending that he is being illegally held because Woodbourne CF [Correctional Facility] is a RTF 'in name only,' that it is too far from Bronx County [where petitioner ultimately intends to reside] to effectively provide the kinds of interaction with the community possible in a 'real RTF;' that it does not offer the kinds of programing that Petition Muniz needs to find a residence in the community and prepare for

> a transition to it; that it is just another medium security prison with inadequate access to the community . . . Mr. Cassidy disputes that the programing provided or available to Petitioner at Woodbourne qualifies Woodbourne as an RTF . . . Resolution of the matter requires not only the testimony of Petitioner but of persons familiar with programing at Woodbourne . . . Although the parties and Court have made good faith efforts to narrow the issues in this habeas corpus proceeding to ones of simply map-based geography, upon further consideration, DOCCS believes that it is appropriate to consider a wide range of factual matters in determining whether [the Woodbourne Correctional] [F]acility is in sufficient proximity to a releasee's intended residence to serve as an RTF. These include, *inter alia*, the availability of telephone, telefax, and other electronic services, transportation services available both publicly and from DOCCS, the residential goals of the releasee, etc. These factors, like programing, require both the presence of the Petitioner and testimony from DOCCS officials and others familiar with Woodbourne."

In petitioner's opposing papers counsel asserts that at least from a geographic standpoint no fact-finding hearing is required. Emphasizing that portion of the statutory definition of an RTF (Correctional Law §2(6)) which specifies, in effect, that an RTF must be "in or near" the community where the releasee intends to reside, Mr. Cassidy argues as follows in paragraphs 10, 15 and 16 of his November 12, 2014 Reply Affirmation:

> "As noted during the October 30 conference call with the Court, the facts are undisputed that Mr. Muniz is from the Bronx and intends to return to the Bronx and that Woodbourne cannot be said to be anywhere 'in or near that community.' On that basis alone, petitioner maintains, Woodbourne may not serve as a statutorily-compliant RTF; Woodbourne is not a 'real' or legitimate RTF within the clear meaning of the statutes, as to Mr. Muniz specifically . . . Certainly there are phones available at Woodbourne as there are at every other prison in this state. Availability of all the phones in the world, not to mention every possible and conceivable type of other electronic devices or services, cannot magically transform Woodbourne into a geographically appropriate facility with respect to proximity to the Bronx within the meaning of the statute, and neither can the 'transportation services available' when the reference point is a community over 100 miles away; such devices or any transportation services simply cannot make Woodbourne 'a community based residence in or near a community where employment, educational and training opportunities are readily available' and which is 'in or near <u>that</u> community' to which Mr. Muniz intends to return when released . . . On this basis alone, this Court can and should order that Woodbourne is not a legitimate RTF in conformity with the

> statutory definition and requirements as to Mr. Muniz., and that DOCCS must therefore immediately transfer him from Woodbourne. The Court should further direct that if DOCCS wishes to continue to require that he reside in an RTF, that they must transfer him to one that is, in the first instance, geographically appropriate within the meaning of the statute; in this case, one that is 'in or near' the Bronx."

Counsel for the petitioner thus invites the Court to determine, without a hearing, that even if the Woodbourne Correctional Facility meets all programmatic requirements to function as an RTF it cannot, from a geographic standpoint, lawfully function as a RTF for the petitioner, who intends to reside in Bronx County. Taking this argument to its logical end, the Court would only need conduct a fact finding hearing with respect to the programmatic sufficiency of the Woodbourne RTF if it first determined that the Woodbourne RTF met the geographic-related statutory requirements with respect to the Petitioner.

The term "near" - as it relates to the proximity of an RTF to the community where an individual in petitioner's position ultimately intends to reside - is not specifically defined in Correction Law §2(6) or in departmental regulations. In this regard the Court notes that Correction Law §94, which authorizes, in effect, the utilization of a county jail as an RTF, specifically limits such authorization to circumstances where the inmate/releasee " . . . has resided or was employed or has dependents or parents who reside in the county, or in a county that is contiguous to the county, in which the institution [county jail] to which he would be transferred is located . . ." Correction Law §94(1)(a). Clearly the legislature could have similarly specified that a DOCCS facility RTF must be located in the county where a releasee intends to reside, or in an adjourning county. Notwithstanding the legislature's failure to do so and notwithstanding the legislature's utilization of the non-specific term "near," the Court finds that it is not precluded from determining, as a matter of law and without the benefit of a fact finding

hearing, that a particular DOCCS facility RTF is not sufficiently "near" to a prospective releasee's intended community of residence so as to preclude geographic compliance with the provisions of Correction Law §2(6).

Correction Law §73(3) mandates that every inmate - or any person on community supervision (*see* Correction Law §73(10) - transferred to a RTF shall be assigned a "specific program" directed toward his/her "rehabilitation and total reintegration into the community." The provisions of Correction Law §73(1) authorize, but do not appear to require, that an inmate/releasee assigned to a RTF " . . . be allowed to go outside the facility during reasonable and necessary hours to engage in any activity reasonably related to his or her rehabilitation and in accordance with the program established for him or her." In any event, DOCCS " . . . shall be responsible for securing appropriate education, on-the-job training and employment for inmates transferred to residential treatment facilities. The department also shall supervise such inmates during their participation in activities outside any such facility and at all times while they are outside any such facility." Correction Law §73(2).

It is clear to the Court that the statutory requirement (Correction Law §2(6)) that an RTF be located "in or near" the community where the release intends to reside is directly linked to a statutory goal of the RTF to totally reintegrate the releasee into such community. With this in mind the Court finds, as a matter of law, that regardless of any telecommunication/transportation assets available at the Woodbourne Correctional Facility, such facility is not "in or near" Bronx County so as to lawfully function as an RTF for the petitioner. In reaching this conclusion the Court notes that respondent's papers include no specific allegations with respect to unique programmatic benefits/services necessary to facilitate petitioner's reintegration into any community that are available to

him at Woodbourne but not available at an RTF significantly closer to the Bronx community where petitioner ultimately intends to reside[2].

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

ORDERED, that respondent's motion to change venue is denied; and it is further

ADJUDGED, that the petition is granted, without costs or disbursements, but only to the extent that DOCCS is directed to promptly transfer petitioner from the Wooodbourne Correctional Facility to an RTF that is in compliance with the geographic mandate of Correction Law §2(6) ("in or near" Bronx County), or, in the alternative, see to it that petitioner is promptly placed in complaint housing in conjunction with his release from DOCCS custody to post-release supervision.

DATED: December 2, 2014 at
Indian Lake, New York

S. Peter Feldstein
Acting Supreme Court Judge

[2] The Court's review of departmental regulations suggests that DOCCS facilities, designated as including an RTF component, are available in Queens County (Queensboro Correctional Facility) and New York County (Edgecombe Correctional Facility and Lincoln Correctional Facility). *See* 7 NYCRR §§100.83, 100.96 and 100.101.