

**People ex rel. Bonet v Warden, Rikers Is. Corr.
Facility**

2014 NY Slip Op 33974(U)

March 14, 2014

Supreme Court, Bronx County

Docket Number: 340057-14

Judge: Jr., Eugene Oliver

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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THE PEOPLE OF THE STATE OF NEW YORK
ex rel. JOHN BONET,
B&C # 888-14-00209
NYSID # 01559402-L,
WARRANT # 674378

DECISION AND ORDER

Petitioner,

-against-

INDEX No.: 340057-14

WARDEN, RIKERS ISLAND CORRECTIONAL
FACILITY, and N.Y.S. DEPARTMENT OF
CORRECTIONS AND
COMMUNITY SUPERVISION,

Respondents.

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EUGENE OLIVER, JR., J.:

The Petitioner, John Bonet, files the instant *Writ of Habeas Corpus*, contending that he has been denied his right to a preliminary hearing in violation of the Due Process Clause of the Fourteenth Amendment, the New York State Constitution, and N.Y. Executive Law §§ 259-i(3)(c)(i) and (iv). The Respondents oppose the petitioner's release, and submit that Mr. Bonet waived his right to a hearing. This Court has reviewed all submitted papers and the corresponding exhibits.

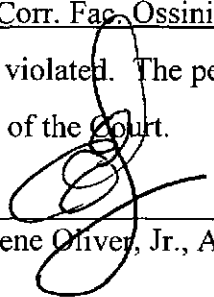
Mr. Bonet, is presently incarcerated on the above warrant for numerous violations of the conditions of his parole. He was convicted for Attempted Burglary in the First Degree, in Schenectady County Supreme Court in 2004. He received a sentence of eight and one half years incarceration, and four years Post Release Supervision. Mr. Bonet was released to parole with specific guidelines on December 17, 2010. Barring any violations, he was to remain on parole supervision until December 17, 2014. The petitioner was declared delinquent on November 20, 2013, and charged with six violations of his parole conditions. On January 22, 2014, Parole Warrant No. 674378 was issued, and lodged against him on January 24, 2014. The Petitioner argues that he was denied his right to a Preliminary Hearing. The Respondent contends that the relator waived his right to a hearing.

Mr. Bonet had one outstanding matter, Bronx Criminal Court Docket No. 2013BX067136, that case was disposed of on March 25, 2014. The petitioner received a violation and fifteen days incarceration.

As per Executive Law § 259-i(3)(c)(iii), the petitioner is entitled to notice of his right to a preliminary hearing, withing three days of the execution of the warrant. The right to a preliminary hearing may be waived if done knowingly, intelligently, and voluntarily, see White v. New York State Div. of Parole, 60 N.Y. 2d 920, 922 [1983]; People ex rel. Moll v. Rodriguez, 132 A.D. 2d 766 [3rd Dept. 1987], leave denied 70 N.Y. 2d 611[1987]; and People ex rel Brown v. Smith, 115 A.D.2d 255 [4th Dept.1985]. The waiver to a preliminary hearing however, cannot be based upon hearsay or speculation. There should be a clear writing documenting the Petitioner's intent to relinquish his right to a hearing. As per People ex rel. Melendez v. Warden, 214 A.D.2d 301 [First Dept. 1995], the proponent of the waiver has the burden to demonstrate by prima facie evidence that a knowing, intelligent, and voluntary waiver was executed.

Mr. Bonet, contends that he did not waive his right. In an affidavit dated February 26, 2014, submitted in the Verified Amended Petition For A Writ of Habeas Corpus, he states that he did not discuss preliminary hearings when he spoke with the parole officer. He admits that the signature on the 9011 form is his, however he contends that he never checked the box next to his signature that waived his right to a hearing. Each party has attached the 9011 form in question as an exhibit. The form is clear and unambiguous. The petitioner has the burden to establish that the waiver of his right to a preliminary hearing was defective, because it was not knowing, intelligent, or voluntary. Mr. Bonet has failed to satisfy that burden. See People ex rel. Baker v. Warden, 17 A.D.3d 266, 793 N.Y.S.2d 405 [1st Dept. 2005]. The petitioner's affirmation, citing ignorance of the content of the 9011 form he acknowledges, is purely self serving. There is no additional information or documentation that would support the petitioner's allegations. In the absence of evidence to the contrary, the respondent is entitled to the presumption that the waiver is valid. See People ex rel. Murray v. Warden, Index No. 340389-08 [Sup. Ct. Bronx Cty. 6/24/08]. Therefore, considering the totality of the circumstances surrounding the waiver, this Court determines that said waiver was valid. See Matter of Schwartz v. Warden N.Y.S. Corr. Fac. Ossining, 82 A.D.2d 870 [2nd Dept 1981]. The defendant's due process rights were not violated. The petition is dismissed and the writ id denied. This constitutes the decision and order of the Court.

March 14, 2014
Bronx, New York



Eugene Oliver, Jr., A.S.C.J.