

Matter of Degnan v Broome County Sheriff
2016 NY Slip Op 30754(U)
March 7, 2016
Supreme Court, Broome County
Docket Number: 2015-3117
Judge: Ferris D. Lebous
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At a Special Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District at the Broome County Courthouse, 92 Court Street, City of Binghamton, New York, on the th day of March, 2016.

PRESENT: HON. FERRIS D. LEBOUS
Justice Presiding.

STATE OF NEW YORK
SUPREME COURT : : BROOME COUNTY

In the Matter of Michael Joseph Degnan,

Petitioner,

-vs-

Broome County Sheriff, David Harder,
Superintendent of the Broome County
Public Safety Building/Jail,

Respondents.

APPEARANCES:

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FERRIS D. LEBOUS, J.S.C.

Petitioner, an inmate at the Broome County Jail, commenced this CPLR article 70 proceeding for a writ of habeas corpus asserting that he is being illegally detained in the Broome County Jail by respondents.

BACKGROUND**A. Procedural History**

On December 1, 2015, petitioner filed a Petition for Writ of Habeas Corpus, together with exhibits and memorandum of law; an "application for CPLR § 3001 Declaratory Judgment for Statutory Construction"; and a Motion to Proceed as a Poor Person and assigned counsel.

The court signed the Writ of Habeas Corpus on December 2, 2015. A hearing on this matter was held before the court with petitioner and respondent's counsel present on December 7, 2015. Petitioner made a request for poor person relief and the assignment of counsel. On the record, the respondents indicated no objection to said relief. Both parties agreed that further proceedings would be made on submission only unless notified by the court.

By Order dated December 8, 2015, this court granted the application for poor person relief and assignment of counsel (Poor Person Order dated December 8, 2015). Upon stipulation, the parties agreed upon an Order for Scheduling which set forth the schedule for additional submissions with the final submission due to the court on or before December 24, 2015, as well as to allow time for the appointment of counsel (Order for Scheduling and Appointment of

Counsel dated December 8, 2015). Due to a conflict in the Office of the Broome County Public Defender,¹ Benjamin Bergman, Esq. was assigned as petitioner's counsel in this matter (Assignment Letter dated December 8, 2015). Due to a subsequently discovered conflict for Mr. Bergman, the court issued another Assignment Letter Order dated December 11, 2015 appointing Michael A. Garzo, Esq. as petitioner's assigned counsel. Thereafter, Mr. Garzo requested and received a thirty day adjournment of the deadline contained in the Order for Scheduling.

Ultimately, on February 1, 2016, Mr. Garzo submitted an *Anders* brief requesting permission to withdraw as counsel for petitioner. The court issued a letter dated February 2, 2016 permitting petitioner until March 1, 2016 to make any additional submissions which were received and accepted by the court.

B. Criminal history

On or about June 14, 2013, petitioner was on parole from a prior criminal conviction when he is alleged to have committed various crimes including rape and burglary. Petitioner was not immediately captured, but was ultimately apprehended on June 20, 2013. Petitioner was initially arraigned in the Town of Kirkwood court, but was re-arraigned in the Town of Fenton on June 21, 2013 for reasons which are not relevant here.

On September 20, 2013, petitioner was indicted by a Broome County grand jury under Indictment 13-607 for one count of rape in the first degree; one count of rape in the second

¹Letter from Jay L. Wilber, Public Defender, dated December 7, 2015.

degree; two counts of a criminal sex act in the first degree; two counts of a criminal sex act in the second degree; endangering the welfare of a minor; burglary in the second degree; criminal trespass in the second degree; two counts of grand larceny in the fourth degree; and three counts of petit larceny.

On October 9, 2013, petitioner appeared before the Hon. Martin E. Smith for arraignment. Petitioner appeared with Michael T. Baker, Senior Public Defender, from the Broome County Public Defender's office who represented to the court that there was a conflict within the Public Defender's office. At the court's direction, Mr. Baker remained for the arraignment. Mr. Baker waived a reading of the indictment and received a copy of the same. The People presented a CPL § 710.30 notice that stated the People were ready for trial. At that time, petitioner objected to Mr. Baker's presence due to said conflict. After the appearance, Torrence Schmitz, Esq. was appointed petitioner's counsel. Mr. Schmitz was later relieved and petitioner elected to proceed pro se.

In the ensuing two years there were approximately 17 defense motions, 2 defense requests for extensions, as well as 9 court appearances all outlined in respondents' "Summary of Underlying Criminal Action against Respondent/Defendant" (Annexed as Exhibit 36 to Affirmation of Vernonia Gorman).

On July 2, 2015, petitioner appeared before Judge Smith. A trial date for August 31, 2015 was set.

On July 21, 2015, petitioner appeared in court and requested an adjournment of the August 31, 2015 trial date because he had been assaulted in the jail. A new trial date was set for November 2, 2015.

On October 20, 2015, petitioner appeared in court to discuss pretrial issues. A Sandoval hearing was set for October 29, 2015. At that time Judge Smith advised that the November trial date would be adjourned due to his impending retirement.

On October 29, 2015, petitioner appeared for the Sandoval hearing but due to another assault in jail the prior evening, advised the court that he was not ready to proceed. The Sandoval hearing was held.

Petitioner's criminal trial was ultimately held before the Hon. Brian D. Burns starting February 1, 2016. On February 11, 2016, the jury rendered a verdict finding petitioner guilty of second-degree burglary, a felony, and on three counts of petit larceny and one count of endangering the welfare of a child, all misdemeanors. The jury was unable to reach a verdict on the rape charge and found petitioner not guilty of two charges of criminal sexual act.

DISCUSSION

The remedy of habeas corpus is reserved to those persons illegally imprisoned or otherwise restrained in their liberty within the state (CPLR § 7002 [a]). Petitioner raises several arguments in support of his contention that he is being illegally imprisoned including that at the

time of the filing of this petition was still awaiting trial more than two years after his arraignment, as well as claimed errors surrounding the indictment. Generally, however, all of petitioner's arguments could have been raised on direct appeal or in a CPL article 440 motion (*People ex rel. Backman v Walsh*, 101 AD3d 1316 [2012], *lv denied* 20 NY3d 863 [2013], *cert denied* 134 S Ct 84 [2013]) and, as such, habeas relief is not appropriate on that basis alone. That said, the court will engage in an examination of the substance of the issues raised by the petition.

1. Speedy Trial

As just noted, petitioner could have filed a motion for release with the trial court due to alleged violations of speedy trial rights. In and of itself, petitioner's failure to do so warrants dismissal of this petition for habeas review (*People ex rel. Bullock v Barry*, 2002 WL 31720977 [Sup Ct New York County, Goldberg, J., November 13, 2002]).

Nevertheless, the court will review the underlying argument presented. The petition contends that CPL § 30.30 mandates dismissal when the People are not ready for trial within six months of the commencement of the criminal action wherein a defendant is accused of one or more offenses, at least one of which is a felony. However, the statute further excludes from the trial readiness calculation various time periods including pretrial motions and continuances granted by the court at the request of, or with the consent of, the defendant (CPL § 30.30 [4][a]).

Here, the calculation of six months runs from June 20, 2013 (the date of petitioner's

arraignment in Town of Kirkwood) and thus expired on December 17, 2013, six months thereafter. The People declared their readiness to proceed to trial on the record at the appearance on October 9, 2013 which is well within the time limitation. There is no requirement that the People renew their declaration of readiness throughout the pendency of the criminal action (*People v Cortes*, 80 NY2d 201, 214 [1992]).

Furthermore, even an analysis under the factors used to determine whether a speedy trial violation has occurred warrants a conclusion that no such violation has occurred. The factors to be reviewed include the extent of the delay, the reasons for the delay, the nature of the underlying charge, whether there has been an extended period of pretrial incarceration, and whether there is any prejudice to the defense by the reason of the delay (*People v Vernace*, 96 NY2d 886 [2001]).

Here, the length of the delay is over two years. At the very least, such a delay warrants an analysis of the remaining factors (*People v Romeo*, 12 NY3d 51, 56 [2009]). With respect to the reasons for the delay, the reasons here include pre-trial motions, change of counsel, petitioner's medical needs, petitioner's request to review documents, and court scheduling. However, delays resulting from pre-trial motions caused, requested or consented to by the petitioner are not chargeable to the People (*People v Worley*, 66 NY2d 523, 528 [1985]; CPL § 30.30 [4][a]).

As noted above, respondents have provided a list entitled "Summary of Underlying Criminal Action against Respondent/Defendant" which details the litigation history in the

underlying criminal proceeding (Annexed as Exhibit 36 to Affirmation of Vernonia Gorman). Although the court will not list each of the 48 items contained on said list, a summary of the matters includes approximately 17 defense motions; 2 defense requests for extensions; as well as 9 court appearances all spanning the two year period since petitioner's arraignment. The court finds that the substantial portion of the delays are attributable to reasons not chargeable to the People and, as such, there is no speedy trial violation on this basis alone.

As to the nature of the charges, they are very serious in nature including felony counts which warrant thorough preparation on both sides. With respect to the issue of prejudice, the court finds no prejudice to petitioner since he was either the cause of or consented to many of delays.²

In view of the foregoing, the court finds that petitioner's failure to file any motions for speedy trial violations with the trial court prohibits habeas review and, even if such a motion had been made, there was no speedy trial violation upon a balancing of the factors reviewed above. In sum, the writ cannot be sustained for the stated reasons.

II. MISCELLANEOUS

²There are no arguments raised in opposition regarding petitioner's parole status at the time of his alleged commission of the underlying charges. Thus, it appears that at least a portion of petitioner's jail time after his apprehension would be based upon a parole violation and not subject to habeas review.

A. Indictment

To the extent that petitioner argues that there were deficiencies with his arraignment upon an indictment warranting his release, the court finds the argument to be without merit. First and foremost, as petitioner could have challenged the sufficiency of the indictment in the context of a CPL article 440 motion or on his direct appeal, habeas corpus relief is unavailable (*People ex rel. Backman v Walsh*, 101 AD3d 1316 [3d Dept 2012], *lv denied* 20 NY3d 863 [2013], *cert denied* 134 S Ct 84 [2013]); *People ex rel. Reyes v State Dept. of Correctional Services*, 288 AD2d 523 [3d Dept 2001], *appeal dismissed, leave denied* 97 NY2d 720 [2002]). In any event, the record demonstrates that the charges were read in open court in his presence on October 9, 2013. Moreover, petitioner's attorney at the arraignment waived a reading of the indictment, and a copy of the indictment was handed to the attorney that day. Thus, petitioner was properly informed of the charges against him, waived a reading of the indictment, and was furnished a copy via counsel.

B. Demurrer

Next, petitioner argues that the charges against him should be dismissed because the court ignored his alternative plea of demurrer. The record reflects that petitioner's statements in support of his demurrer were, in whole, as follows: "I demur to these charges" and "I demur the jurisdiction of the court" (Petitioner's Exhibit A, p 4). These are inadequate arguments as a matter of law to support a petition for a writ of habeas corpus (*People v Smith*, 56 Misc 1 [1907]).

C. Right to self-representation and/or effective assistance of counsel

Petitioner argues he is entitled to release because he was not allowed to proceed at his indictment "sui juris" (Petitioner's Exhibit A, p 4). The record reveals that the trial court acknowledged petitioner's narrative during his arraignment on the indictment, but permitted Mr. Baker to complete the arraignment. The arraignment was proper as the charges were read, the reading of the indictment was waived, a not guilty plea was entered, and the People presented a notice of trial readiness. There was no prejudice to petitioner and he was afforded new counsel following the arraignment.

Petitioner also argues that he was denied effective assistance of counsel. It is a matter of law that a habeas corpus proceeding is not a remedy for testing proper representation (*Jones v Warden*, 16 AD2d 922 [1st Dept 1962]). The habeas corpus petition is dismissed on this basis as well.

The court has considered petitioner's remaining arguments and finds them to be without merit.

The court finds that after a full examination of all the proceedings that this habeas corpus case is wholly frivolous.

Mr. Garzo's application to withdraw as counsel is granted.

CONCLUSION

In view of the foregoing, the court finds that the writ cannot be sustained and the petition is dismissed.

It is so ordered.

Dated: March 7, 2016
Binghamton, New York

s/ Ferris D. Lebous

Hon. Ferris D. Lebous
Justice, Supreme Court

ALL PAPERS SUBMITTED IN CONNECTION WITH THIS MOTION HAVE BEEN FILED, ALONG WITH THE ORIGINAL DECISION AND ORDER, WITH THE BROOME COUNTY CLERK

1. Petition for Writ of Habeas Corpus, together with exhibits sworn to November 4, 2015 and filed December 1, 2015 and memorandum of law;
2. Application for CPLR 3001 Declaratory Judgment for Statutory Construction dated November 4, 2015;
3. Motion to Proceed as a Poor Person and assigned counsel sworn to November 4, 2015 and filed December 1, 2015;
4. Affidavit in Support of Application to Proceed as a Poor Person sworn to November 30, 2015;
5. Writ of Habeas Corpus dated December 2, 2015;
6. Affidavit in Opposition to Petition for Writ of Habeas Corpus of Leia Schmidt, Assistant County Attorney dated December 3, 2015;
7. Memorandum of Law in Opposition to Petition for Writ of Habeas Corpus dated December 6, 2015;
8. Letter from Jay L. Wilber, Public Defender, dated December 7, 2015;
9. Assignment Letter dated December 8, 2015 appointing Benjamin Bergman, Esq.;
10. Poor Person Order dated December 8, 2015;
11. Order for Scheduling and Appointment of Counsel dated December 8, 2015;
12. Assignment Letter Order dated December 11, 2015 appointing Michael A. Garzo, Esq.;
13. Affirmation in Opposition to Petition for Writ of Habeas Corpus of Veronica M. Gorman, Senior Assistant County Attorney dated December 15, 2015, together with Exhibits sealed pursuant to Order of this court;
14. Order sealing exhibits dated December 22, 2015;
15. Amended Memorandum of Law in Opposition to Petition for Writ of Habeas Corpus dated December 15, 2015;
16. "Reply Petition for Writ of Habeas Corpus pursuant to NYCPLR 7009(b) with

Addendum motion to dismiss defense pursuant to NYCRR 3211(b) and/or NYCRR 3212";

17. Letter from Michael A. Garzo, Jr., Esq. dated December 22, 2015 and "so ordered" by the Hon. Ferris D. Lebous on December 23, 2015;
18. Letter from Michael Degnan dated January 25, 2016 to the court, together with Notice and Request for Judicial Intervention;
19. Affidavit of Michael A. Garzo, Jr., Esq. sworn to February 1, 2016;
20. Court letter dated February 2, 2016;
21. Letter from Michael Degnan dated February 22, 2016; and
22. Affidavit from Michael Degnan sworn to February 22, 2016.