

Matter of Harris v Uhler
2016 NY Slip Op 30973(U)
May 13, 2016
Supreme Court, Franklin County
Docket Number: 2015-792
Judge: S. Peter Feldstein
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**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF FRANKLIN
X

In the Matter of the Application of
TRENT D. HARRIS, Sr., #08-B-3796,
Petitioner,

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

**DECISION, ORDER AND
JUDGMENT**

RJI #16-1-2015-0462.63

INDEX # 2015-792

ORI # NY016015J

-against-

DONALD UHLER, Superintendent,
Upstate Correctional Facility, and **NEW
YORK STATE DEPARTMENT OF
CORRECTIONS AND COMMUNITY
SUPERVISION,**

Respondents.

X

The Court has before it the Petition for a Writ of Habeas Corpus (denominated “Writ of Habeas Corpus to Inquire for Writ of Habeas Corpus into the Cause of Detention”) of Trent D. Harris, Sr., verified on October 13, 2015 and filed in the Franklin County Clerk’s office on October 16, 2015. Petitioner, who is now an inmate at the Cape Vincent 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 October 19, 2015 and has received and reviewed respondents’ Notice of Motion to Dismiss, supported by the Affirmation of Christopher J. Fleury, Esq., Assistant Attorney General, dated November 23, 2015, as well as by the Affidavit of Robin Filmer, a DOCCS employee at Counsel’s Office for the New York State Board of Parole. The Court has also received and reviewed petitioner’s opposing papers, comprised of his letter to chambers dated December 1, 2015 (with exhibit) and his Reply to Return, both filed in the Franklin County Clerk’s office on December 8, 2015.

By Letter Order dated January 12, 2016 the parties were directed to supplement their papers with respect to petitioner's claim that he (and/or his attorney) was not provided timely notice of the final parole revocation hearing under the provisions of Executive Law §259-i(3)(f)(iii). In response thereto the Court has received and reviewed petitioner's letter of January 24, 2016 and attached Memorandum of Law, both received directly in chambers on January 28, 2016. The Court has also received and reviewed the Supplemental Letter Memorandum of Christopher J. Fleury, Esq., Assistant Attorney General, dated January 29, 2016. Petitioner's Supplemental Letter Memorandum, dated February 2, 2016, was received directly in chambers on February 5, 2016.

It appears that petitioner was conditionally released from DOCCS custody to post-release supervision on June 18, 2014. On January 27, 2015, however, petitioner was arrested on a parole warrant and two days later, on January 29, 2015, he was served with a Notice of Violation/Violation of Release Report setting forth six parole violation charges relating to incidents that allegedly occurred on December 19, 2014, January 6, 2015, January 8, 2015 and January 15, 2015. At the time he was served with the Notice of Violation/Violation of Release Report petitioner executed a written waiver of preliminary hearing. A Supplementary Violation of Release Report, dated January 30, 2015, set forth three additional parole violation charges all relating to a January 27, 2015 incident that allegedly occurred at the time petitioner was booked into the Onondaga County Correctional Facility after being arrested on the parole warrant.

Sessions of the final parole violation hearing were conducted at the Onondaga County Correctional Facility on February 17, 2015, March 3, 2015, March 31, 2015 and April 14, 2015. The only session of the final hearing where evidence was received into the

record and testimony taken was the April 14, 2015 session. Following the contested final hearing concluded on April 14, 2015 a decision was rendered sustaining eight of nine parole violation charges. Petitioner's post release parole supervision was revoked with a sustained delinquency date of December 19, 2014 and a 24-month delinquent time assessment was imposed. He was returned to DOCCS custody as a post-release supervision violator.

A Notice of Administrative Appeal, apparently prepared by petitioner's final hearing counsel, was received by the DOCCS Board of Parole Appeals Unit on May 26, 2015. The time for petitioner to perfect his administrative appeal was ultimately extended to November 30, 2015 by letter dated October 20, 2015 from the Appeals Unit to petitioner's attorney. In the meantime, this proceeding was commenced on October 16, 2015 when the Petition, verified on October 13, 2015, was filed in the Franklin County Clerk's office. *See* CPLR §304(a).

Respondent's motion to dismiss is premised upon the assertion that petitioner failed to exhaust administrative remedies through the administrative appeals process set forth in 9 NYCRR Part 8006 prior to commencement of this proceeding. A habeas corpus proceeding brought by an adjudicated parole violator to challenge one or more aspects of the underlying parole revocation process is subject to dismissal where the violator fails to first exhaust administrative remedies by taking/perfecting an administrative appeal pursuant to 9 NYCRR Part 8006. *See People ex rel Pettijohn v. LaClair*, 78 AD3d 1395, *People ex rel Griffith v. New York State Division of Parole*, 68 AD3d 1390 and *People ex rel DeMarta v. Sears*, 31 AD3d 918, *lv denied* 7 NY3d 715. Under the facts and circumstances of this case the Court perceives no applicable exception to the exhaustion

requirement. However, even if it was ultimately determined that the causes of action asserted in the Petition were properly before the Court for disposition notwithstanding petitioner's failure to exhaust administrative remedies, dismissal would still be warranted.

Executive Law §259-i(3)(f)(iii) provides, in relevant part, as follows: "Both the alleged [parole] violator and an attorney who has filed a notice of appearance on his behalf . . . shall be given written notice of the date, place and time of the [final parole violation] hearing as soon as possible but at least fourteen days prior to the scheduled date." According to petitioner, however, the written notice in question was dated and mailed on February 9, 2015, only eight days in advance of the originally-scheduled February 17, 2015 session of the final parole revocation hearing. Thus, he argues that the Executive Law §259-i(3)(f)(iii) notice provisions were violated and that the appropriate remedy for such violation is vacatur of the underlying parole warrant and restoration to post-release parole supervision.

Although any attempt to conduct a contested final parole revocation hearing, over the objection of petitioner, on February 17, 2015 would have been a nullity (*see People ex rel Betancourt v. Warden of Rikers Island*, 149 AD2d 356), a review of the transcript of the February 17, 2015 session of the final parole revocation hearing reveals that no objection with respect to notice was interposed by petitioner or his counsel. Rather, that brief session of the final hearing was adjourned at petitioner's request so that he would be afforded an opportunity to consult with a different attorney from the Hiscock Legal Aid Society and to further review the pending parole violation charges. Under such circumstances, the initial scheduling of the final hearing on less than 14-days notice would constitute harmless error. For what its worth, the Court notes that the contested final

hearing in this matter was ultimately concluded on April 14, 2015 - with the petitioner represented by private assigned counsel - well within the 90-day time frame for conducting a final parole revocation hearing as set forth in Executive Law §259-i(3)(f)(i).

The only other cause of action asserted by petitioner in this proceeding is that he was effectively denied a preliminary parole revocation hearing with respect to Parole Violation Charges #7, #8 and #9, which were set forth in the Supplementary Violation of Release Report dated January 30, 2015. Relying, *inter alia*, on a pair of cases out of Supreme Court, Bronx County (*People ex rel Frazier v. Warden, Rikers Island Correctional Center*, 42 Misc 3d 936 and *People ex rel Davis v. Warden, Anna M. Kross Center, New York State Division of Parole*, 31 Misc 3d 1230(A), 2011 NY Slip Op 50911(U)), petitioner argues, in effect, that he was entitled to an opportunity for a separate preliminary hearing with respect to the three parole violation charges set forth in the Supplementary Violation of Release Report. For the reasons set forth below, however, the Court rejects such argument.

The primary consideration underlying the due process requirement that a prompt preliminary hearing must be conducted to determine whether there is probable cause to believe that an arrested, accused parole violator has committed acts constituting a violation of parole condition(s) is that “[t]here is typically a substantial time lag between the arrest [on the parole warrant] and the eventual determination by the parole board whether parole should be revoked.” *Morrissey v. Brewer*, 408 U.S. 471, 485. Due process does not require that an accused parole violator be afforded a preliminary (probable cause) hearing with respect to each pending parole violation charge. Thus, where multiple parole violation charges are pending and a determination is made, following a preliminary

hearing, that there is probable cause to believe that a parole violation occurred with respect to one of the charges, the fact that other pending charges were not addressed at the preliminary hearing does not preclude such other charges from being pursued at the final hearing. *See Poladian v. Travis*, 8 AD3d 770 and *People ex rel Kinzer v. Williams*, 256 AD2d 1240.

This Court finds that when petitioner received his copy of his Supplementary Violation of Release Report (apparently on or about January 30, 2015) he was not entitled to a preliminary hearing with respect to the three parole violation charges set forth therein since he had already waived his right to a preliminary hearing on January 29, 2015 after being served with the original Violation of Release Report setting forth the original six parole violation charges. To the extent different results were reached in the cases cited by petitioner, this Court respectfully disagrees with the analyses set forth in those cases. *See People ex rel Young v. Warden, Otis Bantum Correctional Center*, 45 Misc 3d 1208(A), 2014 NY Slip Op 51498(U) (Supreme Court, Bronx County) and *Frain v. Yelich*, 2012 NY Slip Op 33051(U) (Supreme Court, Franklin County).

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

ORDERED, that respondents' motion is granted; and it is further

ADJUDGED, that the petition is dismissed.

DATED: May 13, 2016 at
Indian Lake, New York

S. Peter Feldstein
Acting Supreme Court Justice