

Matter of Howell v Stanford

2016 NY Slip Op 31199(U)

June 21, 2016

Supreme Court, Franklin County

Docket Number: 2015-0945

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
LEON HOWELL, #15-R-0482,
Petitioner,

**DECISION AND JUDGMENT
RJI #16-1-2015-0567.83
INDEX #2015-0945
ORI #NY016015J**

For a Judgment pursuant to Article 78
of the Civil Practice Law and Rules,

-against-

TINA M. STANFORD, Chairwoman, NYS
Board of Parole,
Respondent.

X

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the Petition of Leon Howell, verified on December 23, 2015 and filed in the Franklin County Clerk's Office on December 30, 2015. Petitioner, who is an inmate at the Bare Hill Correctional Facility, is challenging the May 2015 determination revoking his parole following a final parole revocation hearing. The Court issued an Order to Show Cause on January 8, 2016 and has received and reviewed Respondent's Answer and Return verified on February 5, 2016, including confidential Exhibit N. No Reply has been received from Petitioner.

Petitioner was sentenced by the Supreme Court of New York County on February 11, 2015 to an indeterminate term of incarceration of one and one-half (1 1/2) to three (3) years in state prison and the sentence "is to be executed as a sentence of parole supervision pursuant to CPL 410.91", more commonly known as the "Willard Program." See, Resp. Ex. A. The Willard Drug Treatment Program is a ninety (90) day rehabilitation program that

occurs under parole supervision as opposed to incarceration. *See*, CPL §410.91.¹

Petitioner alleges that there was a considerable delay between his sentencing on February 11, 2015 and the date he was delivered to the Willard campus on or about April 16, 2015. Petitioner also alleges that he refused to execute the contract to enter the Willard Program as the Department of Correctional and Community Services (hereinafter referred to as “DOCCS”) is obligated to deliver him to Willard within ten (10) days of sentencing. In light of the prolonged delay, the Petitioner argues that the remedy for failing to deliver him promptly is to release him to parole supervision in the community. In addition, the Petitioner asserts that at the same time that he refused to sign the Conditions of Release, he was served with a violation of the those terms of parole release, particularly conditions number 12 and 13². Petitioner argues that it is nonsensical that he is charged with violating the terms of a contract that he had not been presented with and he refused to enter. Petitioner alleges that had he been promptly presented with the Parole Conditions of Release at the time he entered the Ulster Correctional Facility for processing, he would have refused to execute them and he would have been returned before the sentencing judge to

¹ CPL §410.91(1) reads, in relevant part: “[I]f the court directs that the sentence be executed as a sentence of parole supervision, it shall remand the defendant for immediate delivery to a reception center operated by the state department of corrections and community supervision, in accordance with section 430.20 of this chapter and section six hundred one of the correction law, for a period not to exceed ten days. An individual who receives such a sentence shall be placed under the immediate supervision of the department of corrections and community supervision and must comply with the conditions of parole, which shall include an initial placement in a drug treatment campus for a period of ninety days at which time the defendant shall be released therefrom.”

² The Conditions of Release state, in pertinent part:

“12. Special Conditions:

I will enter, participate in and successfully complete a treatment program at the Willard Drug Treatment Campus and will comply with all of the requirements of that program and any aftercare treatment recommendations.

13. I will fully comply with the instructions of my Parole Officer and obey such special additional written conditions as he or she, a Member of the Board of Parole or an authorized representative of the Department of Corrections and Community Supervision, may impose.”

resolve this issue.

Respondent asserts that while DOCCS has an obligation to immediately transfer a person judicially sentenced to the Willard Program within ten (10) days of receipt into the custody of DOCCS, in the matter at bar, the delay in transfer was due to an intervening event caused by the Petitioner³. It appears that shortly after the Petitioner was sentenced, he was found guilty of refusing to obey a direct order for which he was issued a thirty (30) day sanction. The Petitioner completed his sanction on March 27, 2015 and arrived at the Willard campus on April 16, 2015. The Petitioner challenged the timeliness of his transfer by a petition seeking habeas corpus relief in the Supreme Court of Seneca County. On June 11, 2015, Acting Supreme Court Justice Bender denied and dismissed the petition finding that “any delay in transferring the petitioner to the Willard Drug Treatment Campus was due to the petitioner’s subsequent misconduct. Further, he could not be transferred until he served his 30 days, and his transfer was accordingly, timely.” *See*, Resp. Ex. O.

The matter at bar is distinguishable from the facts as set forth in the *Matter of People ex rel Ortiz v. Poole*, 11 Misc 3d 1064(a), wherein the petitioner refused to sign the conditions of parole upon arriving at the Willard Campus in light of the delay in DOCCS delivering him. Inasmuch as DOCS provided no explanation regarding the lengthy delay (91 days) in delivering the petitioner to Willard, the *Ortiz* Court found that the petitioner’s refusal to sign the parole conditions was the only choice available to preserve Mr. Ortiz’s due process challenge.

In the matter at bar, the delay by DOCCS in delivering the Petitioner to Willard was due to the Petitioner’s misconduct in reception at Ulster Correctional Facility and any delay

³ It is noted that Petitioner was also referred for a psychological evaluation prior to his delivery to Willard. It is unclear from the record before the Court as to whether the psychological evaluation was conducted before or after the 30 day sanction to the Special Housing Unit.

following the completion of the sanction was *de minimis*. Nonetheless, the Petitioner challenged the delay before the Supreme Court, Seneca County and the delay was found to be attributable to the Petitioner.

Notwithstanding the foregoing, the issue before this Court is whether the Petitioner could be found to violate a condition of parole supervision prior to being presentenced with a written copy of the condition. 9 NYCRR §8003.2 directs that “[a] copy of the conditions of release, with the addition of any special conditions, shall be given to each inmate upon his release to supervision.” At the Final Revocation Hearing held on May 27, 2015, Parole Officer Bond testified that she initially met with the Petitioner on April 20, 2015. At the initial meeting, the Petitioner indicated his refusal to enter the Willard Drug Treatment program in light of the delay. Parole Officer Bond testified that upon the Petitioner’s refusal to enter the program, the Petitioner was advised of the consequences of refusal and was allowed a period of time to consider same. Parole Officer Bond further testified that the Petitioner was presented with the written conditions of parole release on April 21, 2015 and the Petitioner again refused to enter the program or sign the conditions. In light of his refusal, the Petitioner was served with a Notice of Violation on April 21, 2015.

“[C]onsent or non-consent to parole conditions does not relieve a parolee of the duty to abide by them, and the expression of an intent not to abide, which again is not denied here, was properly considered by the board.” *Tinsley v. New York State Bd. of Parole*, 73 Misc 2d 289, 299, *see also*, *People ex rel. Ayers v. Lombard*, 87 Misc 2d 355, 357-58, *aff’d*, 55 AD2d 1051. Inasmuch as the Petitioner was judicially sentenced to parole to attend the Willard Drug Treatment program, he was mandated to comply with the conditions of parole. While the Petitioner argues that he cannot be bound by a contract that he had not entered, he had, in fact, entered a contract upon his acceptance of a plea agreement wherein

the Willard Drug Treatment program was negotiated.

The Petitioner asserts that the conditions of parole should have been presented to him while he was in reception at Ulster or when he was transferred to Downstate as his refusal to execute same would have resulted in his return before the sentencing court. Such assertion is incorrect. If the Petitioner sought to challenge his judicial sentence to Willard, same could have been effectuated through an appropriate motion to the sentencing court.

The Court notes that the Petitioner admitted that he intentionally refused to sign the conditions of parole to enter the Willard program in light of the lengthy delay by DOCCS to produce him to the Willard program and the Petitioner stated such reason at the time of the refusal. Parole Officer Bond testified that she advised the Petitioner that he could pursue his writ of habeas corpus if he entered the Willard program and if he was successful, he would be immediately released to community supervision. Instead, the Petitioner opted to be returned to the custody of DOCCS and pursue his writ of habeas corpus, which was ultimately denied.

The Petitioner specifically argues that he has been found guilty of violating conditions 12 and 13 on April 20, 2015 even though he had not been provided with the written conditions until April 21, 2015. However, the Hearing Officer credited the testimony of Parole Officer Bond who testified that she orally advised the Petitioner of the conditions and the consequences of refusing to enter the Willard program when she first met with him on April 20, 2015. *See, Hurd v. New York State Department of Parole*, 72 AD3d 1388. It is irrelevant as to whether the violation was charged on April 20 or April 21 as the Petitioner refused to comply with the directives on either date. The Petitioner was provided a second opportunity to comply with the conditions of parole supervision after his

initial refusal. His failure to willingly enter the Willard Program was a violation of the conditions of parole and the revocation was proper.

Based upon all of the above, it is, therefore, the decision of the Court and hereby **ADJUDGED**, that the petition is dismissed.

Dated: June 21, 2016 at
Indian Lake, New York.

S. Peter Feldstein
Acting Supreme Court Justice