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

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In the Matter of the Application of
JACQUES WEBB,#88-B-1289,
Petitioner,

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

DECISION AND JUDGMENT
RJI #16-1-2016-0207.43
INDEX # 2016-336

-against-

DARWIN E. LaCLAIR, Superintendent,
Franklin Correctional Facility,
Respondent.

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This proceeding was originated by the Petition for Writ of Habeas Corpus of Jacques Webb, verified on June 1, 2016 and filed in the Franklin County Clerk's office on June 9, 2016. Petitioner is an inmate at the Franklin Correctional Facility. Petitioner 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 June 15, 2016 and has received and reviewed respondent's Answer and Return, verified on July 22, 2016 and supported by the Letter Memorandum of Christopher J. Fleury, Esq., Assistant Attorney General, dated July 22, 2016. No reply has been received from the Petitioner.[1]

On June 3, 1988, petitioner was sentenced in Supreme Court, Kings County, to an indeterminate term of fifteen (15) years to life upon the conviction of Murder in the Second Degree, an indeterminate term of five (5) to fifteen (15) years incarceration upon the conviction of Robbery in the First Degree, an indeterminate term of five (5) to fifteen (15) years incarceration upon the conviction of Criminal Possession of a Weapon in the Second

[1] It is noted that petitioner has written several letters to the Court indicating his release date is August 19, 2016 but he hoped the matter could be decided as soon as possible.

degree, and an indeterminate term of two (2) to six (6) years incarceration upon the conviction of Criminal Possession of a Weapon in the Third Degree. Petitioner was released to parole supervision on May 6, 2004. On April 8, 2015, a violation of parole supervision was filed following petitioner's arrest on charges of felony drug possession. Petitioner pled guilty to Criminal Possession of a Controlled Substances in the Fifth degree on February 4, 2016 and was sentenced to a three (3) year conditional discharge. On March 1, 2016, in light of the foregoing conviction, a parole violation warrant was issued and executed.

A preliminary hearing was waived and petitioner appeared, with counsel, at a final parole revocation hearing on March 28, 2016. Following a pre-hearing conference the presiding Administrative Law Judge (ALJ) placed the following on the record:

> "The Parolee is a category one violator based upon his sole violent felony. He has one other felony conviction which is a more recent narcotics conviction which the Parolee was convicted of a felony and was sentenced to a conditional discharge. Considering the circumstances here Parole is prepared to offer to a plea of guilty to charge number three, charge number three establishing the delinquency date as the date the Parolee plead guilty to the new narcotics (*sic*) February 4, 2016 and if the Parolee pleads guilty as has been indicated the sentence would be a twelve month time assessment but Mr. Webb with the understanding that if your enter and complete a ninety day drug treatment program conducted by the New York Department of Corrections and Community Supervision that is known as a DOCS Program if you enter and complete the DOCS Program successfully your sentence would automatically be modified to revoke and restore time served and you'd be released from State Prison and returned to parole in the community. If you don't enter and complete the program successfully for any reason you'll serve out the twelve months imposed today . . . A couple of other things, no promises as to how quickly the State will move you to do the program... And also no promises to which appropriate State Facility you would be sentenced to do the program (*emphasis added*)." Return, Ex. F, p.4-5.

The petitioner indicated that he was aware and agreed to the terms and conditions as described by the ALJ. Petitioner subsequently entered a plea of guilty to Parole Violation Charge #3 and Parole Violation Charges #1 and #2 were withdrawn with prejudice.

On May 11, 2016, DOCCS staff determined that the petitioner was medically unsuitable for placement in the Willard Drug Treatment Program. Petitioner was instead referred to an alternate drug treatment program at the Franklin Correctional Facility. Petitioner was transferred to Franklin on May 13, 2016[2] where he commenced the DOCCS alternate drug treatment program. According to respondent's answering papers, if petitioner successfully completes the program he is scheduled to "graduate" and be re-released to post-release parole supervision on August 19, 2016.

Citing, *inter alia*, *State ex rel Ryniec v. Willard Drug Treatment Campus*, 11 Misc 3d 1088(A), 2006 WL 1140475, the petitioner argues, in effect, that his ongoing incarceration is illegal in that DOCCS officials failed to transfer him to the Willard Drug Treatment Program, or an alternate program, in a timely fashion. After the *Ryniec* petitioner had been revoked and restored to parole supervision, following a final parole revocation hearing conducted on November 23, 2005, he apparently remained in local custody for over two months until transfer to state custody at the Wende Correctional Facility on January 27, 2006. Less than a month later, on February 22, 2006, Mr. Ryniec was transferred to Willard. Employing the provisions of Criminal Procedure Law §410.91[3] as ". . . a legislative indicator of what a reasonable time frame is to transfer a parole violator who has been revoked and restored to parole supervision, subject to successful completion of the Willard program," the *Ryniec* court ruled ". . . that inmates who are in such a situation are mandated to be transported to the state reception center 'forthwith' . . . and

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[2] The record is devoid of any information related to how long the petitioner was in local custody before he was transferred to DOCCS and at which facility he was evaluated for the Willard Program.

[3] Criminal Procedure Law §410.91 is applicable to criminal defendants who have been judicially sentenced to parole supervision. The statute provides that an individual who is so sentenced " . . . 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 . . ." CPL §410.91(1).

this Court interprets that to mean within ten (10) days . . . Thereafter, the parolee should be received by Willard within ten (10) days after he is admitted to the State reception center. Thus, the parolee should be received by Willard within twenty (20) days of his final parole revocation determination." *Id*. (citations omitted). Noting that the record before it was devoid of any explanation for the 91-day delay between Mr. Ryniec's November 23, 2005, final parole revocation hearing and his ultimate transfer to Willard on February 22, 2006, the Supreme Court, Seneca County, found that Mr. Ryniec was detained in violation of his due process rights and therefore directed that he be forthwith released from Willard and restored to community-based parole supervision.

Respondent counters that petitioner's parole was not "revoked and restored" at the close of his March 28, 2016 final parole revocation hearing. Rather, respondent asserts that the petitioner's parole was revoked at the close of the final hearing and the ALJ imposed a 12 month delinquent time assessment with the provision that if the petitioner entered and successfully completed an unspecified DOCCS drug treatment program the disposition of the final parole revocation hearing would be modified to "revoke and restore."

For what it is worth, this Court finds nothing in the relevant parole regulations authorizing a disposition, following a final parole revocation hearing, whereby a violator's parole is revoked and a delinquent time assessment is imposed subject to the violator's ability to, in effect, purge himself of the time assessment by participating in some form of therapeutic program. Even if the Court presumes that the authority to impose such a disposition as part of a plea agreement does exist, it perceives no reason to treat such a disposition substantially differently from a "revoke and restore" disposition at least insofar as the parole violator's rights to a reasonably prompt determination of his/her eligibility/suitability for participation in the therapeutic program and a reasonably prompt transfer to the program if determined to be eligible/suitable are concerned.

Notwithstanding the foregoing, this Court is simply not prepared to hold that such transfer must occur within a specified number of days following the final parole revocation hearing.

On or about May 11, 2016, DOCCS officials determined that petitioner was medically unsuitable for a Willard placement but approved him for transfer to an alternate drug treatment program at the Franklin Correctional Facility. As noted previously, petitioner was transferred to Franklin on May 13, 2016 and commenced his participation in the alternate program on or about that date. Thus, approximately forty-five (45) days elapsed between petitioner's final parole revocation hearing and his commencement of an alternate drug treatment program at the Franklin Correctional Facility. Under these circumstances the Court finds that the amount of time petitioner spent in local/DOCCS custody was simply not so lengthy and/or unreasonable as to warrant the relief he sought in this proceeding. Additionally, petitioner was clearly advised by the ALJ that there was no guarantee as to how soon he would be transferred to the drug treatment program nor to which facility he would be transferred. These were conditions that the petitioner was made aware of prior to his plea to the parole violation and he was agreeable.

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

ADJUDGED, that the petition is dismissed.

DATED: August 3, 2016 at
Indian Lake, New York

S. Peter Feldstein
Acting Supreme Court Judge