

Matter of Seeley v Kirkpatrick
2016 NY Slip Op 31550(U)
August 16, 2016
Supreme Court, Clinton County
Docket Number: 2016-445
Judge: S. Peter Feldstein
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**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF CLINTON
X

In the Matter of the Application of
JAMES SEELEY, #03-A-1621,
Petitioner,

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

DECISION AND JUDGMENT
RJI #09-1-2016-0163.18
INDEX # 2016-445

-against-

MICHAEL KIRKPATRICK, Superintendent,
Clinton Correctional Facility, and
TINA M. STANFORD, Chairwoman,
New York State Board of Parole,
Respondents.

X

This proceeding was originated by the Petition for Writ of Habeas Corpus of James Seeley, verified on April 4, 2016 and filed in the Clinton County Clerk's office on April 14, 2016. Petitioner, who is an inmate at the Clinton 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 April 19, 2016 and upon a written request for an extension of time by the petitioner, an Amended Order to Show Cause was issued on May 16, 2016. The Court has received and reviewed respondents' Answer and Return verified on June 27, 2016 together with a Letter-Memorandum by Christopher J. Fleury, Esq., Assistant Attorney General, dated June 27, 2016. In further support of the petition, the Court has received and reviewed petitioner's "Response to Answer and Return" sworn to July 3, 2016.

On March 18, 2003, following his conviction by plea, the petitioner was sentenced to a determinate term of seven (7) years of incarceration with five (5) years of post-release supervision. Petitioner was released to parole supervision on or about July 9, 2012.

Thereafter, a parole violation warrant was issued on February 13, 2015 and executed on February 17, 2015. Petitioner was charged as followed:

“Charge #1 - Violation of Rule #13

James Seeley violated Rule #13 (12) of the conditions governing his release in that on February 06, 2015, at approximately 7:00 P.M., at 4 Gould Lane, Comstock, N.Y., he was in violation of special conditions given to him on July 11, 2012, when he was in possession of a second cell phone, without the prior knowledge and permission of his Parole Officer.

Charge #2 - Violation of Rule #13

James Seeley violated Rule #13 (18) of the conditions governing his release in that on February 06, 2015, at approximately 7:00 P.M., at 4 Gould Lane, Comstock, N.Y., he was in violation of special conditions given to him on July 11, 2012, when he was in possession of photos of minors, without the prior knowledge and permission of his Parole Officer.

Charge #3 - Violation of Rule #13

James Seeley violated Rule #13 (23) of the conditions governing his release in that on February 06, 2015, at approximately 7:00 P.M., at 4 Gould Lane, Comstock, N.Y., he was in violation of special conditions given to him on July 11, 2012, when he was in possession of a cell phone containing sexually explicit photos, without the prior knowledge and permission of his Parole Officer.

Charge #4 - Violation of Rule #13

James Seeley violated Rule #13 (23) of the conditions governing his release in that on February 06, 2015, at approximately 7:00 P.M., at 4 Gould Lane, Comstock, N.Y., he was in violation of special conditions given to him on July 11, 2012, when he was in possession of a sexually explicit photos of celebrities, without the prior knowledge and permission of his Parole Officer.” Resp. Ex. C.

Petitioner was represented by counsel at his Final Parole Revocation Hearing before Administrative Law Judge (hereinafter referred to as “ALJ”) Bridgette Fortune on March 24, 2015. Following an off-record negotiation with counsel, the petitioner plead guilty to

Charge #3 of the parole violation and was advised that he would receive a 24-month hold. Petitioner filed an administrative appeal to the proceeding, as well as a supplemental administrative appeal, and the Board of Parole Appeals Unit denied the administrative appeal on September 16, 2015.

Petitioner seeks a writ of habeas corpus and immediate release based upon his assertion that the parole officer falsified records which lead to the petitioner's wrongful arrest and detention. Petitioner complains that the verbal conditions imposed by the parole officer were improper¹ and the search of his bedroom was procedurally deficient. Petitioner asserts that the waiver of the preliminary parole hearing was not knowingly or voluntary and there is no record of such waiver in his institutional file. Petitioner further asserts that although he had assigned counsel, such counsel failed to properly prepare for the final parole revocation hearing and counsel also failed to seek an adjournment of the hearing so that he could prepare.

Respondent argues that the petitioner's guilty plea at the final parole revocation hearing waives any antecedent claims. Respondent asserts that any objections petitioner had to the initial search, the parole conditions imposed, complaints about assigned counsel and timeliness should have been raised during the hearing and they were not. As such, the issues now raised by the petitioner were not preserved at the hearing and, even if they were raised, the guilty plea waived further consideration thereof. Respondent alleges that the petitioner was represented by counsel who participated in the off-record plea negotiations,

¹ The petitioner specifically challenges that the special condition prohibiting the possession of pornography should have been imposed in writing rather than verbally. The petitioner further states that the special conditions for which the petitioner was charged with violating were illegal insofar as they were executed on July 9, 2014 to apply retroactively beginning July 10, 2012 continuing until July 10, 2017. The petitioner argues that the expiration on December 24, 2012 of the special conditions he executed on July 11, 2012 invalidated any and all special conditions he thereafter executed. Petitioner's assertions are unsupported insofar as the charges alleged were subsequent to his execution of same on July 9, 2014. The petitioner has provided no authority to support his theory of invalidation of the conditions of his post-release supervision.

for which the petitioner was present. The respondent asserts that the ALJ accepted the petitioner's knowing and voluntary plea.

Preliminarily, a guilty plea acts as a waiver of any procedural objections absent a determination that the plea was not entered knowingly and voluntarily. *See Steele v. New York State Div. of Parole*, 123 A.D.3d 1170; *see also Horace v. Annucci*, 133 AD3d 1263. Upon a review of the transcript from the final revocation hearing, the ALJ placed the following inquiry on the record:

ALJ: "...The record should reflect a prehearing conference. The plea bargain was agreed to. The parolee will plead guilty to Charge Number 3. The Division will dismiss the remaining charges with prejudice. Under the guidelines, the parolee is a Category 1. This is a joint recommendation for a 24-month hold, and that is what I have agreed to impose. Is that everyone's understand of the plea arrangement?

MR. JONES: Yes, Your Honor.

MR. HURTEAU: Yes.

INMATE: Yes.

ALJ: Notwithstanding that plea arrangement, there are four ways in which you may plead: guilty, not guilty, guilty with an explanation or stand mute. Standing mute means you say nothing and I will interpret that as a not guilty plea. Waiving the reading of Charge Number 3 into the record?

MR. JONES: Waive the reading.

ALJ: How do you plead, sir?

INMATE: Guilty." Resp. Ex. D, p.4.

“Contrary to petitioner's contention, we conclude that his plea to the parole violations was knowing, voluntary and intelligent inasmuch as ‘[p]etitioner was represented by counsel ... and the Administrative Law Judge explained to him the substance of the plea agreement, which he indicated that he understood (*internal citations omitted*).’” *Horace v. Annucci*, 133 A.D.3d 1263, 1264. The petition has failed to assert any cognizable deficiency in the proceeding that would negate the presumption that the petitioner’s plea was knowing and voluntary.

Notwithstanding the foregoing, in his petition, the petitioner challenged every imaginable aspect of this parole violation from the parole release conditions, the search, the waiver of the preliminary hearing and the assistance of assigned counsel. However, at the final parole revocation hearing, the petitioner was silent as to any complaint or challenge and he has therefore failed to preserve such objection for review. *See Tafari v. Selsky*, 56 AD3d 912; *see also Davila v. Selsky*, 48 AD3d 846.

It is noted that in his reply papers, the petitioner asserts for the first time a claim for monetary damages as a result of his “unlawful detainment”. Notwithstanding the procedural absence of raising the claim in the petition, even if the petition had been successful and the petitioner granted immediate release, claims for monetary damages “may only be asserted in the Court of Claims.” *See, Shoga v. Annucci*, 122 AD3d 1180 *citing Jones v. Fischer*, 110 AD3d 1295.

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 16, 2016 at
Indian Lake, New York.

S. Peter Feldstein
Acting Supreme Court Justice