Matter of Watkins v NYS Div. of Parole
2016 NY Slip Op 32350(U)
November 29, 2016
Supreme Court, St. Lawrence County
Docket Number: 148300
Judge: S. Peter Feldstein

STATE OF NEW YORK
SUPREME COURT **COUNTY OF ST. LAWRENCE**

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In the Matter of the Application of
CORNELIUS WATKINS, #14-R-0678,
Petitioner,

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

DECISION AND JUDGMENT
RJI #44-1-2016-0524.12
INDEX #148300

-against-

NYS DIVISION OF PAROLE,
Respondent.

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This proceeding was commenced by the Habeas Corpus Petition (purportedly by Osvaldo Caban, Jr., Esq.,) on behalf of Cornelius Watkins, sworn to on June 14, 2016 and originally filed in Bronx County. The *pro se* petition was subsequently replaced by the Amended Petition[1] for a Writ of Habeas Corpus of Percival A. Clarke, Esq. (assigned counsel) on behalf of Cornelius Watkins, verified on July 1, 2016 and also filed in Bronx County. By order dated August 17, 2016 the Supreme Court, Bronx County (Hon. Vincent T. Quattrochi) directed that venue be changed to St. Lawrence County and that counsel for the petitioner be relieved of his assignment. The change of venue was apparently necessitated by the fact that Cornelius Watkins was no longer held in local (New York City) custody in Bronx County but, rather, had been transferred into New York State Department of Corrections and Community Supervision (hereinafter referred to as "DOCCS") custody at the Ogdensburg Correctional Facility in St. Lawrence County. The papers originally filed in Bronx County were received and filed in the St. Lawrence County Clerk's office on August 25, 2016. Cornelius Watkins, who will here and after be referred to as the petitioner, purports to challenge his continued incarceration in DOCCS custody.

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[1] The Amended Petition will be referred to as the petition hereafter.

The Court issued an Order to Show Cause on August 30, 2016. In response thereto, the Court has received and reviewed the Verified Answer and Return, together with an affirmation of Alicia M. Lendon, Esq., Assistant Attorney General, dated October 14, 2016. In reply thereto, the Court has received and reviewed the petitioner's "Response to Verified Answer/Return" dated November 2, 2016.

On February 26, 2014, petitioner was sentenced as a second felony offender in Supreme Court, New York County, to an indeterminate term of one and one-half (1 ½) to three (3) years incarceration upon the petitioner's conviction by plea of the crime of Criminal Possession of Stolen Property in the Fourth Degree. Petitioner was conditionally released to parole supervision on June 8, 2015. On July 10, 2015, a parole warrant was issued for the petitioner who was declared delinquent on June 11, 2015. The petitioner was arrested on March 24, 2016 on unrelated criminal charges and the parole warrant was executed thereafter. On March 29, 2016, the City Court of New York sentenced the petitioner to a definite term of incarceration of six (6) months to run concurrently with time owed on parole.

On April 7, 2016, the final parole revocation hearing was held at which the petitioner pled guilty to Charge #1 (failing to report) in exchange for the Division of Parole withdrawing Charge #2 (changing residence without approval). Petitioner received a twelve (12) month time assessment with a 97 day DOCCS drug treatment program as an alternative program at the discretion of DOCCS. On July 15, 2016, petitioner was received into DOCCS custody from the NYC Department of Correction. Thereafter, on July 26, 2016, petitioner was transferred to the Willard Drug Treatment Facility. On August 1, 2016, petitioner was advised of the conditions of the Willard Drug Treatment Program (hereinafter referred to

as "the Willard program") and he refused to sign the contract. On August 2, 2016, petitioner was again presented with the terms and conditions to enter the Willard program and again he refused to enter the program. On August 9, 2016, the petitioner was transferred to the Ogdensburg Correctional Facility to serve the remainder of his 12 month time assessment.

The original petition seeking immediate release alleged that DOCCS had failed to timely transfer him to the Willard program and even if he were immediately transferred to Willard, he would potentially serve more time than the original violation sentence of 90 days to complete the program. The petition argued that the only remedy is to grant immediate release to parole supervision.

Although this Court did not receive the underlying petition until August 25, 2016, the Court was unaware that the petitioner had been transferred to the Willard campus on or about July 26, 2016 and that the petitioner had signed a refusal to attend the program on August 2, 2016. The petitioner did not seek to further amend the petition.

Respondent argues that the petitioner is not entitled to immediate release. The respondent asserts that at the time of the parole revocation hearing on April 7, 2016, the petitioner was advised and indeed he acknowledged that he would be required to serve the remainder of his 6 month definite sentence prior to being transferred to any DOCCS drug program.

> "THE COURT: Ninety-seven days once you get into it.
> MR. WATKINS: I understand that but so, they mean that I - - I leave out of Riker's Island July, say July - - July 22nd. That means I got August, September, October I'll be coming home." [Resp. Ex. D, (12:21-25; 13:1)].

Notwithstanding the foregoing, the respondent argues that the petitioner was not entitled to immediate transfer to the Willard program pursuant to CPL §410.91 as he was not judicially sentenced. It is noted that the petition refers to 9 NYCRR 8006.20 (which is a typographical error). However, even if the petitioner relied upon 9 NYCRR 8005.20 (the correct citation), there is no directive contained therein to support a transfer within a brief amount of time. Indeed, 9 NYCRR 8005.20(c)(1) reads, in pertinent part:

> "For the following violators, defined as "Category I," the time assessment, as defined by section 8002.6(a) of this Title, shall be a minimum of 15 months, or a hold to maximum expiration of the sentence, whichever is less, unless a mitigating reduction of up to three months is applied for a violator who accepts responsibility for his or her conduct, or unless paragraph (4) of this subdivision regarding exceptional mitigating circumstances applies; provided, however, that if the violator and the division both consent, the hearing officer consistent with paragraph (6) of this subdivision, may order or recommend to the board that the violator be restored to the Willard drug treatment campus program..."

Respondent argues that the time assessment of 15 months was reduced by three months as the petitioner accepted responsibility for his violation. However, the respondent further argues that the mandatory time assessment was 12 months which could be modified if the petitioner completed the Willard program or a similarly-situated DOCCS program. Insofar as the petitioner refused to accept the terms of the Willard program, the petitioner has chosen to complete his full 12 month time assessment.

In his reply, 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[2] 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 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. Clearly, Mr. Ryniec was in a different procedural stance than that of the petitioner.

In the matter at bar, petitioner's parole was not "revoked and restored" at the close

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[2] 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).

of his April 7, 2016 final parole revocation hearing. Rather, petitioner's parole was revoked at the close of the final hearing and the ALJ imposed a 12 month time assessment with the provision that if the petitioner entered and successfully completed an unspecified DOCCS drug treatment program, such as the Willard program, the disposition of the final parole revocation hearing would be modified and parole supervision would be restored. More importantly, the petitioner was to serve the remainder of his 6 month definite sentence PRIOR to any transfer to an unspecified DOCCS drug treatment program. There has not been an argument offered by the petitioner that following the completion of the 6 month definite sentence he was not promptly transferred to DOCCS custody.

"Habeas corpus relief is available only if an inmate can demonstrate that he or she is entitled to immediate release from prison. An inmate is not entitled to immediate release from prison until the expiration of his or her sentence (internal citations omitted)." *People ex rel. Porter v. Napoli*, 56 A.D.3d 830, 831; *Peopl ex re. Richardson v. West*, 24 AD3d 996. Herein, petitioner waived his opportunity to early release following the completion of the Willard program as offered by refusing to attend. As a result, the petitioner must now serve the remainder of his 12 month time assessment and is not entitled to immediate release at this time.

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: November 29, 2016 at
Indian Lake, New York

S. Peter Feldstein
Acting Supreme Court Judge