

<b>People ex rel. Carpenter v Bartlett</b>
2017 NY Slip Op 30805(U)
April 19, 2017
Supreme Court, Seneca County
Docket Number: 51022
Judge: Dennis F. Bender
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STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF SENECA

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The State of New York, on relation of

ANTHONY CARPENTER  
DIN # 10A4171

Petitioner

DECISION AND JUDGMENT  
Index No. 51022

-against-

RICKEY BARTLETT, SUPERINTENDENT OF  
WILLARD DRUG TREATMENT CAMPUS AND  
NYS DEPARTMENT OF CORRECTIONS AND  
COMMUNITY SUPERVISION,

Respondents

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The petitioner, through his attorneys, Rebekah J. Pazmino, Esq, and Elon Harpaz, Esq. seeks a Writ of Habeas Corpus alleging that DOCCS failed to provide a preliminary hearing within 15 days of the execution of the parole violation warrant. Ms. Pazmino notes the parolee has a right to a preliminary hearing within 15 days of the date of parole violation warrant execution. (Executive Law §259-i(3)(c)(i); 9 NYCRR §8005.6(a)).

Ms. Pazmino further submits that a failure by DOCCS to conduct a preliminary hearing within 15 days of execution of the warrant requires that the warrant be vacated and the parolee reinstated to parole supervision (citing People ex rel Melendez v Warden, 214 AD 2d 301 (1<sup>st</sup> Dept, 1995)).

In response to the writ, Ted O'Brien, Esq, Assistant Attorney General, submits that while there is no dispute the parole violation warrant issued on January 4, 2017 the same was not executed until January 5, 2017. This is because following the urinalysis testing, the Petitioner complained he did not feel well, that he was having shortness of breath and became non-responsive. He was

thereafter transported by ambulance to Bronx Lebanon Hospital (Exhibit C, Return). The Respondent submits that the relator needed to be medically cleared before he could be transferred to jail and have the parole warrant lodged against him. That occurred the following day on January 5, 2017.

In response to the Respondent's Affirmation in this matter, the Petitioner through counsel, Elon Harpaz, Esq, has submitted an Affirmation in Reply. As he notes, the issue is when was the parole violation warrant executed. He states the parole violation warrant was executed on January 4, 2017 as that is the date the Respondent's took the Petitioner into custody. He was there, responding to a directive from his parole officer to report and at that time, he passed a dirty urine. There is no question that he was taken into custody at that point, before he complained of being ill and was thereafter transported to the hospital. (Respondent's Exhibit C, NY State Parole Partner summary which provides, "P/ was taken into custody and became belligerent and he had to be restrained. Parole warrant #754987 was issued. P / then complained of shortness of breath, and was taken to Bronx Lebanon Hospital.")

The Court concurs with the Petitioner that the parole warrant was executed on January 4, 2017, not January 5, 2017.

"Execution occurs when a parolee is taken into custody under the warrant by taking such person and having him detained". (Executive Law, 259-i(3)(a)(ii); See People ex. rel. Morant v Warden, Rikers Island, 35 AD 3<sup>rd</sup> 208 (1<sup>st</sup> Dept, 2006), lv denied 8 NY 3<sup>rd</sup> 809 (2007); People ex. rel. Kato v Warden, George Motchan Detention Center, 27 Misc 3<sup>rd</sup> 1213(a) (Supr Court Bronx Co, 2010, Newman, J.), People ex. Rel. Mitchell v Warden, Anna M. Kross Correctional Facility, 49 Misc 3<sup>rd</sup> 1214(A) (Bronx Co. Supr. Court, 2015).

Pursuant to New York State Executive Law 259-i(3)(c)(i), the Respondents were obligated to provide Petitioner his preliminary hearing within 15 days of the parole warrant execution. The warrant was executed on January 4, 2017 and thus, the hearing needed to be conducted by January 19, 2017. The same was not held until January 20, 2017.

It is well settled that the requirement of timely parole revocation hearings be “strictly construed”, People ex. rel. Johnson v New York State Board of Parole, 71 AD 2d 595, 595 (1<sup>st</sup> Dept, 1979). A failure by DOCCS to conduct a preliminary hearing within 15 days of execution of the warrant requires that the warrant be vacated and the parolee reinstated to parole supervision. People ex. rel. Melendez v Warden, 214 AD 2d 301 (1<sup>st</sup> Dept, 1995); People ex. rel. Rosenfeld, ex. rel. Peterson v Sposato, 87 AD 3d 665, 666 (2<sup>nd</sup> Dept, 2011).

Based upon the foregoing, it is hereby

ORDERED, that the Petitioner is restored to parole status immediately, which the Court interrupts to mean within 10 days of the date of this decision. The parolee is to report to his parole officer and follow all other terms and conditions of his parole supervision.

THIS CONSTITUTES THE DECISION AND JUDGMENT OF THE COURT.

DATED: April 19, 2017

  
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HON. DENNIS F. BENDER  
Acting Supreme Court Justice