

People v Superintendent, Fishkill Corr. Facility

2019 NY Slip Op 33172(U)

September 26, 2019

Supreme Court, Dutchess County

Docket Number: 478/2019

Judge: Hal B. Greenwald

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At the term of the Supreme Court of the State
of New York, held in and for the County of
Dutchess, at 10 Market Street, Poughkeepsie,
12601 on September 26, 2019.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

-----X

The PEOPLE OF THE STATE OF NEW YORK
ex rel. LUIS DELGADO, DIN 316-A-2725

Petitioner,

Index No.: 478/2019

-against-

DECISION AND ORDER

SUPERINTENDENT, Fishkill Correctional Facility
NEW YORK STATE DEPT. OF CORRECTIONS AND
COMMUNITY SUPERVISION

Respondents

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Greenwald, J.

The following papers numbered 1-3 were considered by the Court in deciding Petitioner's
Petition for Writ of Habeas Corpus:

<u>Papers</u>	<u>Numbered</u>
Petitioner's Petition of Writ of Habeas Corpus/ Exhibits A-C	1
Respondents Answer/Exhibits A-K	2
Petitioner's Reply/Exhibits A-B	3

RELEVANT BACKGROUND

Petitioner files this Petition for Writ of Habeas Corpus, seeking immediate release from
the New York State Department of Corrections and Community Supervision ("DOCCS").
Petitioner states that he has been in custody at Fishkill Correctional Facility residential treatment
program ("RTF"), past the maximum expiration date of his sentence as DOCCS believes he is
subject to the conditions of SARA Law. Petitioner asserts that he has not been able to find SARA-
compliant housing and DOCCS has not provided any assistance to find housing to the Petitioner.

Petitioner admits that he was adjudicated a level three sex offender, after a conviction of Sexual Abuse in the First Degree for a crime that occurred on or about October 5, 1992, however he is now on post-release supervision until December 24, 2021, for an unrelated matter. Petitioner argues that as his recent sentence was for non-sexual, non-violent offenses, Executive Law §259-c (14) is inapplicable to him, and he should be released to the New York City shelter system, or alternatively released to his mother's address, which was rejected due to its proximity to school grounds.

Respondents argue that Petitioner being placed at the RTF, was a condition necessary and appropriate, since Petitioner is a level three sex offender who had not secured appropriate housing, pursuant to Executive Law §259-c (14), as the mandatory condition of release imposed by the Board of Parole. Respondents argue further, that Petitioner would not be entitled to immediate release as there are other conditions and compliance issues to be accommodated in its traditional process of releasing an RTF resident to the community. Respondents state that Petitioner's history and the individual circumstances of the case, requires careful consideration and approval of Petitioner's proposed housing, regardless of whether the SARA conditions are imposed.

DISCUSSION

The Applicability of Executive Law §259-c (14), SARA & RTF

New York Executive Law §259-c (14) is applicable to a person serving a sentence for an offense defined in Article 130, 135 or 263 of the penal law or section 255.25, 255.26 or 255.27 of the penal law and the victim of such offense was under the age of eighteen at the time of such offense or such person that has been designated a level three sex offender pursuant to subdivision 6 of section 168-l of the New York Correction Law.

Petitioner's argument that Executive Law §259-c (14), requiring SARA compliant housing does not apply to him, is flawed. The statute is applicable to two categories of persons. The first category is a person serving a sentence for the defined offenses stated in Executive Law §259-c (14) and the victim of such offense was under the age of eighteen at the time of the offense. The second category is a person that has been designated a level three sex offender pursuant to subdivision 6 of section 168-l of the New York Correction Law. The statute does not state that it

is applicable to a person that has been designated a level three sex offender serving a sentence for specific delineated offenses, as with the first category of persons. The distinction is based solely on the risk level designation, and the current sentence has no bearing on the mandatory condition for release.

The Sexual Offender Registration Act (SORA) and the Sexual Assault Reform Act (SARA), are intended to be civil measures designed as an added protection for the children in our communities and is not intended to be punitive to the sexual offender. *See, People v. Fitzpatrick*, 18 Misc. 3d 510, 512 (County Ct. 2007); *see also, Williams v Dept. of Corrections and Community Supervision*, 136 A. D. 3d 147, 153 (1st Dept. 2016). SARA ensures that any individual designated as a level three sex offender would be prohibited from entering school grounds or other areas where children are cared for and is the basis for DOCCS utilizing RTFs as residences for level 3 sex offenders, until the inmates can find SARA compliant housing. *See, People ex rel. Garcia v. Annucci*, 167 A.D. 3d 199, 204 (4th Dept. 2018).

Risk level assessment of a sex offender is done through a judicial process, that includes the right to counsel, to right to have a hearing and the right to appeal the decision. Once the judicial determination is made assigning the defendant a risk level classification, the sexual offender must comply with the directives of the statutes, which includes but is not limited to registration and verification as a sexual offender as provided in the statute. A sexual offender with a level three risk classification is obligated to registration and verification as a sexual offender annually for life. *See, New York Correction Law §§ 168-h and 168-n; see also, People v. Yearwood*, 144 A.D. 3d 776 (2nd Dept. 2016). Even as Petitioner argues that the Petitioner's sexual offense sentence expired, it is noted that the judicially determined risk level designation does not. Which appears to be intentional in the scheme of protecting the children within our communities.

To suggest that the legislature intended to only make Executive Law §259-c (14), applicable to persons currently serving sentences related to sexual offenses undermines the role and purpose of the risk level classification and undermines the intent of SORA and SARA. It would suggest that the commission of a subsequent crime, that is not enumerated in Executive Law § 259-c (14) or related to a sexual offense, declassifies a level three sex offender and the protections sought to keep the most vulnerable citizens in the community, our children safe, would virtually disintegrate. *See, People ex rel. Winters v O'Meara*, 63 Misc. 3d 1208 (A) (Supreme Ct. 2019).

Petitioner does not dispute that he has been designated a level three sex offender. As such, Executive Law §259-c (14) is applicable to Petitioner, as a level three sex offender. Petitioner falls under the second category of persons, regardless of the offense for which he is currently serving. Therefore, Petitioner is subject to SARA conditions imposed on him by the statute.

Pursuant to Corrections Law §§2 and 73, a RTF is a facility consisting of a community based residence in or near a community where employment, educational and training opportunities are available, to persons who are on parole or conditional release or who are or will soon be eligible for release on parole and intend to reside in or near that community when released. DOCCS is expressly authorized to use an RTF as a residence for a level three sex offender who is unable to secure SARA-compliant housing and does not conflict with the sixth month time limit that is applicable to discretionary RTF conditions. See, People ex rel. Johnson v. Supt. Fishkill Correctional Facility, 47 Misc. 3d 984, 989 (Dutchess County Supreme Court, 2015).

Petitioner is a level three sex offender, who has not secured SARA compliant housing, as part of the mandatory conditions of release pursuant to Executive Law §259-c (14). Petitioner is on post-release supervision until December 24, 2021, therefore DOCCS is expressly authorized to place the Petitioner at the RTF at Fishkill Correctional Facility. Petitioner has not provided a sufficient basis to grant the relief requested in Petitioner's petition for Writ of Habeas Corpus, and as such, Petitioner's application is **denied**.

Accordingly, it is hereby,

ORDERED, that Petitioner's Petition for Writ of Habeas Corpus is denied.

Any relief not specifically granted herein is denied.

The foregoing constitutes the decision and order of this Court.

Dated: September 26 2019
Poughkeepsie, New York

ENTER:



Hon. Hal B. Greenwald, J.S.C.

CPLR Section 5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

When submitting motion papers to the Honorable Hal B. Greenwald's Chambers, please do not submit any copies. Please submit only the original papers.

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