

People ex rel. Lucien v Superintendent Fishkill Corr. Facility
2019 NY Slip Op 33840(U)
November 25, 2019
Supreme Court, Dutchess County
Docket Number: 1367/19
Judge: Maria G. Rosa
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

DUTCHESS COUNTY
CLERK'S OFFICE
RECEIVED
2019 NOV 27 AM 11:23

Present:

Hon. Maria G. Rosa, Justice

PEOPLE OF THE STATE OF NEW YORK
ex rel. LEONIDAS LUCIEN,

Petitioner,

DECISION AND ORDER

-against-

Index No. 1367/19

SUPERINTENDENT FISHKILL CORRECTIONAL
FACILITY, NYS DOCCS,

Respondent.

The following papers were read on this petition for a writ of *habeas corpus*:

ORDER TO SHOW CAUSE
PETITION FOR WRIT OF HABEAS CORPUS

AFFIRMATION AND RETURN
EXHIBITS 1 - 6

Petitioner maintains that he is being illegally detained in the Fishkill Correctional Facility beyond the six-month period prescribed by Penal Law §70.45(3). That statute authorizes the Board of Parole to “impose as a condition of post-release supervision that for a period not exceeding six months immediately following release from the underlying term of imprisonment the person be transferred to and participate in the programs of a residential treatment facility.” Petitioner asserts that the respondent lacks statutory authority to detain him beyond the six-month period authorized by Penal Law §70.45 and seeks his immediate release.

Petitioner was convicted in August 2015 of Rape in the 2nd Degree and sentenced to a four year determinate term of incarceration with five years of post-release supervision. The maximum expiration date of his sentence was February 9, 2019. In January 2019 Petitioner was notified that he was being transferred to a residential treatment facility “until such time as a residence has been approved and such address has been verified to be located outside of the Penal Law definition of ‘school grounds’.” Petitioner does not dispute that his offense rendered him subject to the provisions of the Sexual Assault Reform Act (“SARA”), which prohibit him from living or entering within one thousand feet of school grounds upon his release to the community. See Executive Law §259-c(14). Petitioner asserts, however, that he was never released to a residential treatment program but remained confined at the Fishkill Correctional Facility under substantially the same conditions as any other inmate still serving a sentence of incarceration. He claims that the conditions of his confinement do not meet the requirements of Correction Law §2(6) which define a residential

[* 2]

treatment facility as “a correctional facility consisting of a community based residence in or near a community where employment, educational and training opportunities are readily available” He further contends that he has not been able to avail himself of the opportunities set forth in Correction Law §73(1)(2) and (3), which provide residents of a residential treatment facility may be “allowed to go outside the facility during reasonable and necessary hours” and are entitled to “appropriate education, on-the-job training and employment.” He asserts that he is incarcerated solely based upon an inability to find SARA compliant housing but questions how he can locate such housing based upon the conditions of his confinement.

Respondent does not dispute that Petitioner is entitled to release to post-release supervision when a SARA compliant residence is located. It asserts, however, that Petitioner must continue to reside in the Fishkill facility until a SARA compliant residence can be developed because his release without such housing would be an automatic violation of the conditions of his release. Respondent states that the Department of Correction and Community Supervision (“DOCCS”) has designated the Fishkill Correctional Facility as a residential treatment facility and that the services offered there meet the requirements of Correction Law §2(6); (73)(1)(2) and (3). Respondent further claims that DOCCS has met its obligation to assist Petitioner in locating appropriate housing under Correction Law §201(5) and Gonzalez v. Annucci, 149 AD3d 256 (3rd Dept 2017).

Issues of fact exist as to whether the Fishkill Residential Treatment Facility complies with the requirements of a residential treatment facility as defined in Correction Law §2(6) and §73. While Respondent takes the position that it may keep Petitioner confined in that facility until such time as a residence has been approved, the record does not demonstrate the Petitioner has been accorded the rights of a resident of a residential treatment facility as opposed to an inmate. cf. Gonzalez v. Annucci, 32 NY3d 461 (2018). The Court of Appeals has interpreted Corrections Law §201(5) to require DOCCS to actively investigate and approve residences that have been identified by inmates “when it provides the inmates with adequate resources to allow them to propose residences for investigation and approval.” Id. On the record before the court there are issues of fact as to whether DOCCS has provided Petitioner with adequate resources that would enable him to propose residences for investigation and approval. As resolution of these issues are necessary for the court to adjudicate the petition, it is

ORDERED that a hearing on these issues will be held before the court on December 5, 2019 at 10:00 a.m.

The foregoing constitutes the decision and order of the Court.

Dated: November 25, 2019
Poughkeepsie, New York

ENTER:



MARIA G. ROSA, J.S.C.

[* 5]

Pursuant to CPLR §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.

Leonidas Lucien DIN 15A3332
Fishkill Correctional Facility
PO Box 1245
Beacon, NY 12508

Office of the Attorney General
One Civic Center Plaza, Suite 401
Poughkeepsie, NY 12601