

| |
|--|
| People v Bigwarfe |
| 2019 NY Slip Op 34000(U) |
| July 9, 2019 |
| Supreme Court, St. Lawrence County |
| Docket Number: 157920 |
| Judge: Michael R. Cuevas |
| 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. |

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ST. LAWRENCE

THE PEOPLE OF THE STATE OF NEW YORK,
ex rel. DONALD DOBBS,

Petitioner,

DECISION AND JUDGMENT
RJI #44-1-2020-0252
INDEX #157920

-against-

BROOKS BIGWARFE, St. Lawrence County Sheriff,
And New York State Department of Corrections and
Community Supervision,

Respondents.

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

This proceeding was originated by the Verified Petition for a Writ of *Habeas Corpus* of Donald Dobbs III (hereinafter referred to as "Petitioner"), dated June 8, 2020 which was filed in the office of the St. Lawrence County Clerk on June 18, 2020. Petitioner, who is now an inmate at the St. Lawrence County Jail, is challenging his continued incarceration in the custody of the St. Lawrence County Sheriff (hereinafter referred to as "Sheriff").

The Court issued a Writ of *Habeas Corpus* on June 24, 2020. In response thereto, the Court received a Verified Answer and Return on behalf of respondent Sheriff, dated July 2, 2020 and a Motion to Dismiss, supported by the affirmation of Alicia Lendon, Assistant Attorney General on behalf of respondent New York State Department of Corrections and Community Supervision (hereinafter "DOCCS"). Oral argument was heard by the Court *via* a Skype for Business video teleconference on July 7, 2020. Petitioner offered oral argument stating that his sworn petition contained his factual allegations. Respondent Sheriff called Peggy Harper, St. Lawrence County Jail Administrator as a witness and Petitioner was give the opportunity to cross-examine the witness. Respondent DOCCS offered argument on its' motion to dismiss and Petitioner was

accorded the opportunity to respond. At the conclusion of the testimony and oral argument, the Court advised the parties that the proceeding would be deemed fully submitted.

FACTS

At the time of his petition, Petitioner was being held in the St. Lawrence County Jail on a parole violation warrant and criminal charges pending in St. Lawrence County Court. On or about June 29, 2020, after Petitioner entered a plea of guilty to the crime of Criminal Possession of a Controlled Substance in the Third Degree, in violation of Penal Law §220.16 (8), a class B felony, he was sentenced to an determinate term of incarceration of four (4) years. Petitioner remained in the custody of the Sheriff pending his transfer to a DOCCS facility and was still an inmate at the St. Lawrence County Jail as of July 7, 2020.

Petitioner seeks a Writ of *Habeas Corpus* as he claims he suffers from obesity, sleep apnea and vitamin D deficiency¹ and that he had been treated for hypertension, a health status which he claims places him at grave risk of serious illness or death if infected with the COVID-19 virus. Petitioner alleges that he is at a heightened risk of contracting the novel corona virus, COVID-19 due to the design and operation of the St. Lawrence County Jail. He claims that social distancing, and maintaining adequate personal hygiene are not possible due to shared shower facilities, communal meals, communal recreation activities and the jail's admission of new detainees. Petitioner argues that these conditions amount to deliberate indifference on the part of the Sheriff. Petitioner further argues that the Sheriff is not enforcing social distancing within the jail and is not enforcing the wearing of masks or face coverings as recommended by the Center for Disease Control ("CDC").²

¹ Petitioner's health assessment dated 9/25/2018, submitted as an undesignated exhibit to his petition lists his medical conditions as: hypothyroidism, sleep disturbance, acute bilateral low back pain and Body Mass Index 45.0 – 49.9 in adult. A second exhibit, "Diagnostic Nocturnal Polysomnography Interpretation" dated 10/13/2018 confirmed that petitioner suffers from Obstructive Sleep Apnea.

² Petitioner cites to the CDC website, <http://cdc.gov/coronavirus/2019-ncov/community/corrections-detention-guidance-correctional-detention.html> and Governor Cuomo's Executive Order 202.17.

Consequently, the Court takes notice of the fact that the Centers for Disease Control (“CDC”) recommends social distancing, self-isolation or home-confinement, frequent handwashing, and other measures to limit contact with other people, whether symptomatic, or not and that the CDC has warned that the disease is more likely to spread in crowded environments such as prisons, and places where people live, eat, and sleep in close proximity.³

Respondents produced testimony from the Jail Administrator, Peggy Harper, that the St. Lawrence County Jail, at which Petitioner is incarcerated, has had no (0) inmates test positive for COVID-19, with no deaths. The Jail Administrator also testified that no St. Lawrence County corrections officers have tested positive. In her affidavit, Ms. Harper details the various steps the Sheriff and the County have taken to prevent the transmission of the virus in the jail and attaches copies of seven memoranda to inmates issued between March 12, 2020 and June 10, 2020. The memos covered precautionary measures to be taken by inmates, updates to precautions, use of face masks, suspension of visitation, mandated use of face masks, communications, extension of visitation suspension and the commencement of secure visitation. In addition, Ms. Harper testified that new inmates are quarantined before being allowed in the general jail population, that visitation with outsiders had been fully suspended, that corrections officers are checked daily for temperature and/or symptoms, that enhanced cleaning and disinfecting protocols were put in place, that the jail population was spread among all housing units and chairs in common areas spaced to increase social distancing, and that the jail was at substantially less than full capacity

Our analysis must begin with the most recent appellate decision issued in a case involving a similar fact pattern and legal claims – the June 4, 2020 decision of the Appellate Division, Third-Department in *People ex rel. Carroll v Keyser*, 2020 N.Y. App. Div. LEXIS 3281 (3d Dept. 2020). The *Carroll* case was a *habeas corpus* proceeding brought on behalf of Jalil Muntaqim, a 68 year

³ C.D.C., *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (Mar. 23, 2020)

old, black-inmate incarcerated at the Sullivan Correctional Facility, who suffers from hypertension, respiratory ailments and lung damage from a bout of tuberculosis. At least one other inmate developed COVID 19 at the Sullivan facility.⁴

Here, as in *Carroll*, Petitioner argues that *habeas corpus* properly lies to challenge the conditions of confinement of individuals in Petitioner's position. As, in *Carroll*, Respondents here take a contrary view. A strong argument can be made that New York's incorporation of *habeas corpus* into its 1821 Constitution⁵ results in two types of *habeas corpus* – statutory and constitutional. And, that the latter should be interpreted in state prisoner cases as the federal courts have, since the language in the New York Constitution is nearly identical to that in the U.S. Constitution.

However, like the Appellate Division in *Carroll*, we need not, and do not, resolve that question as Petitioner's claims are first and foremost that his confinement is now illegal in violation of both the federal and state constitutional prohibitions against cruel and unusual punishment. *See, U.S. Const., 8th Amend; N.Y. Const., art. 1, sec. 6.*

As to Petitioner's assertion that the impact of the COVID-19 pandemic on his conditions of incarceration and, potentially his health, requires his release due to Respondents' inability or failure to adequately protect him, the Court finds that Petitioner has not met his burden of proof to require any relief. To succeed on this claim, Petitioner must meet a two pronged test. First, that he is objectively "incarcerated under conditions posing a substantial risk of serious harm." *Farmer v. Brennan*, 511 U.S. 825, at 834 (1994); *see also, Helling v. McKinney*, 509 U.S. 25, 35 (1993); *Matter of Wooley v. New York State Dept. of Correctional Servs.*, 15 N.Y.3d 275, 282 (2010). Second, that prison officials exhibit deliberate indifference or that subjectively, their actions reflect a state of mind *akin* to criminal recklessness, in which they consciously disregard the risk of harm.

⁴ As of the date of the Appellate Division's decision, the Court was aware that the petitioner also became infected with the virus.

⁵ N.Y. Const. of 1821, art. VII, §6.

Farmer, supra, 511 U.S., at 839–840; *see also, Walker v. Schult*, 717 F.3d 119, 125 (2d Cir.2013); *Salahuddin v. Goord*, 467 F.3d 263, 280 (2d Cir.2006); *Wooley, supra*, 15 N.Y.3d at 28; *People ex rel. Carroll v. Keyser*, 2020 N.Y. App. Div. LEXIS 3281 (3d Dept. 2020).

This Court finds the language of the U.S. Supreme Court in *Farmer* instructive in guiding us to a decision in this case.

The [Eighth] Amendment also imposes duties on these officials, who must provide humane conditions of confinement; prison officials must ensure that inmates receive adequate food, clothing, shelter, and medical care, and must take reasonable measures to guarantee the safety of the inmates.

Farmer v. Brennan, 511 U.S., *supra* at 825, 834 (1994); *Hudson v. Palmer*, 468 U.S. 517, 526–527, 82 L. Ed. 2d 393, 104 S. Ct. 3194 (1984); *see also, Helling, supra*, 509 U.S., at 31–32; *Washington v. Harper*, 494 U.S. 210, 225 (1990); *Estelle v. Gamble*, 429 U.S. at 97, 103 (1979); *DeShaney v. Winnebago County Dept. of Social Servs.*, 489 U.S. 189, 198–199 (1989).”

Farmer held:

We reject petitioner's invitation to adopt an objective test for deliberate indifference. We hold instead that a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.

Farmer v. Brennan, 511 U.S., *supra* at 837.

Here, Petitioner only submits general claims about the rates of infection of the COVID-19 virus in the general population and the prison system as a whole or facilities in other states like Illinois, without sufficiently disproving respondent Sheriff's evidence regarding the particular conditions under which the Petitioner is housed in the St. Lawrence County Jail. The objective test recited in *Farmer* requires that Petitioner establish he is incarcerated under conditions that pose a *substantial risk of serious harm*. Later, in that same decision, the Court conditions liability on a finding of a disregard of an *excessive risk to inmate health or safety*. In the instant case, Petitioner is arguably incarcerated under a risk of *serious harm* (due to his underlying health status), but this

Court is not convinced that the risk is substantial, given the absence of COVID-19 infection at the St. Lawrence County Jail, and among its staff. These infection statistics, while no guaranty that there is no risk, clearly support a finding that the risk to Petitioner is not *excessive* -particularly, when compared to rates of infection in correctional facilities generally, or in the public at large.

Respondents also successfully rebut the allegation that they have consciously disregarded the threat posed by COVID-19 by the submission of the affidavit and testimony of Peggy Harper, the Jail Administrator. In those statements, she detailed the comprehensive preventative measures the Sheriff and the County have taken to stop the spread of the virus and the successful implementation of such measures.


The Third-Department's recent decision in *Carroll*, on the facts, is nearly indistinguishable. *People ex rel. Carroll v. Keyser*, 2020 N.Y. App. Div. LEXIS 3281 (3d Dept. 2020). Except in this matter, Petitioner has fewer health risk factors, and is incarcerated in a facility with a much lower (non-existent) COVID-19 infection rate. A review of the decision in *Carroll*, establishes that the Third-Department addressed the remaining contentions also raised by the Petitioner herein, and this Court adopts the rationale as stated by the Carroll court.

Consequently, for the reasons stated above, and the binding nature of the *Carroll* decision upon this Court, it is, therefore, the decision of the Court that it is hereby

ORDERED AND ADJUDGED, that the petition as against respondent Sheriff be and hereby is dismissed; and it is further

ORDERED AND ADJUDGED that since the Petitioner was and is not in DOCCS custody during the relevant time involved herein, the Petition fails to allege any basis for a cause of action against the respondent DOCCS and it is therefore, dismissed as against the respondent DOCCS.

DATED: July 9, 2019 at
Schenectady, New York


Michael R. Cuevas
Supreme Court Justice