

People ex rel. Dean v LaClair
2019 NY Slip Op 34002(U)
June 16, 2019
Supreme Court, Franklin County
Docket Number: E2020-250
Judge: Michael R. Cuevas
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STATE OF NEW YORK
SUPREME COURT

COUNTY OF FRANKLIN

THE PEOPLE OF THE STATE OF NEW YORK,
ex rel. ROBERT S. DEAN, ESQ. on behalf of

MICHAEL NARED, DIN #18A2710,

Petitioner,

DECISION AND JUDGMENT

RJI #16-1-2020-0104

INDEX #E2020-250

-against-

DARWIN LACLAIR, Superintendent, Franklin
Correctional Facility; ANTHONY J. ANNUCCI,
Commissioner, 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 Benjamin Rutkin-Becker, Esq., Of Counsel to Robert S. Dean, Esq., of the Center for Appellate Litigation (hereinafter referred to as "Petitioner's Counsel"), on behalf of Michael Nared (hereinafter referred to as "Petitioner"), dated May 26, 2020 which was filed in the office of the Franklin County Clerk on that same date. Petitioner, who is now an inmate at the Franklin Correctional Facility, is challenging his continued incarceration in the custody of the New York State Department of Corrections and Community Supervision (hereinafter referred to as "DOCCS").

The Court issued a Writ of *Habeas Corpus* on May 27, 2020. In response thereto, the Court received a Verified Answer and Return dated June 3, 2020. Oral argument was heard by the Court via a Skype for Business video teleconference on June 4, 2020. At the oral argument, Petitioner's Counsel requested, and was granted an opportunity to submit a Reply to Darwin LaClair, Superintendent, Franklin Correctional Facility and Anthony Annucci, Commissioner, New York

State Department of Corrections and Community Supervision's (hereinafter referred to collectively as "Respondents") Answer and Return. Petitioner's Counsel submitted a Reply dated June 8, 2020. Counsel for the parties agreed with the Court that the proceeding would be deemed fully submitted upon receipt of the Reply.

FACTS

On or about June 21, 2018, Petitioner entered a plea of guilty to the crime of Attempted Assault in the Second Degree, in violation of Penal Law §§110.00 and 120.05(2), a class D felony. He was sentenced to an indeterminate term of incarceration of one and one-half to three (1 1/2 - 3) years. Petitioner was received into the custody of DOCCS on July 6, 2018. Petitioner subsequently was convicted of the crime of Bail Jumping in the Second Degree, in violation of Penal Law §120.56, a Class E felony, Menacing in the Second Degree (P.L. §120.14) and Criminal Possession of a Weapon in the Fourth Degree (P.L. §265.01) and was sentenced to terms of imprisonment of two to four (2 - 4), one, and one years, respectively – all to be served concurrently. Petitioner's maximum expiration date was calculated as March 26, 2023, with a conditional release date of December 26, 2021.

Petitioner seeks a Writ of *Habeas Corpus* as he is HIV positive, with a possible resulting immunodeficiency,¹ a status which he claims "places him at grave risk of serious illness or death if infected with the COVID-19 virus. Petitioner alleges that the novel corona virus, COVID-19 is rapidly spreading in the DOCCS's prison system, citing to DOCCS's statistics that show that as of May 18, 2020, 465 inmates had been infected and 16 had died.² Petitioner also recites the numbers of confirmed cases of and deaths attributed to COVID-19 within New York State and the fact that there is no vaccine or cure for COVID-19.

¹ Respondents answer that while Petitioner is admittedly HIV positive, he submits no evidence that he is immunocompromised.

² DOCCS, *NYS DOCCS Incarcerated Individuals COVID-19 Report by Housing Facility as of May 18, 2020 at 3:00 pm* (May 18, 2020).

Petitioner recites and the Court takes notice of the undisputed facts that COVID-19 has been declared a worldwide pandemic by the World Health Organization (“WHO”); that the President has declared a national emergency and that Governor Cuomo has issued an Executive Order declaring a disaster emergency in New York. It is also undisputed that the COVID-19 virus is particularly contagious, may be transmitted by asymptomatic individuals, can damage lung tissue, damage other organs, and may require advanced medical support for individuals with serious cases. Nor is it disputed 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. It is also noted 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 documentary evidence that the Franklin Correctional Facility, at which Petitioner is incarcerated, has had only one (1) inmate test positive for COVID-19, with no deaths, and only one inmate test pending.⁴ Nineteen other inmates tested negative after exhibiting symptoms which could be associated with the virus. The one COVID-19 positive inmate at Franklin was the only inmate in three DOCCS facilities in Franklin County to test positive. He was one of two total COVID-19 positives in all eleven DOCCS facilities in the Northeastern quadrant of New York (Clinton, Essex, and Franklin counties). It is undisputed that Franklin County, where Petitioner is incarcerated, has one of the lowest rates of COVID-19 infection. Conversely, Bronx County, where Petitioner proposes to reside in an apartment with three other people if released, has one of the highest.

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-

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

⁴ Answer and Return, Exhibit C, *NYS DOCCS Incarcerated Individuals COVID-19 Report by Housing Facility of June 2, 2020 at 3:00 PM*.

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 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.⁵

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 Constitution⁶, results in two types of *habeas corpus* – statutory and constitutional. And, that the latter should be interpreted in 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 two elements. 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

⁵ As of the date of the Appellate Division's decision, the Court was aware that the petitioner also became infected with the virus.

⁶ N.Y. Const. of 1821, art. VII, §6.

akin to criminal recklessness, in which they consciously disregard the risk of harm. *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, without establishing the particular conditions under which the Petitioner is housed in the Franklin Correctional Facility. 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 extremely low-rates of COVID-19 infection at the Franklin Correctional Facility, and in all DOCCS facilities in the three- county Northeastern Quadrant of New York. These infection rate statistics 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 area of the state to which the Petitioner proposes to relocate should he be released.


Respondents also successfully rebut the allegation that they have consciously disregarded the threat posed by COVID-19 by the submission of the affidavit of Charles J. Quakenbush detailing the preventative measures DOCCS has taken to stop the spread of the virus and the capability of DOCCS to provide any needed medical services.

The Third-Department's recent decision in *Carroll* is factually 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 lower 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, due to the reasons stated above, and the binding nature of the *Carroll* decision upon this Court, it is, therefore, the decision of the Court that this matter is hereby

ADJUDGED, that the petition is dismissed.

DATED: June 16, 2019 at
Schenectady, New York


Michael R. Cuevas
Supreme Court Justice