

Schwartz v Sanford
2020 NY Slip Op 32597(U)
August 11, 2020
Supreme Court, New York County
Docket Number: 154885/2020
Judge: Debra A. James
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

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INDEX NO. 154885/2020

JACOB SCHWARTZ,

MOTION DATE 08/03/2020

Petitioner,

MOTION SEQ. NO. 001

For a Judgment pursuant to Article 78 of the Civil Practice Law & Rules,

- v -

**DECISION + ORDER ON
MOTION**

TINA SANFORD, as Commissioner of the New York State Board of Parole,

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 26, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

ORDER

Upon the foregoing documents, it is

ORDERED that, to the extent that it seeks to change venue from New York, as improper, to Albany County, the cross motion of respondent, pursuant to CPLR §§ 510 and 511, is denied as moot; and it is further

ORDERED and ADJUDGED that the cross motion of respondent to deny the petition on the grounds of lack of subject matter jurisdiction, pursuant to CPLR 3211(a)(2), is granted, and the petition to vacate respondent's determination dated May 4, 2020 denying his application for parole is denied, and this special

proceeding is dismissed, without costs and disbursements to respondent.

DECISION

As stated by the First Department in King v New York State Div. of Parole, 190 AD2d 423, 435 (1993), affd 83 NY2d 788 (1994), which modified that part of the trial court's order that directed respondent to release petitioner King from prison:

"While we find it difficult to believe that petitioner would be denied parole after a hearing at which the statutory factors are fairly and properly applied, the Parole Board should have the opportunity to make that determination using the appropriate standard. Accordingly, this matter is forthwith remanded to respondent and respondent is directed to provide petitioner with a de novo hearing."

See also Garcia v New York State Div. of Parole, 239 AD2d 235, 240 (1st Dept. 1997) ("Under these circumstances, while the IAS court may have been sincerely impressed by petitioner's obvious spirit of redemption and very laudable accomplishments, it was not entitled to substitute its judgment for that of the Board.")

In the proceeding at bar, respondent rendered a determination dated May 4, 2020 (Determination), which denied discretionary release and imposed a "hold" of eighteen months before petitioner could appear for the next parole interview.

Petitioner filed and perfected an administrative appeal of the Determination on April 14, 2020, to which he submitted supplemental challenges on June 1, 2020.

On July 20, 2020, by the Amended Administrative Appeal Decision Notice (Amended Appeal Decision), respondent's three Commissioners appeal board unanimously vacated the Determination, and remanded the matter for "de novo interview". As set forth in petitioner's reply to respondent's cross motion, respondent's counsel has stated that such de novo interview is "expected to be part of the round beginning August 31*** [and as,] [t]he time for a response will have expired[,] before the September round".

The Amended Appeal Decision rendered the proceeding before this court moot. As argued by respondent, the Amended Appeal Decision, in granting petitioner's appeal, "afforded [Petitioner] the only relief to which Petitioner is entitled." See Matter of Callwood v Cabrera, 49 AD3d 394 (1st Dept. 2008) ("Nevertheless, dismissal was appropriate because the landlord's voluntary agreement to withdraw its objection to petitioner's succession rights application rendered the petition moot and nonjusticiable, leaving the court without subject matter jurisdiction over the proceeding [see CPLR 3211(a)(2)]."

Nor does petitioner demonstrate an exception to the mootness doctrine, as, unlike in Matter of Standley v New York State Div. of Parole, 34 AD3d 1169 (3d Dept. 2006), respondent at bar has not "repeatedly failed to consider sentencing minutes and recommendations of the sentencing court as required under

Executive Law § 259-i". By contrast here, petitioner has not shown that his claims will evade judicial review based upon any (1) repeat misstatement by the respondent of petitioner's offense; (2) repeat failure of respondent to provide detailed reasons for its Determination, in lieu of summarily itemizing petitioner's achievements while incarcerated or making a perfunctory finding of lack of insight, parroting the statutory standard, and/or (3) repeat failure of respondent to perform an analysis of risks and needs assessment, such as COMPAS, and an individualized reason for any departure from such assessment scores.

Respondent cites no precedent for an order directing a change of venue of a proceeding, where, as here, the court lacks jurisdiction over the subject matter. In any event, such demand is rendered academic with the dismissal of this proceeding.

8/11/2020
DATE

Debra A. James
DEBRA A. JAMES, J.S.C.

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

APPLICATION: GRANTED DENIED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE