People ex rel. Neurohr v Superintendent, Clinton Corr. Facility
2020 NY Slip Op 33065
August 28, 2020
Supreme Court, Clinton County
Docket Number: 2020-57
Judge: Michael R. Cuevas
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STATE OF NEW YORK
SUPREME COURT COUNTY OF CLINTON

THE PEOPLE OF THE STATE OF NEW YORK,
ex rel. JOSEPH NEUROHR, DIN #08A1966,
NYSID#02690492Z,

Petitioner,

AMENDED[1]
DECISION AND JUDGMENT
RJI #09-1-2020-0104
INDEX #2020-57

-against-

SUPERINTENDENT, Clinton Correctional Facility;
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 Affirmation in Support of a Writ of *Habeas Corpus* of Lawrence T. Hausman, Esq, Of Counsel to Janet E. Sabel, Esq., of the Legal Aid Society (hereinafter referred to as "Petitioner's Counsel"), on behalf of Joseph Neurohr (hereinafter referred to as "Petitioner"), dated February 21, 2020 which was filed in the office of the Clinton County Clerk on or about February 26, 2020 . Petitioner, who is now an inmate at the Clinton 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 March 11, 2020. In response thereto, the Court received a Verified Answer and Return on April 23, 2020. Petitioner's Counsel submitted a

[1] This Order is amended only to the extent that the date the Order was signed contained a typographical error stating June 8, 2019 instead of 2020. Pursuant to CPLR 5019 this non-substantive change need not be made on notice.

Reply Affirmation dated May 11, 2020. Counsel for the parties stipulated that the proceeding would be heard on submission.

On March 10, 2008, the Petitioner entered a plea of guilty to the crime of Course of Sexual Conduct Against a Child, in violation of Penal Law §130.75(1)(a), a class B felony. He was sentenced to a determinate term of incarceration for a period of thirteen (13) years with a term of twenty (20) years post-release supervision. The Petitioner was received into the custody of DOCCS on April 9, 2008. Petitioner's maximum expiration date was calculated to be December 19, 2020, with a conditional release date of October 19, 2019.[2] At a Sex Offender Registration Act ("SORA") hearing held March 15, 2019, Petitioner was classified as a Level 2 Sex Offender.

Petitioner seeks a Writ of *Habeas Corpus* insofar as he has reached his Conditional Release date, but has not been released due to the imposition of additional restrictions associated with his Level 2 Sex Offender classification. Specifically, the condition that he obtain housing that complies with the Sexual Assault Reform Act ("SARA"), referenced in Executive Law §259-c (14). Petitioner argues that because he is incarcerated and indigent, he is unable to secure such housing on his own and is dependent upon DOCCS to secure his placement in a New York City Department of Homeless Services' ("DHS"") shelter. Petitioner claims that DOCCS has refused to assist him in securing shelter placement, and that if his release were ordered by the Court, New York City would have no option but to provide him shelter.

Petitioner further complains that Respondent DOCCS has denied his request to be placed in a Residential Treatment Facility ("RTF") and posits that DOCCS will only do so once he reaches his maximum expiration date, thereby denying him the benefit of his good-time credit and extending his incarceration beyond his maximum expiration date.

Superintendent, Clinton Correctional Facility and New York State Department of Corrections and Community Supervision (hereinafter referred to collectively as "Respondents")

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[2] The Conditional Release date is calculated to be six-sevenths of the maximum expiration date. *Penal Law*§70.40.

argue that the Petitioner is not entitled to immediate release, as of the date of the petition, because he has not yet reached his maximum expiration date. Respondents further opine that since Petitioner is an adjudicated Level 2 sex offender, where the victim was less than eighteen years old, "[ ] DOCCS has not only the right, but also the duty to ensure that he has an acceptable residence before releasing him." *Affirmation of Marat Shkolnik, attached as Exhibit A to Respondents Answer and Return ("Shkolnik Aff."), ¶6.*

Respondents assert that DHS is an independent agency, not under DOCCS' auspices and further claim, "Petitioner is on an active priority release list that the Department submits to DHS for appropriate shelter placement as space is available." *Shkolnik Aff. ¶¶14, 15.*

In reply papers, Petitioner seeks to buttress his argument that he is being subjected to cruel and unusual punishment by virtue of the outbreak of the COVID-19 virus with general statements about the pandemic's effects in the DOCCS' prison system, New York State, and the world.

Preliminarily, it is noted that as of the date of this Decision, Order, and Judgment, Petitioner has not been released to the community, or to a Residential Treatment Center. Petitioner is still in the custody of DOCCS at the Clinton Correctional Facility, nearly eight-months after his Conditional Release date, and within six-months of his maximum expiration date. Petitioner has been granted an open parole release date and Respondents are on the record indicating that he will be released on parole, if the mandatory conditions are met.[3] However, if the condition, as applied to him, is found unconstitutional, rendering his claims cognizable in a *habeas corpus* proceeding, he could be entitled to immediate release. *People ex rel. Durham v. Annucci*, 170 A.D.3d 1634, 1634 (4th Dept. 2019), *lv. dismissed* 33 N.Y.3d 1008 (2019); *compare, People ex rel. DeFlumer v Strack*, 212 A.D.2d 555, 555 (2d Dept. 1995), *lv. dismissed* 85 N.Y.2d 966 (1995).

It is also the true, as espoused by Petitioner's Counsel, that Petitioner has been granted an open parole release date, affording him a "legitimate expectation of early release from prison" that

[3] Petitioner is in much the same position as the Petitioner in *People ex rel. Johnson,* and raises many of the same arguments. *People ex rel. Johnson v. Superintendent, Adirondack Corr. Facility,*174 A.D. 3d 992 (3d Dept. 2019). As this is a Third-Department case, this Court is bound by the *Johnson* decision and borrows liberally from that decision.

cannot be taken away without due process. *Matter of Russo v. New York State Bd. of Parole*, 50 N.Y.2d 69, 73 (1980); *see Greenholtz v Inmates of Neb. Penal & Correctional Complex*, 442 U.S. 1, 12 (1979); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *Victory v. Pataki*, 814 F.3d 47, 60 (2d Cir. 2016); *Matter of Abrams v. Stanford*, 150 A.D.3d 846, 848 (2d Dept. 2017). Parole release nevertheless remains a statutory grant of "a restricted form of liberty" prior to the expiration of a sentence. *People ex rel. Matthews v. New York State Div. of Parole*, 58 N.Y.2d 196, 204 (1983); *accord, Matter of Lopez v. Evans*, 25 N.Y.3d 199, 206 (2015). Reasonable residential restrictions may be imposed as a condition precedent to release. *See e.g., Executive Law* § 259-c [2]; *Matter of Boss v. New York State Div. of Parole*, 89 A.D.3d 1265, 1266 (3d Dept. 2011); *Matter of Breeden v. Donnelli*, 26 A.D.3d 660, 660 (3d Dept. 2006); *Matter of Lynch v. West*, 24 A.D.3d 1050, 1051 (3d Dept. 2005); *People ex rel. Stevenson v Warden of Rikers Is.*, 24 A.D.3d 123 (1st Dept. 2005). Therefore, although the open parole release date granted to Petitioner cannot be revoked absent procedural due process, we are unpersuaded that he has a further "liberty interest [or] fundamental right . . . to be free from special conditions of parole" regarding his residence under either the Federal or the State Constitution. *Matter of Williams v. Department of Corr. & Community Supervision*, 136 A.D.3d 147, 164 (1st Dept. 2016), *appeal dismissed,* 29 N.Y.3d 990 (2017); *see Morrissey v. Brewer*, 408 US 471, 480 (1972).

The Third- Department in *Johnson* also addressed the substantive due process argument raised by Petitioner herein and determined that the rational basis test was appropriate, holding that where "[t]he right asserted by [petitioner] is not fundamental," the mandatory condition imposed by *Executive Law* § 259-c (14) will satisfy substantive due process "so long as it is 'rationally related to any conceivable legitimate [s]tate purpose." *Johnson, supra,* 174 A.D. 3d, at 992; *see also*, *Myers v Schneiderman*, 30 N.Y.3d 1, 15 (2017), *quoting People v Walker*, 81 N.Y.2d 661, 668 (1993); *see also, People v Knox*, 12 N.Y.3d 60, 67 (2009), *Matter of Williams, supra,* 136 A.D.3d at 165.

Petitioner argues that studies have shown that the residential restrictions on sex offenders are ineffectual and contends there are "better or wiser ways to achieve the law's stated objectives." While this may, or may not be true, the proper entity for this argument is not the courts, but the state legislature. *Matter of Williams, supra,* 136 A.D.3d at 149; *Vasquez v Foxx*, 895 F.3d 515, 525 (7th Cir 2018), *cert. denied* 139 S. Ct. 797 (2019). Thus, the mandatory condition comports with substantive due process, and Petitioner is not entitled to immediate release. *Johnson, supra,* 174 A.D. 3d, 995.

Petitioner's additional argument that he will lose the benefit of good-time earned if not released to a Residential Treatment Facility, or to the community, also cannot be a basis to compel his release pursuant to a writ.

> Inasmuch as the amount of good time granted to a prisoner is not a right and 'the determination to withhold good time did not render petitioner's continued confinement pursuant to his original sentence unlawful', habeas corpus relief is unavailable to challenge a determination of the time allowance committee. Moreover, the expiration of petitioner's sentence is the point in time at which the right to release would accrue, not the conditional release date (internal citations omitted).

People ex rel. Richardson v. West, 24 A.D.3d 996, 997 (3d Dept. 2005).

Since the Petitioner here has only reached his conditional release date and not his maximum expiration, *habeas corpus* relief was not proper as of the filing of the petition. *See, People ex rel. Justice v. Racette*, 111 A.D.3d 1041 (3d Dept. 2013). Notwithstanding same, since Petitioner has otherwise been granted parole release and would be released, but-for the administrative failure to provide or obtain for him adequate housing pursuant to SARA, it is appropriate for this Court to convert this matter to an Article 78 proceeding. As such, the Court will consider the merits of the remaining arguments in the petition as if it is a challenge to an administrative determination.

As to Petitioner's assertion that the impact of the COVID-19 pandemic on his conditions of incarceration and, potentially his health, 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, 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. *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).

Here, Petitioner only submits general claims about the potential impacts of the COVID-19 virus, without establishing his particular vulnerabilities, if any, or the particular conditions under which the Petitioner is housed in the Clinton Correctional Facility. For this reason, Petitioner fails to carry his burden on the first prong of the two-part test. The attempt to establish the second prong is similarly without record evidence, and also fails.

This Court has also examined Petitioner's claim that DOCCS has refused to place his name on a list to be submitted to DHS for placement in a NYC homeless shelter. While that particular fact is disputed, we find that Respondent DOCCS met its obligation under Corrections Law § 201 (5) to provide petitioner "adequate resources" by proposing "residences for investigation and approval," then "actively investigat[ing]" the residences he proposed, and placing him on the wait list for appropriate New York City DHS shelter housing. *Matter of Gonzalez v Annucci*, 32 N.Y.3d 461, 474 (2018).

Based upon all of the above, it is, therefore, the decision of the Court and it is hereby

ADJUDGED, that the petition is dismissed.

DATED: June 8, 2020 at
Schenectady, New York

Michael R. Cuevas
Supreme Court Justice

Re-signed as "amended"

DATED: August 28, 2020
Schenectady, New York

Michael R. Cuevas
Supreme Court Justice