People v Cuomo
2020 NY Slip Op 33751(U)
October 27, 2020
Supreme Court, Franklin County
Docket Number: 2020-253
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. ANTONIO MARTINEZ, DIN #98-A-1117,

Petitioner,

DECISION AND JUDGMENT
RJI #16-1-2020-0105
INDEX #2020-253

-against-

GOVERNOR ANDREW CUOMO, Acting
Commissioner ANTHONY ANNUCCI, and
Superintendent DONITA MCINTOSH, of Bare Hill
Correctional Facility,

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 Antonio Martinez (hereinafter referred to as "Petitioner"), dated May 19, 2020 which was filed in the office of the Franklin County Clerk on May 27, 2020. Petitioner, who is now an inmate at the Bare Hill Correctional Facility, is challenging his continued incarceration in the custody of Donita McIntosh, Superintendent of said facility (hereinafter referred to as "Superintendent").

The Court issued a Writ of *Habeas Corpus* on May 29, 2020. In response thereto, the Court received a Motion to Dismiss based upon fraud in the pleadings, dated September 18, 2020. Oral argument was heard by the Court *via* a Skype for Business video teleconference on October 6, 2020. By an order, both issued July 14, 2020, the Court: (1) denied the motion to dismiss on the grounds of fraud, but amended its prior order on Petitioner's application to proceed as a poor person and re-scheduled the dates for filing of the Answer and Return and the hearing on the Petition. The Court then received an Answer and Return dated October 16, 2020 which was filed in the Franklin County Clerk's Office on October 19, 2020. Petitioner did not submit a written Reply before the scheduled date for the hearing. Instead, Petitioner responded to the Reply in

sworn testimony on the record. Each party presented argument in support of their respective positions. At the conclusion of argument, the parties agreed with the Court that the proceeding would be deemed fully submitted.

FACTS

On or about April 6, 2018, Petitioner was convicted of the crimes of Murder in the Second Degree, in violation of Penal Law §125.25 and Criminal Possession of a Weapon in the Third Degree, in violation of Penal Law §265.02 . Each crime is a felony. Petitioner was sentenced to a indeterminate term of incarceration of twenty-six and one-half (26 ½) years to life. Petitioner was received into the custody of DOCCS on March 2, 1998. Petitioner's earliest release is September 13, 2022.

PETITIONER'S ARGUMENT

Petitioner seeks a Writ of *Habeas Corpus* as he alleges that Respondents lack legal authority to continue to detain him since they cannot guarantee the safety or life of petitioner should the COVID-19 virus get loose within the facility.

With respect to the Bare Hill Correctional Facility, petitioner claims that all inmates cannot or do not observe social distancing in showers, at "the desk", at phones, in the yard and in the gym. Petitioner further alleges that while facility staff are required to wear masks, they do so only when supervisors are present. Petitioner opines that other civilians (teachers and visitors) coming into the facility increase the risk of contracting the virus. Most recently, petitioner claims that two inmates in the H1 unit tested positive for COVID-19 and were removed; the unit was shut down and the other inmates were tested and transferred to other housing units – one to his own unit.

Petitioner recites, and the Court takes notice of, the undisputed facts that COVID-19 may attack each individual differently and that higher risk individuals are those over the age of 65, and those with underlying health conditions, such as high blood pressure, asthma, and diabetes.[1]

[1] http://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html

Petitioner correctly asserts that there is currently no vaccine to prevent CO VID-19 and no known cure. 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.[2]

RESPONDENT'S ARGUMENT

Respondent produced documentary evidence that the Bare Hill Correctional Facility, at which Petitioner is incarcerated, has had zero (0) inmates test positive for COVID-19 (468 tested negative), with no deaths, and 117 inmate test pending.[3]

Respondent argues that while petitioner seemingly acknowledges that his safety cannot be guaranteed, Petitioner is not of an age or medical condition which would place him at a higher risk for a serious outcome should he contract the virus.. Respondent also claims that respondents have an outstanding record in controlling the virus in the correctional facilities in the Northeastern quadrant of New York State and across the state.

LEGAL ANALYSIS

While petitioner raises concerns about the potential risk of infection *posed* in a prison setting, we must consider the conditions under which the petitioner is currently detained to determine whether immediate release is appropriate. Unless the threat of harm is undeniably

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

[3] Answer and Return, Exhibit D, *NYS DOCCS Incarcerated Individuals COVID-19 Report by Housing Facility of October 14, 2020 at 3:00 PM.*

imminent. Therefore, 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 old, black-inmate incarcerated at the Sullivan Correctional Facility, who suffered 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 *Caroll,* Respondents here take a contrary view. A strong argument can be made that New York's incorporation of *habeas corpus* into its 1821 Constitution[5], 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[6] 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

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[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.
[6] Therefore, this court need not address Respondent's argument that *habeas corpus* relief is not an available remedy in this case, nor does it address Petitioner's counter argument on that issue in his reply papers.

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. *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 submits general claims about the rates of infection of the COVID-19 virus and "spikes" occurring in other prisons, while admitting that the particular conditions under which the Petitioner is housed in the Bare Hill Correctional Facility has not resulted in similar infection

rates or spikes. 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 (as anyone living today anywhere in the world is), but this Court is not convinced that the risk is substantial, given the absence of COVID-19 infection at the Bare Hill Correctional Facility, and near absence 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 general population.

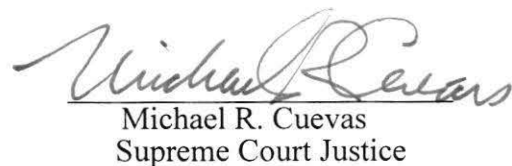
Inasmuch as petitioner has not alleged that respondents have consciously disregarded his health or safety, nor established that he is at an excessive risk of harm, respondents need not prove that they have consciously disregarded the threat posed by COVID-19.

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 no significant health risk factors, and is incarcerated in a facility with a lower COVID-19 infection rate.

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 it is hereby

ADJUDGED, that the petition be, and hereby is, dismissed.

DATED: October 27, 2020 at
Schenectady, New York



Michael R. Cuevas
Supreme Court Justice