People v LaClair
2020 NY Slip Op 33752(U)
August 11, 2020
Supreme Court, Franklin County
Docket Number: 2020-281
Judge: Michael R. Cuevas

STATE OF NEW YORK
SUPREME COURT **COUNTY OF FRANKLIN**

The People of the State of New York
Ex Rel. JERRY ADAMS, #89-A-7005

Petitioner/Relator,

ORDER

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

RJI #16-1-2020-0118
INDEX #2020-281

-against-

DARWIN LaCLAIR, Superintendent and
ANTHONY ANNUCCI, as Commissioner,
NEW YORK STATE DEPARTMENT OF
CORRECTIONS AND COMMUNITY SUPERVISION,

Respondents.

This is a proceeding for a Writ of *Habeas Corpus* pursuant to Article 70 of the New York Civil Practice Law and Rules ("CPLR") that was originated by the Verified Petition of Jerry Adams (hereinafter referred to as "Petitioner") sworn to on April 29, 2020, and filed in the Franklin County Clerk's Office on June 11, 2020. Petitioner, who is an inmate at the Franklin Correctional Facility, claimed that he was being illegally detained due to a violation of Criminal Procedure Law Section 430.10 which changed the duration of his judicially imposed sentence and imposed on him the requirements of the Sex Offender Registration Act (SORA). The Court granted a Writ of *Habeas Corpus* on June 17, 2020. The Respondent, through the Office of the Attorney General, served an Answer and Return dated June 24, 2020. A hearing was held on June 30, 2020, at which Petitioner and counsel for the Respondent appeared.

At oral argument, it became apparent that Petitioner was additionally complaining that despite his best efforts to secure SARA compliant housing, the NYS Department of Corrections and Community Supervision was not adequately assisting in those efforts. Petitioner claimed that his proposed community residences have been rejected without explanation. The Court granted Petitioner leave to amend his Petition and Petitioner has submitted an Amended Petition and Affidavit in Support thereof, both sworn to July 1, 2020. The allegations in the Amended Petition indicate that Petitioner is alleging failures or overt acts of the NYS Department of Corrections and Community Supervision (DOCCS) frustrating his attempts to secure SARA compliant housing. In response to the Amended Petition, Respondents served an Answer and Return dated August 5, 2020. At a hearing held on August 10, 2020, arguments were heard from both parties and all parties agreed that the record would be closed.

FACTS

Upon his convictions, Petitioner was sentenced in Supreme Court, Kings County, on June 14, 1989 to indeterminate terms of incarceration as follows: Sodomy in the First Degree, 12 ½ years to 25 years; Robbery in the First Degree, 12 ½ years to 25 years; Robbery in the Second Degree, 7 ½ to 15 years; Criminal Possession of Stolen Property in the Third Degree, 3 ½ to 7 years. The sentences on the Sodomy in the First Degree and Robbery in the First Degree were ordered to be served consecutive to each other and the sentences on the other crimes were to be served concurrently to each other and to the sentences for Sodomy in the First Degree and Robbery in the First Degree. Petitioner was received into DOCCS custody on June 17, 1989 and has been

incarcerated for nearly 32 years; he is now 69 years old and ambulates with the assistance of a walker.

Petitioner first became eligible for parole on August 6, 2008, and currently has an open date for parole release with his next scheduled parole hearing date in August 2020. Petitioner's earliest release date was March 19, 2020 and his maximum expiration date is October 31, 2030.

As a result of his status as a sex offender, the Parole Board found that Petitioner was subject to the requirement of Executive Law Section 259-c (14) and Penal Law Section 70.45 (3) and imposed a condition of parole release prohibiting him from entering "school grounds" as that term is defined in Penal Law Section 220.00.

Since February 2020, Petitioner has submitted five potential residences for DOCCS's review and consideration: one in Troy, NY, one in Ithaca, NY and three in Brooklyn, NY. All but one were found not to comply with SARA. The one SARA compliant address was not available as Petitioner's brother was living with someone else. In addition to the residences submitted by Petitioner, Respondent inquired as to one which was not SARA compliant, and inquired about a Residential Treatment Facility that may have a bed for Petitioner by the end of summer.

PETITIONER'S ARGUMENT

Petitioner first asserted that he was being illegally detained by the imposition upon him of the requirements of the Sex Offender Registration Act since that statute was not adopted until well after his conviction and sentence. Petitioner argued that his original sentence was thus illegally changed in violation of the Criminal Procedure Law.

At the initial hearing in this matter on June 30, 2020, Petitioner sought to raise an additional issue that Respondents were either not assisting in the investigation of proposed residences; or, were not communicating the results of any investigations. He alleged this resulted in his continued detention despite an open parole release date. Petitioner was permitted to amend his petition to assert his new claims regarding Respondent's failure to adequately assist him in locating "SARA" compliant housing.

RESPONDENTS' ARGUMENT

As to Petitioner's initial claim, Respondent's argue that the Courts, for approximately twenty-years, have upheld the application of Corrections Law § 168-n and the Sex Offender Registration Law to individuals convicted prior to their enactment as not constituting violations of the U.S. Constitution's prohibition against *ex post facto* laws or double jeopardy.

As to Petitioner's second argument that Respondent should be directed to do its duty to assist him with finding post-release housing that is Sexual Assault Reform Act, Executive Law §259-c (14) ('SARA") compliant, Respondents have submitted documentation that each potential residence suggested by Petitioner has been reviewed for compliance. However, Respondents also argue that the Courts have held that the burden to propose potential post-release residences is upon the Petitioner and not the Respondent, despite Petitioner's limited access to housing search tools due to his incarceration.

DISCUSSION

The Courts have found that application of SORA to a defendant convicted prior to its enactment, is proper. In 2009, the Appellate Division, Third Department held, "

> "Application of SORA to defendant did not violate his constitutional rights. Because SORA does not impose punishment, but is a civil statute aimed at the prevention of crime and protection of the public, applying SORA to individuals who committed crimes prior to its enactment does not violate the ex post facto or double jeopardy clauses of the U.S. Constitution."

People v. Szwalla, 61 AD 3d 1289 (3rd Dep't 2009)

The *Szwalla* court additionally found that by following Corrections Law §168-n, the County Court accorded the defendant with due process.

In a 2019 decision, the Appellate Division, Third Department ruled,

> Turning to the merits, "[t]here is no federal or state constitutional right to be released to parole supervision before serving a full sentence." It is true that petitioner has been granted an open parole release date, affording him a "legitimate expectation of early release from prison" that cannot be taken away without due process. Parole release nevertheless remains a statutory grant of "a restricted form of liberty" prior to the expiration of a sentence, and reasonable residential restrictions may be imposed as a condition precedent to release. 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."

People ex rel. Fred Johnson v. Superintendent, 174 AD3d 992 (3rd Dep't 2019).

Here, as in the *Fred Johnson* case, the Court finds that Respondent DOCCS met its obligation under Correction Law Section 201(5) to provide petitioner "adequate resources…to propose residences for investigation and approval and did, in fact investigate those residences proposed. However, this Court understands the Petitioner's frustration in learning that every housing option he has proposed, save one,

has been "shot down" as non- SARA compliant. Petitioner is not alone in his distress in the lack of SARA-compliant housing available to parolees. Presiding Justice Garry, while concurring with the majority in the *Fred Johnson* case, wrote a separate opinion concluding that the statutes and regulations mandating SARA compliant housing are ripe for review by the Legislature as solutions to this problem are beyond the purview of the Court.

For the reasons stated above, it is

ORDERED AND ADJUDGED that the petition and amended petition be and hereby are denied and dismissed.

Dated: August 11, 2020

MICHAEL R. CUEVAS
JUSTICE OF THE SUPREME COURT