People v Bigwarfe
2020 NY Slip Op 33753(U)
August 4, 2020
Supreme Court, St. Lawrence County
Docket Number: 158116
Judge: Michael R. Cuevas

STATE OF NEW YORK
SUPREME COURT COUNTY OF ST. LAWRENCE

THE PEOPLE OF THE STATE OF NEW YORK,
ex rel. RALPH E. SUTTON, JR.,

Petitioner,

DECISION AND JUDGMENT
RJI #44-1-2020-0323
INDEX #158116

-against-

BROOKS BIGWARFE, St. Lawrence County Sheriff,

Respondent.

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 Ralph E. Sutton, Jr. (hereinafter referred to as "Petitioner"), dated July 19, 2020 which was filed in the office of the St. Lawrence County Clerk on July 22, 2020. Petitioner, who is now an inmate at the St. Lawrence County Jail, is challenging his continued incarceration in the custody of the St. Lawrence County Sheriff (hereinafter referred to as "Sheriff" or "Respondent" or "Respondent Sheriff").

The Court issued a Writ of *Habeas Corpus* on July 22, 2020. In response thereto, the Court received a Verified Answer and Return on behalf of respondent Sheriff, dated July 24, 2020. Oral argument was heard by the Court *via* a Skype for Business video teleconference on July 7, 2020. Petitioner offered testimony and oral argument in support of his petition. Respondent Sheriff called Peggy Harper, St. Lawrence County Jail Administrator as a witness and Petitioner was given the opportunity to cross-examine the witness. At the conclusion of the testimony and oral argument, the Court advised the parties that the proceeding would be deemed fully submitted.

FACTS

At the time of his petition, Petitioner was being held in the St. Lawrence County Jail on a sentence of imprisonment rendered by the St. Lawrence County Court. On or about January 15, 2020, Petitioner was found guilty to the crime of Criminal Possession of Marihuana in the Fourth Degree, in violation of Penal Law §221.15, a class A misdemeanor and was sentenced to an determinate term of incarceration of 364 days. Petitioner remained in the custody of the Sheriff and was still an inmate at the St. Lawrence County Jail as of July 31, 2020.

Petitioner, a 33 year old, African-American male seeks a Writ of *Habeas Corpus* as he claims he suffers from obesity, bilateral pitting edema and high blood pressure and is pre-diabetic, a health status which he claims places him at grave risk of serious illness or death if infected with the COVID-19 virus. Petitioner alleges that he is at a heightened risk of contracting the novel corona virus, COVID-19 due to the design and operation of the St. Lawrence County Jail. He claims that social distancing, face mask wearing and hand sanitizing are not being enforced, particularly during communal meals and communal recreation activities as is recommended by the Center for Disease Control ('CDC").[1] Petitioner alleges further violations of recommended protocols: (1) that three inmates were not quarantined after returning from medical appointments outside the facility; (2) that cleaners were not provided hand sanitizer or gloves; (3) that staff were not being routinely screened for the virus; (4) that respondent discontinued the use of Styrofoam trays and (5) that an inmate who cleans the intake area returns to petitioner's housing unit after such cleaning duties.

Consequently, the Court takes notice of the fact 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

[1] Petitioner cites to the CDC website, http://cdc.gov/coronavirus/2019-ncov/community/corrections-detention guidance-correctional-detention.html and Governor Cuomo's Executive Order 202.17.

and 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 produced the affidavit of and testimony from the Jail Administrator, Peggy Harper, that the St. Lawrence County Jail, at which Petitioner is incarcerated, has had no (0) inmates test positive for COVID-19, with no deaths. The Jail Administrator also testified that no St. Lawrence County corrections officers have tested positive. In her affidavit, Ms. Harper details the various steps the Sheriff and the County have taken to prevent the transmission of the virus in the jail and attaches copies of ten (10) memoranda to inmates issued between March 12, 2020 and July 21, 2020.The memos covered precautionary measures to be taken by inmates, updates to precautions, use of face masks, suspension of visitation, mandated use of face masks, communications, extension of visitation suspension, the commencement of secure visitation and reminders to continue to take precautionary measures. In addition, Ms. Harper testified that new inmates are quarantined before being allowed in the general jail population, that corrections officers are checked daily for temperature and/or symptoms, that enhanced cleaning and disinfecting protocols were put in place, that the jail population was spread among all housing units, that hand washing stations were made available, and that the jail was at substantially less than full capacity. Ms. Harper reiterates that her memos reflect official jail policy and that while no discipline for failure to adhere to such policies has been necessary thus far, that staff are subject to discipline if they are not following directives.

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 suffers from

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

hypertension, respiratory ailments and lung damage from a bout of tuberculosis. At least one other inmate developed COVID 19 at the Sullivan facility.[3]

Here, as in *Carroll*, Petitioner argues that *habeas corpus* properly lies to challenge the conditions of confinement of individuals in Petitioner's position. A strong argument can be made that New York's incorporation of *habeas corpus* into its 1821 Constitution[4] results in two types of *habeas corpus* – statutory and constitutional. And, that the latter should be interpreted in state 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 a two pronged test. 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 jail 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).

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

[4] N.Y. Const. of 1821, art. VII, §6.

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 in the general population and the prison system as a whole, without sufficiently disproving respondent Sheriff's evidence regarding the particular conditions under which the Petitioner is housed in the St. Lawrence County Jail. 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 absence of COVID-19 infection at the St. Lawrence County Jail, and among its staff. These infection statistics, while no guaranty that there is no risk, 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 public at large.

Respondents also successfully rebut the allegation that they have consciously disregarded the threat posed by COVID-19 by the submission of the affidavit and testimony of Peggy Harper, the Jail Administrator. In those statements, she detailed the comprehensive preventative measures the Sheriff and the County have taken to stop the spread of the virus and the successful implementation of such measures.

The Third-Department's recent decision in *Carroll,* on the facts, is 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 much lower (non-existent) 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, for 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

ORDERED AND ADJUDGED, that the petition as against respondent Sheriff be and hereby is dismissed.

DATED: August 4, 2020 at
Schenectady, New York

Michael R. Cuevas
Supreme Court Justice