

Matter of Buckley v Dagostino
2026 NY Slip Op 32070(U)
May 28, 2026
Supreme Court, Schenectady County
Docket Number: Index No. 2026-1023
Judge: Paul E. Davenport
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STATE OF NEW YORK
SUPREME COURT

COUNTY OF SCHENECTADY

In the Matter of the Application of

CASEY BUCKLEY

For a Writ of Habeas Corpus to Inquire into
the Cause of Detention

DECISION AND ORDER
Index No. 2026-1023

-against-

DOMINIC DAGOSTINO, SHERIFF OF
THE COUNTY OF SCHENECTADY, and
DANIEL F. MARTUSCELLO III,
COMMISSIONER OF NEW YORK STATE
DEPARTMENT OF CORRECTIONS AND
COMMUNITY SUPERVISION (DOCCS)

Appearances:

For the Petitioner:	Schenectady County Conflict Defenders Office 608 State Street Schenectady, New York 12305
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For the Respondent: DOCCS	New York State Office of the Attorney General The Capitol Albany, New York 12224
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For The Respondent: Dominic Dagostino	No Appearance
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Paul E. Davenport, J.:

This action seeks review of County Courts action to remand the Petitioner pending her final parole revocation hearing under Executive Law § 259-i et seq. (the “Less is More Act”). On July 3, 2025, the

Petitioner, Casey Buckley, was released under the supervision of the New York State Department of Corrections and Community Supervision (hereinafter “DOCCS”). Petitioner’s maximum expiration date under DOCCS parole supervision is July 3, 2030. On April 30, 2026, Petitioner was found by the community supervision staff to be an absconder, as she had failed to report as directed, was not residing at her approved domicile, and the staff was unable to communicate with her.

After an additional notice to report was served, and the Petitioner did not report, on May 5, 2026, a parole warrant was issued by DOCCS. On May 11, 2026, the Petitioner was arrested and charged with Criminal Possession of a Controlled Substance in the 7th Degree. Based on her arrest, a Notice of Violation and Supplementary Violation of Release Report was issued and served upon the Petitioner on May 12, 2026. On that date, a recognizance hearing was held in County Court. The Petitioner appeared with her assigned counsel, the Schenectady Couty Public Defenders Office, and DOCCS’ Court Liaison Officer (hereinafter “CLO”), Teresa Asbury, was also present. Although a conflict with the Public Defender’s Office was identified at pre-hearing conference, County Court went on the record and heard from CLO Asbury to lay out the facts and DOCCS position on remand. No transcript of the proceeding was produced with the pleadings in this matter, so it is not clear exactly what information Ms. Asbury provided. Based upon the information that this Court does have, it appears that Petitioner’s counsel at this initial appearance did not object to Ms. Asbury’s presence or the information she provided to the Court on the record. Due to the apparent conflict with the Public Defender’s office, after hearing from Ms. Asbury, County Court appointed the Schenectady County Conflict Defenders Office to represent Petitioner and adjourned the hearing to that afternoon to hear from her new counsel. Conflict counsel appeared with Petitioner at the adjourned appearance. Subsequently, County Court issued a written order remanding the Petitioner to the Schenectady County Jail pending her final parole revocation hearing. County Court’s written order found that Petitioner presented a substantial risk of failing to appear at the preliminary or final revocation hearings

and no non-monetary condition or combination of conditions in the community would reasonably assure her appearance at the preliminary or final revocation hearing.

On May 14, 2026, the Petitioner filed pursuant to an Order to Show Cause (“OTSC”) and attorney affirmation, an application seeking Habeas Corpus relief from County Court’s securing order. No writ or order to produce was filed with the OTSC. The Petitioner argued that she should be released as the recognizance hearing was perfunctory and did not afford her due process, and that the proceeding was deficient as DOCCS was represented by a non-attorney, CLO Asbury. No verified petition or copy of the mandate was objected to, nor was a transcript of the hearing provided with the Petitioner’s pleadings.

DOCCS responded to the Petitioner’s OTSC with the affirmation of counsel. DOCCS opposed Petitioner’s application arguing that its burden was to provide information to the Court and its long-standing practice was to do so with lay witnesses and not licensed attorneys. As such, DOCCS argued that PLO Asbury was not practicing law, but simply provided the required information as a witness. Executive Law § 259-i(3)(a)(v). DOCCS further argued that it is a long-standing practice as it has used this procedure in thousands of recognizance hearings since the enactment of Executive Law § 259-i in March of 2022. Moreover, due to the requirement that recognizance hearings must take place within 24 hours, DOCCS argued that it has only a handful of attorneys in its employ, and it would be an immense financial and organizational burden on DOCCS as it would be forced to hire an untold number of lawyers throughout the State to have attorneys appear at every recognizance hearing. DOCCS also submitted that its Court Liaison Officers never hold themselves out as counsel.

A hearing was held on May 22, 2026. Based upon the parties’ submissions and the proof adduced at the hearing, the Court makes the following findings.

The function of the habeas corpus court is one of collateral review of the determination of the county court. The habeas corpus court is not to examine the bail question again or to make de novo determination of bail. People ex rel. Fischetti v Brann, 166 A.D.3d 29, 38 (1st Dept. 2018). Thus, the court reviewing the habeas corpus petition must limit its consideration of the “propriety of the [county court’s] determination in the light of the record on which it was made.” People ex rel. Kuby ex rel. Jordan v Merritt, 96 A.D.3d 607, 608 (1st Dept. 2012).

The Less is More Act modified the procedures and standards regarding the revocation of post release supervision, eliminating the numbered categories of violations and, instead, distinguishing technical violations from non-technical violations and prohibiting reincarceration for technical violations, with limited exceptions. Executive Law §§ 259[6], [7]. If the parole officer charges a person under community supervision with a violation, such parole officer may issue a warrant for the retaking of such person for his temporary detention. Executive Law § 259–i[3][a][i][ii]. The releasee must be presented within 24 hours of being detained to “a county court, district court or city court in the county or city where the violation is alleged to have been committed for a recognizance hearing.” Executive Law § 259–i[3][a][iv]. At a recognizance hearing, DOCCS shall be responsible for presenting information to the Court regarding the alleged violation and the releasee’s community supervision record. The Court shall consider all available evidence of the releasee’s employment, family and community ties including length of residency in the community, history of reporting in a timely fashion to a parole or supervisory officer, and other indicators of stability. At the conclusion of the recognizance hearing, the court may order that the releasee be detained pending a preliminary or final revocation hearing only upon a finding that the releasee currently presents a substantial risk of willfully failing to appear at the preliminary or final revocation hearings and that no non-monetary condition or combination of conditions in the community will reasonably assure the releasee’s

appearance at the preliminary or final revocation hearing. Executive Law § 259-i[3][a][vi]. Further, the Court must put its findings on the record or in writing.

The Petitioner's main contention is that the recognizance hearing was a nullity because DOCCS did not appear with a licensed attorney, but only a Court Liaison Officer was present. The Petitioner asserts that any conduct that involves the commencement of a proceeding or filing of papers in relation to an action or proceeding constitutes the practice of law. The Petitioner relies upon Department of Corrections and Community Supervision v. Sasser, where the Court dismissed Petitioner's application for remand pending a parole revocation hearing, after finding that an attorney was required to appear on behalf of the Petitioner, and after Petitioner ignored the Court's order to appear with an attorney, it dismissed the application. Dep't of Corr. & Cmty. Supervision v. Sasser, 81 Misc. 3d 236, (N.Y. Sup. Ct. 2023). In doing so, the court in Sasser also distinguished the numerous proceedings, including those that determine a person's liberty, wherein the Court is provided information by non-attorneys as a basis in making its determination. The Petitioner urges the same result herein.

As Sasser is not binding, this Court declines to follow it, for a myriad of reasons. First, this Court finds that nothing in the relevant sections of the Executive Law, requires that an attorney is required to provide information to the court and to demonstrate that the warrant was properly issued and served. Moreover, there are a number of circumstances that are analogous to the actions of the Court Liaison Officer that have never been found to be the practice of law. In bail qualifying misdemeanor charges, often bail hearings are based on documents and investigation materials provided to the court by the arresting police officer(s), not the district attorney's office. These liberty determinations are also often made without any input, appearance or communication with the district attorney's office, which is only required when the individual is charged with certain felonies. CPL § 530.40. Moreover, the fact that these bail hearings are allowed to be heard at the same time as the recognizance hearing also supports the conclusion that counsel

need not appear for DOCCS and supports that the actions of the Court Liaison Officer is not the practice of law. Executive Law §259-i(3)(a)(viii). Similarly, search warrant applications are supported and issued based on sworn documents submitted to the issuing courts by non-attorneys. CPL § 690.35(1); CPL § 690.05(1). Moreover, the court may obtain additional information by questioning the requesting law enforcement official under oath and ex parte. CPL § 690.45(1); CPL § 690.35.

Additionally, in Duguid v. B.K., the court found in a Final Extreme Risk Protection Order (“ERPO”) proceeding, that the filing of a sworn petition and investigative documents that commenced and supported the application did not constitute the practice of law. Duguid v. B.K., 76 Misc. 3d 1005, 1013 (N.Y. Sup. Ct. 2022). The Court in Duguid in making its determination reviewed the statutory language, putting particular weight on the fact that the commencement of the proceeding was statutorily authorized to be performed by a non-attorney. CPLR §6340; CPLR §6341. Thus, the Court found that a police officer presenting investigatory materials to the Court as well as drafting the commencement documents did not constitute the practice of law. Similarly, the Less is More Act also statutorily authorizes the commencement of a parole revocation proceeding by a non-attorney, namely, the issuance of a parole warrant by a parole officer.

In addition, DOCCS has established the necessity of its practice and the long-standing nature of it. Duguid, 76 Misc. 3d at 1010-11; People v. Black 156 Misc. 516 (Co. Ct. 1935). Based upon the 24-hour deadline for the holding of the recognizance hearing, DOCCs submitted proof that its only office is in Albany, New York, and it employs only a handful of attorneys. To require attorney appearances at each recognizance hearing throughout the state, would require the need to hire an untold number of attorneys and incur the associated travel or housing costs. Also, these additional costs would militate against the costs savings that was an important component to the Legislature’s reasoning for the enactment of the Less is More Act. New York Bill Jacket, L. 2021, c. 427. Moreover, while the statute has only been in existence

for a little over four (4) years, DOCCS has submitted that it has utilized this practice “thousands of times” since 2022.

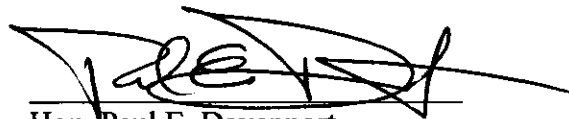
Finally, sister states when facing similar issues involving the prosecution of parole revocation proceedings have found that the parole officers’ role in commencing and presenting the case was not the practice of law. State v. Barlow 372 S.C. 534 (S.C. Sup. Ct. 2007); Laverette v. State 248 Ga. App. 304 (G.A. Ct. App. 2011).

Based upon the foregoing, the procedure of the Court Liaison Officer presenting information to the Court was not the practice of law. As such, County Court properly evaluated the case based upon the information provided by the Court Liaison Officer and properly issued a written determination remanding the Petitioner. It is hereby

ORDERED that the Petitioner’s application for Habeas Corpus relief is denied.

The foregoing constitutes the decision and order of this Court.

Schenectady, New York
Dated: May 28, 2026


Hon. Paul E. Davenport
Supreme Court Justice