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STATE OF NEW YORK
COUNTY OF ONEIDA

SUPREME COURT

**PEOPLE OF THE STATE OF NEW YORK ex.
rel. KATHY MANLEY, Esq., on behalf of**

ORDER

Petitioner,

– against –

Index No

**ANTHONY ANNUCCI,
ACTING COMMISSIONER,
NEW YORK STATE DEPARTMENT OF
CORRECTIONS AND COMMUNITY
SUPERVISION,**

Upon the reading and filing of the Petition and Reply of Kathy Manley, the Answer of Assistant Attorney General Thomas Trace, Esq., and having had oral argument on the Petition on December 22, 2021, *and the Court having rendered a bench decision, a copy of which is attached hereto and incorporated herein,*

IT IS HEREBY ORDERED that DOCCS shall immediately release Relator

to Parole supervision in accordance with the Parole Release Decision dated 8/31/21.

ENTERED:

DATED: 12/22/21



Hon. David A. Murad
Oneida County Supreme Court Justice
200 Elizabeth Street
Utica, N.Y. 13501

STATE OF NEW YORK FIFTH JUDICIAL DISTRICT

SUPREME COURT COUNTY OF ONEIDA

* * * * *

PEOPLE OF THE STATE OF NEW YORK ex. rel.
KATHY MANLEY, ESQ., on behalf of

Petitioner,

- against -

ANTHONY ANNUCCI, ACTING COMMISSIONER, NEW YORK STATE
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION,

Respondent.

* * * * *

Index No.:
RJI No.:

BENCH DECISION ON MOTION FOR WRIT OF HABEAS CORPUS

Held via Microsoft Teams
December 22, 2021

HELD BEFORE:

THE HONORABLE DAVID A. MURAD
SUPREME COURT JUSTICE

APPEARANCES:

KATHY MANLEY, ESQ.
Attorney for Petitioner

THOMAS TRACE, ESQ.
Attorney for Respondent

Reported By:

Therese Plante, CSR, RPR
Senior Court Reporter

1 (Oral arguments were heard.)

2 THE COURT: All right. I'm going to issue my
3 decision. Fairly lengthy. I'll try to be clear on this.

4 The facts underlying this habeas corpus
5 petition are undisputed and include the following:

6 Relator, was sentenced to a minimum of
7 20 years and a maximum of 40 years for convictions of two
8 counts of first degree rape and one count each of first
9 degree sodomy and sexual abuse. His conditional release
10 date is April 29, 2024. His maximum expiration date is
11 August 29, 2037.

12 By Amended Parole Board Release Decision Notice
13 dated September 15, 2021, was granted an, quote,
14 "open date," close quote, setting his earliest release
15 date as September 28, 2021 or earlier and setting forth
16 numerous conditions of his release. A parole officer
17 completed a home visit and approved proposed
18 address on or about October 5, 2021.

19 By memorandum dated November 3, 2021,
20 was notified that he was identified as a possible, quote,
21 "detained sex offender," close quote, and that his case
22 had been referred to the Case Review Team for evaluation
23 under Article 10 of the Mental Hygiene Law.

24 was designated as a Level III sex
25 offender on November 10, 2021 by the Queens County

1 Sentencing Court. remains in custody of the New
2 York State Department of Corrections and Community
3 Supervision at the Marcy Correctional Facility.

4 contends that respondents' continuing
5 to hold him in custody and failure to release him to
6 parole is a constitutional violation of his liberty
7 interest.

8 Respondent contends to the following: First,
9 habeas corpus relief is not available because petitioner
10 is not entitled to an immediate release, as there is no
11 inherent constitutional right to parole.

12 Second, has only been temporarily
13 detained, quote, "in accordance with Department
14 regulations for evaluation pursuant to Article 10 of the
15 Mental Hygiene Law which, upon information and belief,
16 will be concluded by the first week of January 2022,"
17 close quote. And sex offenders subject to Article 10
18 review are not ready for release to the community until
19 the review is completed.

20 And, third, failed to attach a copy of
21 the mandate of his detention to his petition or state why
22 he was unable to, requiring dismissal of the petition
23 pursuant to CPLR Section 7002(c)1.

24 To the extent respondent argues the petition
25 should be dismissed because petitioner failed to attach a

1 copy of the mandate of his detention pursuant to CPLR
2 Section 7002(c)1, the Court finds that the exhibits to
3 the petition sufficiently provide the basis for DOCCS
4 continuing to hold in custody, despite the
5 parole board open release date of September 28, 2021.
6 The Court will not dismiss the petition for failure to
7 attach a copy of a mandate.

8 The Amended Parole Board Release Decision
9 Notice states in part, quote, "This open date following a
10 24-year incarceration is granted based on the statutory
11 factors, including your programming, good overall
12 disciplinary record and low COMPAS Risk and Needs scores.
13 These leave the panel to conclude that you can remain law
14 abiding in the community. You're well-formed release
15 plans and significant family and community support leave
16 the panel to conclude that your release is appropriate at
17 this time," close quote.

18 The decision goes on to cite numerous
19 conditions connected with the open date to parole
20 supervision, including proposal of a residence to be
21 investigated by the Department and that will
22 abide by the mandatory condition imposed by the Sexual
23 Assault Reform Act. The conditions of release include a
24 statement that quote, "shall not be released
25 until the Board of Parole and DOCCS are informed of the

1 sex offender risk level that has been or will be
2 established," close quote.

3 Notably, there is no condition of release
4 referencing the completion of an MHL Article 10 Review.
5 The Parole Board did not include an Article 10 special
6 condition under DOCCS Directive No. 8302, and it does not
7 appear that such a special condition would have been
8 appropriate because is not yet the subject of a
9 petition for civil management under MHL Article 10.

10 Despite respondent claiming that
11 release is being withheld in accordance with Department
12 regulations and applicable law, there are no cited
13 regulations to support this assertion and only general
14 references to MHL Article 10 provisions, none of which
15 militate that DOCCS continue to hold in custody.

16 The Court is cognizant of the general rule that
17 habeas corpus relief is not available to an individual
18 who is not entitled to immediate release from custody and
19 that there is no constitutional or inherent right of a
20 convicted person to be conditionally released before the
21 expiration of a valid sentence.

22 However, it is critical and dispositive in this
23 matter that the Amended Parole Board Release Decision
24 Notice of September 15, 2021 granted an open
25 date of September 28, 2021 or earlier upon his

1 satisfaction of the conditions in that decision.

2 There are no allegations that the decision was
3 rescinded or that has not met the preconditions
4 for the release. MHL Article 10 has no automatic effect
5 of blocking or staying the operation of the Parole Board
6 decision while the Case Review Team is evaluating

7
8 Should respondent believe it is appropriate to
9 prevent the release of a person under the circumstances
10 present in this matter, the agency may avail itself of
11 MHL Section 10.06(f) which states in part, quote, "If it
12 appears that the respondent may be released prior to the
13 time the Case Review Team makes a determination and the
14 attorney general determines that the protection of public
15 safety so requires, the attorney general may file a
16 securing petition at any time after receipt of written
17 notice pursuant to subdivision B of Section 10.05 of this
18 article," close quote.

19 The reference notice under MHL Section 10.05(b)
20 is the notice given to the attorney general and the
21 Commissioner of Mental Health by an agency with
22 jurisdiction of the person who may be a detained sex
23 offender and is nearing an anticipated release from
24 confinement.

25 It is undisputed that this notice was provided

1 to the attorney general and the Commissioner of Mental
2 Health and that was subsequently provided
3 statutory notification that he is under MHL Article 10
4 evaluation.

5 Absent a securing petition, if an MHL Article
6 10 petition for civil management is filed upon completion
7 of evaluation by the Case Review Team, and if is
8 at liberty when the petition is filed, MHL
9 Section 10.06(h) requires the Court to order his return
10 to confinement for purposes of the probable cause
11 hearing.

12 In the meantime, having failed to avail itself
13 of an MHL Section 10.06(f) securing petition, respondent
14 has no authority to continue to hold in custody.

15 The petition for habeas corpus is granted, and
16 shall be released in accordance with the valid
17 existing Amended Parole Board Release Decision Notice
18 dated September 15, 2021. Counsel, please give me an
19 order with a transcript of my decision attached. Okay?

20 (Discussion off the record.)

21 (Whereupon, the proceedings were concluded.)
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C E R T I F I C A T I O N

The foregoing is a true and accurate transcript of my
stenographic notes in the above-entitled matter.

Dated: December 23, 2021.

Therese Plante, Sr. Court Reporter

Therese Plante/Senior Court Reporter