Decision in Habeas Proceeding - FUSL000141 (2022-10-20)

STATE OF NEW YORK
SUPREME COURT ULSTER COUNTY
People of the State of New York Ex Rel.

MARTHA RAYNER, ESQ. ON BEHALF OF
[redacted],

Petitioner,

Decision and Order
Index No.: [redacted]

-against-

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

Respondent.

Supreme Court, Ulster County

Present: Julian D. Schreibman, JSC

Appearances:

Martha Rayner, Esq.
Attorney for Petitioner
Lincoln Square Legal Services, Inc.
Fordham Law School
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New York, New York 10023

LETITIA JAMES
Attorney General of the State of New York
Attorney for Respondent
The Capitol
Albany, New York 12224
By: Helena O. Pederson, Assistant Attorney General, of Counsel

Schreibman, J.:

This *habeas corpus* proceeding was commenced on July 30, 2021 to secure the immediate release of petitioner's relator (hereinafter "petitioner") who, at the time, was an inmate incarcerated at Eastern Correctional Facility ("Eastern") but who had been granted "open date" parole status

with an earliest possible release date of May 19, 2021.[1] The petition alleges that all conditions of release were satisfied on or before May 18, 2021, and thus that there was no impediment to his release on May 19, 2021. The petition alleges that despite the foregoing, petitioner was handed a post-it note on May 18, 2021, advising him that he was being held for review under the Sex Offender Management and Treatment Act ("SOMTA" L. 2007, ch. 7) pursuant to Article 10 of New York's Mental Hygiene Law. It is undisputed that the Attorney General did not file a securing petition to prevent petitioner's release pending completion of the Article 10 review process. Nevertheless, petitioner remained incarcerated for more than seventy days beyond his May 19, 2021, earliest release date. He maintains that in the absence of a securing order, his detention beyond his release date was unlawful. This Court scheduled the petition to be heard on August 6, 2021. Respondent released petitioner on or about August 4, 2021, and requests that the petition be dismissed as moot because petitioner obtained all relief to which he was entitled under CPLR Article 70. Petitioner argues that an exception to the mootness doctrine applies and that the matter should be converted to an action for declaratory judgment.

Generally speaking, Courts have the power to declare law only when determining the rights of persons in an actual controversy, and may not pass on moot questions. (*Hearst Corp. v Clyne*, 50 NY2d 707, 713-714 [1980]). When a petitioner has been granted "all of the relief to which he

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[1] "An open parole date or 'open date is the earliest possible release date' (DOCCS *Community Supervision Handbook* at 15, available at: https://doccs.ny.gov/system/files/documents/2019/05/Community_Supervion_Handbook.pdf [last accessed November 16, 2020]). The New York State Department of Corrections and Community Supervision *Community Supervision Handbook* states that "[i]f the Board grants release, this is known as an 'open date.' This date is contingent upon the inmate receiving an approved residence in accordance with established residency restrictions and local laws" (*id.* at 12–13)." (*People ex rel. Johnson v. Superintendent, Adirondack Corr. Facility*, 36 N.Y.3d 187, 193, FN1 [2020], *reargument dismissed sub nom. People ex rel. Ortiz v. Breslin*, 36 N.Y.3d 1087 [2021], and *cert. denied sub nom. Ortiz v. Breslin*, 142 S. Ct. 914 [2022]).

is entitled, the petition must be dismissed as moot[.]" (*Serrano v Smith*, 152 AD3d 854 [3rd Dept. 2017]). However, exceptions to the mootness doctrine exist permitting judicial review "where the issues are substantial or novel, likely to recur and capable of evading judicial review." (*People ex rel. Johnson v Superintendent, Adirondack Corr. Facility*, 36 NY3d 187, 195-196 [2020], *reargument dismissed sub nom. People ex rel. Ortiz v Breslin*, 36 NY3d 1087 [2021], and *cert. denied sub nom. Ortiz v Breslin*, 142 S. Ct. 914 [2022]).

The issue here, as framed by petitioner, is a narrow one, to wit: Whether DOCCS has the authority, without first obtaining a securing order, to extend the confinement of an inmate who has been granted open parole status and has satisfied all conditions for release, in order to undertake or complete an Article 10 review.

The broader question of whether a person can be detained for Article 10 review without a securing order is not novel and has not escaped judicial review. (See, *e.g.*, *State v Rashid*, 16 NY3d 1 [2010]; *People ex rel. David NN v Hogan*, 53 AD3d 841 [3rd Dept. 2008]). In *Rashid*, the detainee had been released from prison and was on parole when the State gave interagency notice of an Article 10 review pursuant to MHL § 10.05 [b]. (16 NY3d 1, 14). However, the State waited until after his parole ended to petition and secure an order for Rashid's detention pending the outcome of the probable-cause hearing required under § 10.06 [g]. (*Id.* at 10). The Court of Appeals concluded that Rashid's detention was unlawful because the Attorney General did not petition for a securing order until after Rashid was no longer under State custody or supervision. (*Id.* at 19.) In so doing, it expressly rejected the notion that initiation of pre-petition Article 10 review of a person under State custody or control "freezes" the subject in detained status. (*Id.* at 13).

In *People ex rel. David N.N. v Hogan*, the petitioner was transferred from a State correctional facility to a facility operated by the Office of Mental Health ("OMH") pursuant to a

Correction Law § 402 commitment order. (53 AD3d 841). While there, OMH apparently undertook an Article 10 review. (*Id.*) Petitioner's commitment order expired, but OMH continued to detain him because the review had not been completed as of his scheduled release date. (*Id.*) The Attorney General applied for and obtained a securing order during the period of extended detention. (*Id.* at 843). While the period of petitioner's confinement between the expiration of the commitment order and the granting of the securing order was not directly challenged in the proceeding, the Third Department held that the state's extension of petitioner's confinement during that period was "without authority." (*Id* at 843 and FN 4).

The factual backdrop of the instant matter is analogous, but not identical to *People ex rel. David N.N. v Hagen,* and is novel in that respect. Based upon the position taken by respondent in the return and during oral argument, it is likely to recur and, given the absence of caselaw that is directly on point, it might evade judicial review.[2] As such, this matter falls within a recognized exception to the mootness doctrine. (*Bezio v Dorsey*, 21 NY3d 93 [2013]). Accordingly, this Court converts the petition to an action for declaratory judgment. (*Id.*)

Upon so doing, and upon the specific facts of this case, the Court concludes that petitioner is entitled to judgment declaring that his continued detention at Eastern - without a securing order from the date beyond his earliest parole release when all conditions of release were met to the date of his release - was unlawful. Having been granted parole, petitioner possessed a "protectable liberty interest that entitled him to due process." (*Victory v Pataki*, 81 F.3d 47, 60 [2nd Cir. 2016]). Due process would have been satisfied if the Attorney General filed a securing petition prior to petitioner's earliest release date. (*People ex rel. David N.N.*, 53 AD3d 844, FN 3). The failure to do so in this case resulted in petitioner's detention without due process, and was therefore

[2] Respondent argued in the return, that its "position is that offenders subject to such [Article 10] reviews are not deemed ready for release to the community until such review has been completed."

unauthorized. (*People ex rel. David N.N. v Hagen,* 53 AD3d 841, 844 [3rd Dept. 2008]). Accordingly, it is hereby

ORDERED that petitioner is entitled to judgment declaring that Respondent unlawfully detained him from the date beyond his earliest release date when all of his conditions for release were satisfied to the date of his release.

This shall constitute the Decision and Order of the Court. The original Decision and Order is being filed with the Ulster County Clerk via NYSCEF. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry.

SO ORDERED.

Dated: October 20, 2022
Kingston, New York

ENTER,

JULIAN D. SCHREIBMAN, JSC

Papers considered: Order to Show Cause dated July 30, 2021; Verified Petition by Martha Rayner, Esq. dated July 28, 2021, with Exhibits 1-2; Return by Helena O. Pederson, Assistant Attorney General, dated August 3, 2021, with Exhibits A-B; Reply Affirmation by Martha Rayner, Esq. dated August 4, 2021; and Transcript of Proceeding dated August 6, 2021.