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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 2

Index No. 45734/92

MICHAEL QUARTARARO,

Petitioner,

DECISION/ORDER

-against-

Present:

NEW YORK STATE BOARD OF PAROLE,

Hon. Louis B. York
Justice, Supreme Court

Respondent.

X

Petitioner Michael Quartararo moves to restore this case to active status pursuant to CPLR § 5104 and Judiciary § 753 and to hold respondent, the New York State Board of Parole, in civil contempt of court. Respondent cross-moves, pursuant to CPLR § 3211, for an order dismissing the petition, denying the motion for contempt, and terminating these proceedings. For the following reasons, the court denies petitioner's motion to reactivate this case, grants respondent's cross-motion, and dismisses the petition.

Petitioner Michael Quartararo commenced this Article 78 proceeding in 1992, challenging the determination of the New York State Parole Board on his parole hearing. The court found that, in reviewing petitioner's parole application, the board improperly considered photographs of the victim and other trial evidence, information regarding the revocation of petitioner's work release, Peter Quartararo's (petitioner's brother) suppressed confession, and other materials. Accordingly, the court ordered the materials removed from the prisoner's parole file and ordered a de novo hearing. Quartararo v. Division of Parole, N.Y.L.J., Feb. 17, 1994 at 24 (Sup. Ct. N.Y. County, Feb. 17, 1994).

Subsequently, the petitioner challenged the de novo hearing as well. The court found that the parole board had once again consulted the offending documents, and decided that, in light of the parole board's repeated inability to conduct an appropriate review, the court would decide petitioner's parole application. If the board had considered only the proper materials, the court continued, Quartararo would have been released. Accordingly, the court ordered the prisoner released under parole supervision. Quartararo v. Division of Parole, N.Y.L.J., Aug. 18, 1995 (Sup. Ct. N.Y. County, Aug. 18, 1995). Respondent appealed the determination of the Supreme Court, and, on appeal, the First Department agreed with the court that the parole board considered the improper materials in the prisoner's parole file. However, the Court held that the Supreme Court had exceeded its power in releasing the prisoner. Thus the First Department modified the order, and granted Petitioner another de novo hearing. Quartararo v. New York State Division of Parole, 224 A.D.2d 266, 637 N.Y.S.2d 721 (1st Dept. 1996), lv denied, 88 N.Y.2d 805, 646 N.Y.S. 2d 984 (1996).

At petitioner's subsequent de novo hearing on April 2, 1996, and at his regularly scheduled parole hearings on April 30, and June 3, 1996, he was again denied parole. In October, 1996, he brought this motion seeking that the board be found in contempt, and that he be released from prison into parole supervision.

In February of 1998, while this motion was pending, Petitioner had another parole hearing, in which he was again denied release. Petitioner challenged this latest hearing in Albany County. In December of 1998, the Albany Supreme Court, granted Quartararo's petition and ordered a de novo hearing. Quartararo v. Board of Parole, No. 3743-98, Slip

Op. (Sup.Ct. Albany County Dec. 14, 1998). Since Respondent did not object, the court incorporated Petitioner's February 1998 parole board hearing as part of this proceeding.

Also in December of 1998, Judge Seybert of the United States District Court overturned Petitioner's conviction by a writ of habeas corpus. Quartararo v. Hanslmaier, 28 F.Supp.2d 749 (E.D.N.Y. 1998). Quartararo was released from prison, pending appeal. This court determined that because Petitioner had been released from jail, the Article 78 petition was moot. Accordingly, this court marked it off of the calendar, rendering the case inactive. Rather than dismiss the case outright, the court gave petitioner leave to restore if or when petitioner returned to jail. However, the court "admonishe[d] petitioner to remember that a subsequent parole denial review renders the one before this court moot." Quartararo v. New York State Board of Parole, No. 45734/92 (Sup. Ct. N.Y. County, 1/10/2000).

On July 21, 1999, the Federal Court of Appeals for the Second Circuit reversed Judge Seybert's decision. Quartararo v. Hanslmaier, 186 F.3d 91 (2d Cir. 1999), cert. denied, 120 S.Ct. 1196 (2000). Petitioner was returned to the Department of Corrections for imprisonment.

On January 4, 2000, the parole board denied Quartararo's release at the 1998 court ordered de novo hearing. On February 1st, 2000, petitioner was denied parole at his regularly scheduled hearing.

On May 16, 2000, petitioner submitted an order to show cause to the Supreme Court, Albany County, for contempt against respondents. According to petitioner, in reviewing petitioner's parole application, respondents improperly considered materials that

the Supreme Court, New York County, had ordered expunged from the file. After review, the Albany Court held that the parole board properly conducted the hearings. Quartararo v. New York State Board of Parole, No. 01-98-ST8973, Slip Op. (Sup. Ct. Albany County, Oct. 11, 2000).

In August of 2000 petitioner moved this court to reactivate the motion previously marked off the calendar. The motion includes challenges to petitioner's January and February of 2000 hearings and seeks an order of contempt against respondent. Respondent cross-moves to dismiss.

Petitioner argues that the case should be reactivated due to the improprieties in both his original and latest parole hearings. As this court stated in its decision to mark this case off of the calendar on January 1, 2000, "a subsequent parole denial review renders the one before this court moot." Quartararo v. New York State Board of Parole, No. 45734/92 (Sup. Ct. N.Y. County, 1/10/2000); see Manzy Brown III v. Division of Parole, 255 A.D.2d 861, 682 N.Y.S.2d 637 (3rd Dept. 1988); see also Faison v. Russi, 240 A.D.2d 822, 658 N.Y.S.2d 155 (3rd Dept. 1997), lv denied, 91 N.Y.2d 802, 667 N.Y.S.2d 682 (1997). Therefore petitioner's challenges of his parole denials are no longer properly before this court.

Additionally, petitioner has erred in his contention that the contempt proceedings are still viable. The Albany Court held that the parole board complied with the court's order in conducting petitioner's January and February 2000 parole hearings. Quartararo v. New York State Board of Parole, No. 01-98-ST8973, Slip Op. (Sup. Ct. Albany County, Oct. 11, 2000). A parole board cannot be held in contempt if a subsequent parole hearing

adheres to the order of the Supreme Court. Jones v. New York State Division of Parole, 205 A.D.2d 778, 614 N.Y.S.2d 914 (2 Dept. 1994). Therefore, challenges of all previous hearings are rendered moot, since Petitioner's de novo, as well as regularly scheduled hearing, conformed to the court's order.

Respondent's first argument is that petitioner's claims are moot. As discussed above, this court agrees. Second, Respondents seek to dismiss under CPLR § 3211 (a) (4), alleging that the Albany action covers the same parties, and the same cause of action. This argument is moot because the action in Albany County has already been decided. In fact, the Albany proceeding is res judicata, since that proceeding covered the same parties and the same issue. Dept. of Hous. Preservation & Dev. V. Ieraci, 156 Misc 2d 646, 594 N.Y.S.2d 574 (N.Y.City Civ.Ct., 1992).

Due to these reasons, it is

ORDERED THAT Petitioner's motion to restore is denied, and it is further

and ADJUDGED

ORDERED THAT Respondent's cross-motion to dismiss is granted, and the

petition is dismissed.

Dated: 6/29/07
FILED
JUN 30 2007
COUNTY CLERK'S OFFICE
NEW YORK

ENTER:

Ray

Louis B. York, J.S.C.

Norman Godner

CLERK