

**Matter of Vetrano v Superintendent, Bare Hill
Correctional Facility**

2013 NY Slip Op 31598(U)

July 9, 2013

Supreme Court, Franklin County

Docket Number: 2013-232

Judge: S. Peter Feldstein

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**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF FRANKLIN
X

In the Matter of the Application of
MICHAEL VETRANO, #04-A-3488,
Petitioner,

for Judgment Pursuant to Article 70
of the Civil Practice Law and Rules

DECISION AND JUDGMENT
RJI #16-1-2013-0110.32
INDEX # 2013-232
ORI # NY016015J

-against-

SUPERINTENDENT, Bare Hill Correctional
Facility, **DIVISION OF PAROLE** and **WARDEN**,
Warren County Jail,

Respondents.

X

This proceeding was originated by the Petition for a Writ of Habeas Corpus of Michael Vetrano, verified on March 6, 2013 and filed the Franklin County Clerk's office on March 8, 2013. Petitioner, who is an inmate at the Bare Hill Correctional Facility, purports to challenge his continued incarceration in the custody of the New York State Department of Corrections and Community Supervision. The Court issued an Order to Show Cause on March 14, 2013 and has received and reviewed the Return of the state respondents (Superintendent, Bare Hill Correctional Facility and Division of Parole), dated April 26, 2013, as well as the Affirmation in Opposition to Petition for a Writ of Habeas Corpus of Amy C. Bartlett, Esq., First Assistant Warren County Attorney, dated April 26, 2013 and submitted on behalf of the county respondent (Warden, Warren County Jail). The Court has also received and reviewed petitioner's Affidavit of Reply, sworn to on May 8, 2013 and filed in the Franklin County Clerk's office on May 10, 2013.

On June 23, 2004 petitioner was sentenced in Warren County Court, as a second felony offender, to a determinate term of 6 years, with 5 years post-release supervision,

upon his conviction of the crime of Attempted Robbery 1^o.¹ He was received into DOCCS custody on June 29, 2004.

It appears petitioner was first released from DOCCS custody to post-release supervision on February 13, 2009. After violating the conditions of his release petitioner was returned to DOCCS custody as a post-release supervision violator. On October 11, 2011 petitioner was re-released from DOCCS custody to post-release supervision. On April 12, 2012, however, he was served with a Notice of Violation/Violation of Release Report charging him with violating the conditions of his release in three separate respects. Parole Violation Charge #1 alleged that petitioner “. . . violated Rule #11 of the rules governing his parole when on or about 2/21/12, he used a controlled substance, cocaine, and he had no medical authorization for such use.” Parole Violation Charge #2 alleged that petitioner “. . . violated Rule #13 of the rules governing his parole when on or about 4/9/12 at McPike Addiction Treatment Center . . . he threatened his roommates . . . and was unsatisfactorily discharged from the program.” Parole Violation Charge #3 alleged that petitioner “. . . violated Rule #8 of the rules governing Parole in that he threatened the safety and well being of an other [sic] when on or about 4/9/12, at McPike Addiction Treatment Center . . . he threatened his roommates.” At the time petitioner was served with the violation papers he checked the box on the Notice of Violation form indicating that he did not wish to have a preliminary hearing. Petitioner’s signature appears under that box.

A final parole revocation hearing was conducted at the Warren County Correctional Facility on May 15, 2012. Following an off-the-record discussion, the presiding Administrative Law Judge (ALJ) stated as follows:

¹ Petitioner was sentenced on June 23, 2004 and resentenced on October 24, 2012. He was apparently resentenced for the purpose of specifying the second felony offender designation.

“Record should reflect a prehearing conference. Plea bargain was agreed to. The parolee will plead guilty to Charge No. 2. The Division will dismiss the remaining charges. Under the guidelines, parolee is a Category 1. This is a joint recommendation for a 15-month hold, and that is what I have agreed to impose. Is that everyone’s understanding of the plea arraignment?”

The Parole Revocation Specialist, petitioner’s counsel and petitioner himself all responded in the affirmative. After advising petitioner that notwithstanding the proposed plea agreement he could plead guilty, not guilty, guilty with an explanation or stand moot with respect to the parole violation charges, a reading of Parole Violation Charge #2 was waived and, following a second off-the-record discussion, petitioner personally entered a plea of guilty to Parole Violation Charge #2. The remaining parole violation charges were withdrawn with prejudice. Petitioner’s post-release parole supervision was revoked with a delinquency date modified from February 21, 2012 to April 9, 2012, and a 15-month delinquent time assessment was imposed.

The document perfecting petitioner’s administrative appeal from the parole revocation proceedings was received by the DOCCS Parole Appeals Unit on September 18, 2012. The Appeals Unit, however, failed to issue its findings and recommendation within the 4-month time frame set forth in 9 NYCRR §8006.4(c). This proceeding ensued.

Petitioner challenges various aspects of the parole revocation process. He first argues that his waiver of preliminary hearing was not voluntary since it was the result of improper (and unfulfilled) promises on the part of a parole officer. He next argues that the Notice of Violation document did not inform him of his right to compel witnesses to attend hearings. He also argues that staff at the Warren County Jail undermined his right to effectively participate in the final hearing by denying him contact with his attorney, denying him paper and writing impliments, confiscating legal documents, unreasonably restricting his access to the facility law library and preventing him from bringing

unspecified legal documents to the final hearing.² Petitioner also argues that his assigned attorney was ineffective³ and that he only accepted the plea bargain agreement at the final hearing under duress.

The Court declines to reach the factual issues underlying petitioner's arguments since it is persuaded that his guilty plea at the final parole revocation hearing constituted a waiver similar to that of a criminal defendant. The entry of a guilty plea by a defendant in a criminal action “. . . generally results in a forfeiture of a right to appellate review of any nonjurisdictional defects in the proceedings.” *People v. Fernandez*, 67 NY2d 686, 688 (citation omitted). See *People v. Granger*, 96 AD3d 1669 and *People v. Whitehurst*, 291 AD2d 83, *lv denied* 98 NY2d 642.

It is first noted that petitioner brought none of his allegations of improper pre-hearing conduct on the part of the parole officer and/or jail staff to the attention of the ALJ presiding at the final hearing. Nor did petitioner bring to the ALJ's attention any concerns with respect to the sufficiency of notice of rights set forth on the Notice of Violation form and/or his concerns with respect to the adequacy of assigned counsel. Rather, while represented by counsel, he accepted a plea bargain agreement that resulted in the dismissal of two of three parole violation charges, limited his delinquent time assessment to 15 months and resulted in the modification of his delinquency date from February 21, 2012 to April 9, 2012. The Court finds that the challenges asserted by

² In addition, petitioner contends that staff at the Warren County Jail confiscated personal hygiene products, repeatedly threatened his life and well being, denied him water for days at a time and required him to sleep on a cement floor with no mattresses. Petitioner does not specify how such conduct impacted upon his ability to participate in the final parole revocation hearing.

³ Petitioner asserts that during the course of one of the off-the-record discussions at the final hearing the ALJ was critical of the representation provided by petitioner's attorney.

petitioner in this proceeding are not jurisdictional in nature and therefore did not survive his guilty plea at the final parole revocation hearing.

Based upon all of the above, it is, therefore, the decision of the Court and it is hereby

ADJUDGED, that the petition is dismissed.

DATED: July 9, 2013 at
Indian Lake, New York

S. Peter Feldstein
Acting Supreme Court Judge