

Matter of Printup v Stanford

2013 NY Slip Op 33105(U)

December 4, 2013

Supreme Court, Franklin County

Docket Number: 2013-680

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
CLIFFORD R. PRINTUP, Jr., #95-B-2202,
Petitioner,

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

**DECISION AND ORDER
RJI #16-1-2013-0341.88
INDEX # 2013-680
ORI # NY016015J**

-against-

TINA STANFORD, Chairwoman, NYS
Board of Parole, and **MICHAEL J. LIRA**,
Superintendent, Chateaugay Correctional Facility,
Respondents.

X

This proceeding was originated by the Petition for Writ of Habeas Corpus of Clifford R. Printup, Jr., verified on July 18, 2013 and filed in the Franklin County Clerk's office on August 2, 2013. Petitioner, who is an inmate at the Chateaugay Correctional Facility, is challenging 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 August 9, 2013 and has received and reviewed respondents' Notice of Motion to Dismiss, supported by the Affirmation of Hilary D. Rogers, Esq., Assistant Attorney General, dated September 27, 2013, as well as by the Affidavit of Robin Filmer, a DOCCS employee at Counsel's Office in Albany, sworn to on September 19, 2013. The Court has also received and reviewed petitioner's opposing papers (denominated Reply) sworn to on October 10, 2013 and filed in the Franklin County Clerk's office on October 17, 2013.

On October 24, 1995 petitioner was sentenced in Niagara County Court, as a second felony offender, to a controlling indeterminate sentence of 7 to 14 years upon his convictions of the crimes of Criminal Possession of a Weapon 2^o and Criminal Possession

of a Weapon 3^o.¹ He was received into DOCCS custody on November 3, 1995. Following two parole delinquencies and returns to DOCCS custody as a parole violator, petitioner was released to parole supervision for a third time on March 31, 2011. A Parole Warrant signed by Senior Parole Officer Anthony Molik, however, was issued on October 13, 2011. At the time the warrant was issued petitioner's whereabouts was unknown to parole officials.

On November 21, 2012 petitioner 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 a September 28, 2011 curfew violation. Parole Violation Charge #2 alleged a failure to report on October 3, 2011 and thereafter. Parole Violation Charge #3 alleged an unapproved change of residence on or before October 4, 2011. A Supplementary Violation of Parole Report, adding a fourth parole violation charge, was subsequently issued. Parole Violation Charge #4 alleged that petitioner entered Canada on November 20, 2012 without the knowledge and/or permission of his supervising parole officer (P.O. Turecki).

A preliminary revocation hearing was held at the Niagara County Jail on December 3, 2012. After certain documents were received into evidence and Parole Officer Turecki testified with respect to Parole Violation Charge #2, petitioner asserted that the provisions of 9 NYCRR §8004.2 had been violated since Senior Parole Officer Molik signed the parole warrant as well as the Violation of Release Report. The presiding Hearing Officer, however, advised petitioner, in effect, that he had no authority to make a ruling with respect to this issue. Upon the conclusion of the preliminary hearing a probable cause determination was made with respect to Parole Violation Charge #2.

¹ Although petitioner was originally sentenced on October 24, 1995 an Amended Sentence and Commitment Order was issued on December 11, 1995.

A final parole revocation hearing was conducted at the Niagara County Jail on December 13, 2012. After extensive discussion with respect to sentence calculation issues that are not germane to this proceeding, petitioner again sought to raise an issue with respect to the fact that parole warrant and Violation of Release Report were both signed by Senior Parole Officer Molik². The presiding Administrative Law Judge (ALJ) responded that the resolution of this issue was beyond her jurisdiction. According to the ALJ, “[m]y jurisdiction is limited to determining whether or not there is sufficient evidence of a violation of parole in an important respect.” The final hearing was subsequently adjourned and recommenced on January 3, 2013. At that time petitioner, who was represented by counsel, entered into an agreement whereby he pled guilty to Parole Violation Charge #1 (with the remaining charges withdrawn), his parole was revoked with a modified delinquency date of November 21, 2011 and a delinquent time assessment was imposed holding him to his maximum expiration date.

Petitioner’s notice of administrative appeal was received by the DOCCS Parole Appeals Unit on January 11, 2013. The Appeals Unit initially advised petitioner that he had until May 15, 2013 to perfect his appeal. That date was subsequently extended to July 31, 2013. Notwithstanding the foregoing, petitioner’s administrative appeal was never perfected. This proceeding was originated on August 2, 2013 when the Petition for Writ of Habeas Corpus, verified on July 18, 2013, was filed in the Franklin County Clerk’s office. *See CPLR §304(a).*

² The Violation of Release Report was not personally signed by Parole Officer Turecki. Rather, the report was signed on October 18, 2011 by Senior Parole Officer Molik “for P. Turecki” and by Senior Parole Officer Molik in his own capacity. The Supplementary Violation of Parole Report (relating to Parole Violation Charge #4) was signed by both Parole Officer Turecki and Senior Parole Officer Molik on November 30, 2012.

Respondent's motion to dismiss is premised upon the assertion that petitioner failed to exhaust administrative remedies through the administrative appeals process set forth in 9 NYCRR Part 8006. Petitioner counters by alleging that the respondents engaged in dilatory tactics that compromised his ability to perfect his administrative appeal in a meaningfully timely fashion. In this regard he notes that his notice of administrative appeal, received by the Appeals Unit on January 11, 2013, included requests for a transcript of the December 3, 2012 preliminary hearing as well as transcripts of the December 13, 2012 and January 3, 2013 sessions of the final hearing. He also notes that the transcript of the preliminary hearing (Respondents' Exhibit E) was certified by the court reporter as true and correct on December 3, 2012, that the transcript of the December 13, 2012 session of the final hearing (part of Respondents' Exhibit F) was certified on December 26, 2012 and that the transcript of the January 3, 2013 session of the final hearing (part of Respondents' Exhibit F) was certified on January 3, 2013. Thus, he suggests that copies of all three transcripts should have been available to parole officials on January 11, 2013 when his notice of administrative appeal, including the request for copies of such transcripts, was received by the DOCCS Parole Appeals Unit.

Notwithstanding the foregoing, petitioner also alleges in his opposing papers that by letter dated April 18, 2013 he first notified parole officials that he had not received copies of any of the transcripts in question. Petitioner acknowledges that he received a copy of the transcript of the January 3, 2013 session of the final hearing under cover letter from the Appeals Unit dated April 22, 2013. He next alleges that by letter dated May 3, 2013 he again communicated with parole officials thanking them for the copy of the January 3, 2013 transcript but pointing out that he had still not received copies of the two remaining transcripts. Petitioner's opposing papers go on to demonstrate that his May 3, 2013 letter was followed up by an additional letter to parole officials, dated June 5, 2013,

wherein he again requested copies of the December 3, 2012 and December 13, 2012 transcripts and requested an extension of time to perfect his administrative appeal.

Petitioner acknowledges that he received copies of the two remaining transcripts under cover letter from the Appeals Unit dated June 18, 2013. That letter also advised him that the time for him to perfect his administrative appeal was extended to July 31, 2013. Alluding to the 4-month regulatory time frame for the Appeals Unit to address an administrative appeal (*see* 9 NYCRR §8006.4(c)), and noting that the maximum expiration date of his underlying multiple sentences, in the absence of a parole violation, had been calculated as August 20, 2013 and that even with a parole violation a January 19, 2014 conditional release date was in play, petitioner maintains that the failure of parole authorities to timely provide him with copies of available transcripts warrants the denial of respondents' motion.

Based upon the record before it the Court cannot be altogether certain whether or not copies of the three transcripts were, in fact, available to parole officials on or about the certification dates. Thus, it is difficult to assess the reasonableness of the conduct of parole officials in failing to provide petitioner with copies of transcripts until April 22, 2013 and June 18, 2013. Nevertheless, the Court finds that the allegations and exhibits set forth in petitioner's opposing papers at the very least raise disturbing doubts with respect to the timing of respondents' delivery of copies of the transcripts to petitioner. It is noted, moreover, that respondents have not sought leave of the Court to submit any response to petitioner's opposing papers in order to address the issue of the availability of the transcripts. In view of all of the foregoing, the Court is therefore persuaded that the motion to dismiss should be denied.

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

ORDERED, that respondents' motion is denied; and it is further

ORDERED, that respondents' serve a copy of their Return on the petitioner on or before December 23, 2013, and that they simultaneously mail their original Return to the Clerk of the Court for filing and mail a further copy of said Return to the undersigned; and it is further

ORDERED, that petitioner mail his original Reply to the respondents' Return to the Court Clerk's Office, Franklin County Courthouse, 355 West Main Street, Suite 3223, Malone, New York, 12953, on or before January 3, 2014.

DATED: December 4, 2013 at
Indian Lake, New York

S. Peter Feldstein
Acting Supreme Court Judge