

**Matter of Saxton v O'Meara**

2016 NY Slip Op 31162(U)

June 17, 2016

Supreme Court, St. Lawrence County

Docket Number: 146942

Judge: S. Peter Feldstein

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This opinion is uncorrected and not selected for official publication.

**STATE OF NEW YORK  
SUPREME COURT**

**COUNTY OF ST. LAWRENCE  
X**

In the Matter of the Application of  
**KAREEM SAXTON, #10-A-2513,**  
Petitioner,

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

**DECISION AND JUDGMENT  
RJI #44-1-2015-0833.31  
INDEX # 146942  
ORI # NY044015J**

-against-

**ELIZABETH A. O'MEARA,** Superintendent,  
Gouverneur Correctional Facility, and **NYS  
DOCCS,**

Respondents.

**X**

This proceeding was originated by the Petition for Writ of Habeas Corpus of Kareem Saxton, by his attorney Kerry Elgarten, Esq., The Legal Aid Society, Criminal Appeals Bureau, 199 Water Street, New York, NY 10038, verified on December \_\_, 2015 and filed in the St. Lawrence County Clerk's office on December 28, 2015. Kareem Saxton, who will hereinafter be referred to as the petitioner, is now an inmate at the Fishkill Correctional Facility and is challenging his continued incarceration in DOCCS custody. The Court issued an Order to Show Cause on January 8, 2016 and has received and reviewed respondents' Answer and Return, including Confidential Exhibit B and D, verified on February 12, 2016<sup>1</sup>. The Court has also received and reviewed the Reply Affirmation in Support of Petition for Writ of Habeas Corpus of Kerry Elgarten, Esq., The Legal Aid Society, dated February 23, 2016 and submitted on behalf of the petitioner.

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<sup>1</sup> Respondent's Answer and Return consists of the Affirmation of Alicia M. Lendon, Esq., Assistant Attorney General, dated February 12, 2016, as well as the Affirmation of Kathleen M. Kiley, Esq., Counsel to the New York State Board of Parole, dated February 5, 2016.

On April 20, 2010 petitioner was sentenced in Supreme Court, Bronx County, after a plea, to a determinate term of 6 years, with 8 years post-release supervision, upon his conviction of the crime of Course of Sexual Conduct Against a Child 1<sup>o</sup> (Penal Law §130.75(1)(a)). Upon such conviction/sentencing petitioner was certified by the sentencing court as a Sex Offender (Correction Law §168-a(1) and (3)(a)(i), pursuant to the provisions of Correction Law §168-d(1)(a)).

After petitioner was received into state custody DOCCS officials calculated the maximum expiration date of his determinate sentence as March 27, 2016 and the conditional release date of such sentence as October 27, 2015. Since petitioner was convicted of an offense defined in Article 130 of the Penal Law, and since the victim of such offense was under the age of 18 at the time of such offense, Executive Law §259-c(14) - enacted as part of the Sexual Assault Reform Act (SARA) in 2000, and later amended - mandated that the Board of Parole impose a condition of release whereby petitioner “ . . . shall refrain from knowingly entering into or upon any school grounds, as that term is defined in subdivision fourteen of section 220.00 of the penal law<sup>[2]</sup>, or any other facility or institution primarily used for the care or treatment of persons under the age of eighteen while one or more of such persons under the age of eighteen are present . . . ” Executive Law §259-c(14). Accordingly, the following was imposed by the Parole Board as one of the conditions of petitioner’s release: “ . . . I MUST COMPLY WITH SECTION

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<sup>2</sup> Penal Law §222.00(14) provides as follows: “‘School ground’ means (a) in or on or within any building, structure, athletic playing field, playground or land contained within the real property boundary line of a public or private elementary, parochial, intermediate, junior high, vocational, or high school, or (b) any area accessible to the public located within one thousand feet of the real property boundary line comprising any such school or any parked automobile or other parked vehicle located within one thousand feet of the real property boundary line comprising any such school. For the purposes of this section, an ‘area accessible to the public’ shall mean sidewalks, streets, parking lots, parks, playgrounds, stores and restaurants.”

259-C(14) OF THE EXECUTIVE LAW, I WILL NOT BE RELEASED UNTIL A RESIDENCE IS DEVELOPED AND IT IS VERIFIED THAT SUCH ADDRESS IS LOCATED OUTSIDE THE PENAL LAW DEFINITION OF SCHOOL GROUNDS AND IT IS APPROVED BY THE DEPARTMENT [DOCCS].”

Notwithstanding the fact that he was ultimately approved for conditional release, subject to conditions (including the condition set forth in the preceding paragraph), petitioner was not released from DOCCS custody on his October 27, 2015 conditional release date. Rather, he initially remained in DOCCS custody at the Gouverneur Correctional Facility. In this proceeding petitioner “. . . seeks a writ of habeas corpus on the ground that DOCCS has keep him illegally in custody after he was granted a CR date of October 27, 2015. He has not been released to post release supervision in the community or at a residential treatment facility (‘RTF’), as required by the Penal Law, Correction Law and Executive Law.”

When a DOCCS inmate, like petitioner, is eligible for conditional release from DOCCS custody to post-release supervision, “[t]he board of parole shall establish and impose conditions of post-release supervision in the same manner and to the same extent as it may establish an impose conditions in accordance with the executive law upon persons who are granted parole or conditional release; provided that, notwithstanding any other provision of law, the board of parole may impose as a condition of post-release supervision that for a period not exceeding six months immediately following a release from the underlying [determinate] term of imprisonment the person be transferred to and participate in the programs of a residential treatment facility as that term is defined in subdivision six of section two of the correction law.” Penal Law §70.45(3). If a condition

of release with respect to the securing of suitable housing is not satisfied prior to the scheduled conditional release date, the actual release of the inmate is not warranted. *See Breeden v. Donnelly*, 26 AD3d 660 and *People ex rel Bernzott v. Murray*, 12 AD3d 1102.

In this proceeding petitioner argues, in effect, that the previously-quoted provisions of Penal Law §70.45(3) mandate an inmate's conditional release to post-release supervision at a residential treatment facility where such inmate has reached his/her conditional release date but suitable, SARA-compliant, housing for such inmate has not yet been identified/developed. The Court, however, rejects this argument. Although the Appellate Division, Third Department, has recently made clear that when an inmate reaches the maximum expiration date of his/her determinate sentence and such inmate's release [to post-release supervision] is subject to the mandatory SARA conditions set forth in Executive Law §259-c(14), the inmate "... must be released [post-release supervision] to either suitable housing or a residential treatment facility pursuant to Penal Law §70.45(3) ..." *People ex rel Green v. Superintendent of Sullivan Correctional Facility*, 137 AD3d 56, 60.

In the case at bar petitioner was not scheduled to reach the maximum expiration date of his underlying determinate sentence until March 27, 2016 and, therefore, the release to the community or release to an RTF mandate enunciated in *Green* would not have been applicable until the March 27, 2016 maximum expiration date was reached<sup>3</sup>. This Court simply finds no basis to extend the PRS release to the community or release

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<sup>3</sup> Although neither party contacted the Court on or after March 27, 2016, it appears that on or about that date petitioner was transferred from the Gouverneur Correctional Facility to the Fishkill Correctional Facility, which is designated under DOCCS regulations to function, at least in part, as an RTF. *See* 7 NYCRR §100.90(c)(3). The Court presumes that as of March 27, 2016 petitioner commenced serving his 8-year period of post-release supervision at the Fishkill RTF pursuant to Penal Law §70.45(3).

an RTF to a DOCCS inmate who has reached the conditional release date of his/her determinate sentence but not the maximum expiration date.

Finally, to the extent petitioner generally calls into question whether or not DOCCS officials fulfilled their “obligation” to find petitioner suitable, SARA-compliant housing prior to his October 27, 2015 conditional release date, this Court notes that it is petitioner who has the obligation to identify appropriate housing, with DOCCS officials only obligated to assist in the process. *See People ex rel Green v. Superintendent of Sullivan Correctional Facility*, 137 AD3d 56 at 60. There are no specific allegations in the petition as to just how DOCCS officials allegedly fell short of any obligation to assist petitioner in locating an acceptable community residence.

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:** June 17, 2016 at  
Indian Lake, New York

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S. Peter Feldstein  
Acting Supreme Court Justice