Matter of Reed v Annucci
2017 NY Slip Op 32855(U)
December 8, 2017
Supreme Court, Franklin County
Docket Number: 2017-341
Judge: S. Peter Feldstein
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STATE OF NEW YORK
SUPREME COURT **COUNTY OF FRANKLIN**

In the Matter of the Application of
ROBERT REED, #93-B-1119,
Petitioner,

for Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

DECISION, ORDER & JUDGMENT
RJI #16-1-2017-0168.29
INDEX #2017-341

-against-

ANTHONY ANNUCCI, Acting Commissioner,
Department of Corrections and Community
Supervision and **JAMES VOUTOUR,** Niagara
County Sheriff,
Respondents.

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the Petition of Robert Reed, verified and supported by the Petitioner's Affidavit in Support of Order to Show Cause, both sworn to on May 15, 2017. Both of these documents were filed in the Franklin County Clerk's Office on May 17, 2017. Petitioner, who is an inmate at the Clinton Correctional Facility, appears to be challenging the denial of an Inmate Grievance.

This Court issued an Order to Show Cause on May 22, 2017. In response thereto, the Court has received and considered the Notice of Motion to Dismiss, supported by the Affirmation of Christopher J. Fleury, Esq., Assistant Attorney General, dated August 10, 2017, with exhibits, as well as the Opposing Affidavit of Laura T. Bittner, Niagara County Assistant District Attorney, dated August 8, 2017, together with an exhibit. In reply, the Court received a letter from the petitioner indicating that Respondent Voutour failed to

appear and as such, he has deemed to have admitted the facts asserted by the petitioner.[1]

On March 25, 1993, following a trial by jury, the petitioner was convicted of two counts of Rape in the First Degree and sentenced by the Niagara County Court to two separate indeterminate terms of incarceration for a period of eight and one-third (8⅓) to twenty-five (25) years to run consecutively[2]. While incarcerated, the petitioner was convicted following a trial by jury of two counts of Promoting Prison Contraband in the First Degree for which he was sentenced to an indeterminate term of two and one-half (2½) years to five (5) years incarceration for each count to run concurrent to each other and consecutive to the sentence the petitioner was already serving.

Preliminarily, the petitioner captioned this matter as a petition pursuant to Article 78 of the CPLR. Nonetheless, the petitioner asserts that he is entitled to immediate release and frames the remainder of his petition as if it were filed pursuant to Article 70 of the CPLR, i.e. a petition seeking habeas corpus relief. Petitioner is again arguing that there was not a proper commitment provided by the sentencing court to the Department of Corrections. Petitioner has previously been denied habeas corpus relief in this Court as well as other Courts for similar reasoning. *See, People ex rel Reed v. Travis,* 12 AD3d 1102 (4th Dept. 2004) *lv denied* 4 NY3d 704 (2005); *Matter of Reed v. Travis*, 19 AD3d 829 (3d Dept.

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[1] It is noted that the Court assumes the Niagara County District Attorney's Office appeared on behalf of the Niagara County Sheriff, James Voutour, although the affidavit submitted fails to acknowledge same. It is noted that the Niagara County District Attorney's Office failed to provide a copy of the opposition papers to the Attorney General's Office and, as such, Attorney Fleury assumed jurisdiction had not been obtained over Respondent Voutour and therefore, did not provide a copy of his motion papers to Voutour or the Niagara County District Attorney's Office. Insofar as the petitioner does not make any allegation specifically against Sheriff Voutour, the failure of the Attorney General's Office and the Niagara County District Attorney's Office to serve each other with papers is harmless.

[2] The Appellate Division, Fourth Department modified the sentence to run concurrently as opposed to consecutively. *People v Reed*, 212 AD2d 962 *app denied* 86 NY2d 739.

2005) *lv denied* 5 NY3d 708 (2005); *Reed v. Alexander*, 2008 WL3155310 (ND NY 2008); *Reed v. Alexander*, 2009 WL2390603 (ND NY 2009); *Matter of Reed v. Fischer*, 79 AD3d 1517 (3d Dept. 2010); *Matter of Reed . Fischer*, 92 AD3d 1001 (3d Dept. 2012); *Reed v. Tedford*, 110 AD3d 1123 (3d Dept. 2013) *app dismissed* 22 NY3d 1008 (2013); *Reed v. Great Meadow Correctional Facility*, 981 F. Supp. 184; *Matter of Reed v. Annucci*, Franklin County Index No. 2017-185 (2017); *People of the State of New York v. Robert I. Reed*, 440 motion, Niagara County Supreme Court (5/3/2017); *People of the State of New York v. Robert I. Reed*, 440 Motion, County Court, Chemung County, (6/27/2017).

Petitioner herein argues that on November 14, 2016 he filed a grievance that stated the following:

> "I am being unlawfully imprisoned by (DOCCS) because on May 17, 1993, I was initially received at the Wende Correctional Facility without a commitment and Title 9 NYCRR 7002.2 states a prisoner cannot be admitted without a commitment. In Snead v. Bonnoil, 166 NY 325, 329 the New York State Court of Appeals held 'A person who has arrested a party without process, or on void process, wrongfully, cannot detain him on valid process, until he has restored such party to the condition he was in at the time of the arrest, at least his liberty. The law will not permit a wrong to be perpetrated for the purpose of executing process nor to use process for the purpose of continuing imprisonment commenced without authority and by his wrongful act. (Citations omitted). I request to be released from the unlawful confinement." Petition, Ex. 1.

In response to the inmate grievance filed, the petitioner was advised to contact the county of commitment regarding the alleged error in receipt of the Sentence and Commitment. In the petition, it was stated that the petitioner never received a response to his December 16, 2016 appeal from the Central Office Review Committee. The petitioner failed to specify anything further regarding his administrative appeal and his petition

further fails to object to the lack of response instead focusing solely on the fact that the underlying commitment was not received by DOCCS. Respondents assert that the petitioner has failed to state a cause of action insofar as his inmate grievance was addressed. "Failure to timely process a grievance entitles an inmate to nothing more than the right to review at the next appeal level in the grievance process (see, 7 NYCRR 701.8) and, therefore, the petition states no cause of action." *Cliff v. Goodman*, 274 AD2d 723, 723.

Additionally, as has been repeatedly determined by this Court and in the above-cited decisions, a proper Sentence and Commitment was received and the petitioner is being held pursuant to same. The petitioner's inmate grievance fails to raise an issue that could have been addressed by the Inmate Grievance Committee and the response to the petitioner's appeal is appropriate despite the petitioner's disagreement with the basis of his custody which has repeatedly been determined to be valid.

> "The doctrine of collateral estoppel, a narrower species of *res judicata*, precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity, whether or not the tribunals or causes of action are the same. We have recently reaffirmed that collateral estoppel allows 'the determination of an issue of fact or law raised in a subsequent action by reference to a previous judgment on a different cause of action in which the same issue was necessarily raised and decided.' What is controlling is the identity of the issue which has necessarily been decided in the prior action or proceeding (*internal citations omitted*)." *Ryan v. New York Tel. Co.*, 62 NY2d 494, 500 (1984).

As Respondent Annucci correctly asserts, the issue of the validity of the petitioner's commitment has been litigated many times and has always been determined to be appropriate. Therefore, the respondents' assertion that the petitioner should be collaterally estopped from further challenging his Sentence and Commitment is correct.

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

ORDERED, that the respondents' motion to dismiss is granted; and it is further

ADJUDGED, that the petition is dismissed.

Dated: December 8, 2017, at
Lake Pleasant, New York.

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S. Peter Feldstein
Acting Supreme Court Justice