

Kielly v Colvin

2018 NY Slip Op 30730(U)

April 25, 2018

Supreme Court, Seneca County

Docket Number: 52023

Judge: Dennis F. Bender

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK
COUNTY OF SENECA SUPREME COURT

SARA KIELLY
DIN 12-B-3951

Petitioner

- Against -

JOHN COLVIN, SUPERINTENDENT
FIVE POINTS CORRECTIONAL FACILITY,

Respondent

DECISION & JUDGMENT
Index No. 52023

Hon. Dennis F. Bender, Acting J.S.C.

The Petitioner herein filed a petition for a Writ of Habeas Corpus in Tompkins County. The matter was transferred to this county due to the Petitioner being housed at Five Points Correctional Facility. The Transfer Order is dated February 9, 2018 but was not received by this Court until April 4, 2018. The Petitioner alleges in her petition that her constitutional rights are being deprived. She alleges she is subject to cruel and unusual punishment and that there have been violations of the equal protection provisions of the 14th Amendment. She alleges she has been consistently and systemically sexually tortured, in part due to her transgender identity. She alleges incidents in Attica from January of 2013 to July of 2013, incidents in Auburn Correctional Facility from July to October 2013, at Clinton Correctional Facility from October of 2013 to August of 2015, at Sing Sing from August of 2015 to October of 2015 and from July of 2016 to August of 2016 and at Five Points Correctional Facility from February of 2016 to July of 2016, as well as from August of 2016 to the present. She also alleges incidents at Central New York Psychiatric Center from October of 2015 to February of 2016. She alleges that an appropriate safety plan would be to release her under appropriate monitoring.

Prior to transfer, a Verified Answer and Return was submitted by James Shoemaker, Assistant Attorney General from the Binghamton Office of the New York State Attorney General. The Respondent notes that habeas corpus relief is improper because the Petitioner cannot show she is entitled to immediate release from prison. The Petitioner is currently incarcerated due to a Broome County Court conviction and sentence made on December 14, 2012 for Murder in the 1st

Degree and she was sentenced to a term of incarceration of 25 years to Life. The Court concurs that the Petitioner cannot show her immediate entitlement to release and accordingly, the petition for writ relief is not appropriate.

There is also no point in converting this matter to an Article 78 proceeding, as the Respondent has raised the defense of the statute of limitations, People ex rel Catapano v Smith, 143 AD 2nd 538 (4th Dept, 1988). The petition is dated September 28, 2017 and was apparently filed in Tompkins County on October 4, 2017. All allegations pertaining to incidents before June 4, 2017, are time-barred. Allegations as to purported wrongdoing by Five Points Correctional Facility personnel after that date “to present” are insufficiently pled. There are no particulars provided regarding complaints made or grievances filed, and whether there was an exhaustion of administrative remedies.

It is further noted that allegations of sexual harassment and/or abuse while at Five Points that the Petitioner did properly grieve are addressed in the Return submitted by the Respondent and were deemed unfounded.

The Petitioner argues she is subject to severe restrictions due to placement in “protective custody”, with negligible time out of her cell, minimal interaction with others and no access to programming. She submits this is detrimental to her mental health and safety, as she has been diagnosed with severe mental illness. To constitute cruel and inhuman treatment, the Petitioner would need to allege and prove that the Respondent’s actions or omissions amount to a “deliberate indifference to a serious medical need”. People v Duncan, 306 AD 2d 716(3d Dept., 2003); Outman v Annucci, 49 Misc. 3d 1129(Albany County Supreme Court, 2015). The Petitioner has failed to make such a showing, and the Respondent has shown her current placement at Five Points was carefully considered and the Respondent submits the facility can meet her medical and psychiatric needs. (Effman affidavit, Answer and Return, Ex. S)

The petition is in all respects denied and dismissed.

THIS CONSTITUTES THE DECISION AND JUDGMENT OF THE COURT.

DATED: April 25, 2018



HON. DENNIS F. BENDER
Acting Supreme Court Justice