Green v Laclair
2018 NY Slip Op 31952(U)
August 15, 2018
Supreme Court, Franklin County
Docket Number: 2018-101
Judge: S. Peter Feldstein

STATE OF NEW YORK
SUPREME COURT **COUNTY OF FRANKLIN**

People of the State of New York *ex rel.*
ROLAND GREEN, #07A3298,
Relator,

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

DECISION AND JUDGMENT
RJI #16-1-2018-0032.04
INDEX #2018-101

-against-

DARWIN LACLAIR, SUPERINTENDENT, FRANKLIN CORRECTIONAL FACILITY, NEW YORK SATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, AND NEW YORK STATE DIVISION OF PAROLE,
Respondents.

This proceeding was originated by the Verified Petition for Writ of Habeas Corpus by Michael E. Cassidy, Esq., Prisoner Legal Services, Inc., on behalf of Roland Green (hereinafter referred to as "Petitioner"), sworn on January 29, 2018 and filed in the Franklin County Clerk's office on January 31, 2018. Petitioner, who is an inmate at the Franklin 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 February 5, 2018 and thereafter an Amended Order to Show Cause on March 5, 2018. In response thereto, the Court has considered the Respondents' Answer and Return together with the Letter-Memorandum of Christopher J. Fleury, Esq., Assistant Attorney General, dated May 3, 2018. In further support of the Petition, the Court has considered the Reply Affirmation of Attorney Cassidy.

Petitioner was received into the custody of the New York State Department of Corrections and Community Supervision (hereinafter referred to as "DOCCS") on June 7,

1989 to serve an indeterminate sentence of five (5) to fifteen (15) years incarceration upon the conviction for the crimes of Rape 1° and Robbery 1°. Petitioner was released upon his maximum expiration on June 9, 2003 and was adjudicated a level three (3) sex offender pursuant to the Sex Offender Registration Act (hereinafter referred to as "SORA"). *See*, Correction Law Article 6-C.

Petitioner was received into DOCCS custody on June 13, 2007 to serve a determinate sentence of thirteen (13) years incarceration with an additional five (5) years of post-release supervision upon the conviction for the crime of Robbery 2° and concurrently sentenced to an indeterminate term of three and one-half (3½) to seven (7) years incarceration upon the conviction for the crime of Burglary 3°. The Petitioner's maximum expiration date was calculated to be September 28, 2019 with a conditional release date of November 16, 2018. The Time Allowance Committee granted all available good time allowable which was affirmed. Petitioner was given an open date for conditional release of November 16, 2017. *See*, Pet. Ex. C.

On November 9, 2017, Parole issued the conditions of release upon the Petitioner which included that he was subject to the conditions of the New York State Sexual Assault Reform Act (hereinafter referred to as "SARA") and further directed that the Petitioner must have a SARA-compliant address to which he can be released. Petitioner was homeless prior to his 2007 incarceration and does not have a SARA-compliant address for release. Petitioner argues that he is not subject to the conditions of SARA insofar as the instant offense(s) of his current incarceration were not sexually related and he has served the maximum time associated with his sex offense. Petitioner argues that a plain reading of Executive Law §259-c(14) indicates that SARA only applies to parolees who were serving

a current sentence for a sex crime and the victim was under the age of eighteen or the parolee was designated a level three sex offender *based upon the instant offense* (emphasis added). In the Reply, it is argued that it is nonsensical to equate all level three sex offenders with sex offenders who victimize(d) children as the Respondents' reading of the statute would imply.

Preliminarily, Respondents argue that the Petitioner is not entitled to habeas corpus relief insofar as he has only reached his conditional release date. Nonetheless, the Respondents allege that the Petitioner's reading of Executive Law §259-c(14) is flawed as the statute applies to all level three sex offenders, in addition to those currently serving a sex offense for which the victim was less than eighteen years of age. Respondents further argue that if the Petitioner seeks to be relieved of the responsibilities associates with SARA, his better recourse would be to challenge his SORA designation as a level three sex offender.

> "Inasmuch as the amount of good time granted to a prisoner is not a right and 'the determination to withhold good time did not render petitioner's continued confinement pursuant to his original sentence unlawful', habeas corpus relief is unavailable to challenge a determination of the time allowance committee. Moreover, the expiration of petitioner's sentence is the point in time at which the right to release would accrue, not the conditional release date (*internal citations omitted*)." *People ex rel. Richardson v. West*, 24 AD3d 996, 997.

Inasmuch as the Petitioner herein has only reached his conditional release date and not his maximum expiration, habeas corpus relief is not proper at this juncture. *See, People ex rel. Justice v. Racette*, 111 AD3d 1041. Notwithstanding same, insofar as the Petitioner has otherwise been granted parole release and but-for the administrative determination that he lacks adequate housing pursuant to SARA, this matter would be appropriate to

convert to an Article 78 proceeding. As such, the Court will consider the merits of the petition as if it were a challenge to an administrative determination.

The crux of the petition centers upon whether the language of Executive Law §259-c(14) appropriately applies to the Petitioner. The following is the relevant text therein:

> "14. notwithstanding any other provision of law to the contrary, **where a person serving a sentence for an offense** defined in article one hundred thirty, one hundred thirty-five or two hundred sixty-three of the penal law or section 255.25, 255.26 or 255.27 of the penal law **and the victim of such offense was under the age of eighteen** at the time of such offense ***or*** **such person has been designated a level three sex offender** pursuant to subdivision six of section one hundred sixty-eight-l of the correction law, is released on parole or conditionally released pursuant to subdivision one or two of this section, the board shall require, as a mandatory condition of such release, that such sentenced offender 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[1], 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, provided however, that when such sentenced offender is a registered student or participant or an employee of such facility or institution or entity contracting therewith or has a family member enrolled in such facility or institution, such sentenced offender may, with the written authorization of his or her parole officer and the superintendent or chief administrator of such facility, institution or grounds, enter such facility, institution or upon such grounds for the limited purposes authorized by the parole officer and superintendent or chief officer. Nothing in this subdivision

[1] "14. 'School grounds' 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 (emphasis added)." NY Penal Law §220.00

> shall be construed as restricting any lawful condition of supervision that may be imposed on such sentenced offender." NY Exec. Law §259-c.

It is noted that while such statutory provision does not specifically reference a parolee's residence, caselaw has interpreted the 1000 foot buffer zone to include travel near any residence. *See, Williams v. Department of Corrections and Community Supervision*, 136 AD3d 147. As was discussed in *Williams*, the 1000 foot buffer zones often severely limit the areas in which the parolee can obtain housing. It is also noted that upon reaching the maximum expiration of an underlying sentence, the level three sex offender is not limited pursuant to the restrictions of SARA, but instead is subject to the statutes under SORA and chapter 568. *See, People v. Diack*, 24 NY3d 674.

In the matter at bar, the Petitioner objects to the Respondents' interpretation of the plain language of Executive Law §259-c(14) insofar as his instant offenses are not the basis of his SORA classification as a level three sex offender. Petitioner cites four other similar matters that have been presented to other Supreme Courts in the State for guidance.

Petitioner finds support for his interpretation of the statute in *People ex rel. Madison v. Superintendent*, Index No. 291-2017 (Sup. Ct. Dutchess Co. 5/16/17). In *Madison*, Justice Grossman held that:

> "the plain language of the statute reflects that it is applicable 'where a person serving a sentence' for: (1) an enumerated crime where the victim is under 18 years old, or (2) has been adjudicated a Level 3 sex offender for that conviction. Reading further in the statute, as this Court is required to do, the subsequent language refers back to that specific person 'serving a sentence,' by referring to his/her four times as 'such sentenced offender.' " *Madison,* p. 6.

Justice Grossman distinguishes the holding in *People ex rel. Negron v. Superintendent*, Index No. 1673-2016 (Sup. Ct. Sullivan Co. 2/8/17) as "the cases upon which that court relies are factually distinguishable from those here." *Madison,* p. 7. However, the pertinent portion of the holding in *Negron*, as well as the similar decisions in *Matter of Cajigas v. Stanford,* Index No. 655-16 (Sup. Ct. Albany Co. 2/10/17) and *Matter of Walker v. Stanford*, Index No. 3921-15 (Sup. Ct. Albany CO. 6/21/16), is that Executive Law §259-c(14) is not limited to the instant offense. A reading to the contrary fails to consider the intent of the 2005 amendment to SARA to include all level three sex offenders regardless of whether their current parole is related to a sentence for a sex offense. Pursuant to Correction Law §168-h(2), a sex offender who has been classified a level three offender will remain classified as such for life. As such, once classified as a level three sex offender, such designation remains with the person despite the nature of any subsequent criminal convictions. In other words, the designation will remain upon that person for all other programs, benefits, activities and limitations for the duration of his or her life. It would be nonsensical to separate the overarching classification of a level three sex offender from the terms of parole release from a sentence for a non-sexually related crime. Every aspect of the parolee's life - employment, housing, treatment - will be under the ambit of being a level three sex offender. Executive Law §259-c(14) was amended to reflect such consideration and even if inartfully written, the intention of same cannot be denied. "In ascertaining the purpose and applicability of a statute, it is proper to consider the legislative history of the act, the circumstances surrounding the statute's passage, and the history of the times." Statutes Law §124; *see also*, *Riley v. County of Broome*, 95 NY2d 455, 463–64.

> "Inmates have no federal or state constitutional rights to be released to parole supervision before serving a full sentence. Pursuant to Executive Law §259-c (2) and 9 NYCRR 8003.3, special conditions may be imposed upon a parolee's right to release. The courts routinely uphold these conditions as long as they are rationally related to the inmate's past conduct and future chance of recidivism." *Williams v. Department of Corrections and Community Supervision*, 136 A.D.3d 147, 158–59, *appeal dismissed*, 29 NY3d 990.

Despite the Petitioner's desire for the Court to essentially divorce his previous classification as a level three sex offender from any of the requirements for his current sentence's parole eligibility, this Court declines such invitation. Clearly, the legislative intent in the 2005 amendment to SARA was to protect the most vulnerable citizens of society, school-aged children, from contact with parolees who are sex offenders - previously classified or current convictions. It is noted that the Petitioner's sex offense involved raping a child who was seven years old. As such, the Petitioner's argument that "it defies common sense to think that the legislature concluded that children needed even more protection from level three sex offenders who had never victimized a child than it needed from sex offenders who had in fact victimized children" is disingenuous. Petition, ¶27. Petitioner is a level three sex offender from whom children need to be protected.

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: August 15, 2018 at
Lake Pleasant, New York

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S. Peter Feldstein
Acting Supreme Court Judge