

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

People ex rel. Page v. Fields

2023 NY Slip Op 02676 (App. Div. 2023) · No. 2021-00493 · Decided May 17, 2023

SUMMARY

The Appellate Division, Second Department, affirmed a corrected order denying and dismissing a habeas corpus proceeding concerning the continued confinement of sex offenders unable to secure housing compliant with the Sexual Assault Reform Act. The court dismissed the appeal as academic for one petitioner and upheld dismissal as academic for the other named individuals, concluding that the mootness exception did not apply because the underlying issue had already been decided by the Court of Appeals.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Francesca E. Connolly, J.P.; Joseph J. Maltese, J.; Joseph A. Zayas, J.; Janice A. Taylor, J.
JURISDICTION	New York
DECIDED	May 17, 2023
DOCKET	2021-00493
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from a corrected order in a habeas corpus proceeding that denied the petition and dismissed claims concerning five individuals as academic and denied and dismissed the claim concerning Robert Rubino on the merits.
STANDARD OF REVIEW	The court reviewed the lower court's disposition of the habeas corpus proceeding and applied the mootness doctrine, including whether an exception to mootness was established.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion; precedential within applicable New York state-court hierarchy.

PARTIES

The People of the State of New York, ex rel. Ava C. Page, on behalf of Dennis Barr, Michael Blount, Frederick Hightower, Herbert McQueen, Jason Smith, and Robert Rubino v. Leroy Fields, Jr., et al.

TOPICS

habeas corpus

mootness

appellate procedure

post-conviction relief

remedies

PRACTICE AREAS

habeas corpus

criminal procedure

post-conviction relief

appellate procedure

remedies

QUESTIONS PRESENTED

1. Whether the claims concerning individuals released to SARA-compliant housing became academic during the proceeding or appeal.
2. Whether the broader issue concerning DOCCS's authority to detain SARA-restricted sex offenders after the date they otherwise would be released to parole or postrelease supervision fell within an exception to the mootness doctrine.
3. Whether the notice of appeal from the original order could be deemed a premature notice of appeal from the corrected order under CPLR 5520(c).

HOLDINGS

1. The claims were academic because each individual was released to SARA-compliant housing while the proceeding or appeal was pending.
2. The broader issue did not qualify for an exception to mootness because the Court of Appeals had already decided it in *People ex rel. Johnson v Superintendent, Adirondack Corr. Facility*.
3. The court deemed the notice of appeal from the December 23, 2020 order a premature notice of appeal from the February 1, 2021 corrected order.

KEY QUOTATIONS

“As such, this appeal does not raise “significant or important questions not previously passed on, i.e., substantial and novel issues” that would qualify as an exception to the mootness doctrine” ([*2])

FACTUAL BACKGROUND

The petitioner sought habeas relief for convicted sex offenders subject to the Sexual Assault Reform Act's requirement that they not reside within 1,000 feet of a school. The petition alleged that the Department of Corrections and Community Supervision unlawfully kept the individuals at Fishkill Correctional Facility beyond the maximum expiration dates of their incarceratory sentences because they had not secured SARA-compliant housing, rather than releasing them to the New York City Department of Homeless Services shelter system to obtain such housing. All named individuals were released to SARA-compliant housing while the proceeding or appeal was pending.

PROCEDURAL HISTORY

The petitioner commenced a habeas corpus proceeding challenging the continued confinement of certain convicted sex offenders at Fishkill Correctional Facility after the maximum expiration dates of their incarceratory sentences. The Supreme Court, Dutchess County, dismissed the claims concerning Barr, Blount, Hightower, McQueen, and Smith as academic because they had been released to SARA-compliant housing, and denied and dismissed the claim concerning Rubino on the merits. During the appeal, Rubino also was released to SARA-compliant housing. The Appellate Division deemed the notice of appeal from the original order a premature notice of appeal from the corrected order, dismissed the appeal concerning Rubino as academic, and affirmed the corrected order insofar as reviewed.

DISPOSITION

dismissed

CASES CITED

- Matter of Dreikausen v Zoning Bd. of Appeals of City of Long Beach, 98 NY2d 165, 173
- Matter of Dering Point Assoc., LLC v Incorporated Vil. of Dering Harbor, 199 AD3d 913, 914-915
- People ex rel. Johnson v Superintendent, Adirondack Corr. Facility, 36 NY3d 187
- Matter of Hearst Corp. v Clyne, 50 NY2d 707, 715
- Lenape Resources, Inc. v Town of Avon, 121 AD3d 1591, 1591
- People ex rel. Lynch v Poole, 57 AD3d 1490, 1491

OPINION

PER CURIAM.

People ex rel. Page v Fields (2023 NY Slip Op 02676) People ex rel. Page v Fields 2023 NY Slip Op 02676 Decided on May 17, 2023 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on May 17, 2023 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department FRANCESCA E. CONNOLLY, J.P.

JOSEPH J. MALTESE JOSEPH A. ZAYAS JANICE A. TAYLOR, JJ. 2021-00493 (Index No. 52125/20) [*1]The People of the State of New York, ex rel. Ava C. Page, on behalf of Dennis Barr, et al., appellant, vLeroy Fields, Jr., etc., et al., respondents. Patricia Pazner, New York, NY (Ava C. Page pro se of counsel), for appellant. Letitia James, Attorney General, New York, NY (Ester Murdukhayeva and Stephen J. Yanni of counsel), for respondents.

DECISION & ORDER In a habeas corpus proceeding, the petitioner appeals from a corrected order of the Supreme Court, Dutchess County (Hal B. Greenwald, J.), dated February 1, 2021. The corrected order, in effect, denied the petition and dismissed the proceeding as academic insofar as

asserted on behalf of Dennis Barr, Michael Blount, Frederick Hightower, Herbert McQueen, and Jason Smith, and, in effect, denied the petition and dismissed the proceeding on the merits insofar as asserted on behalf of Robert Rubino.

ORDERED that on the Court's own motion, the notice of appeal from an order dated December 23, 2020, is deemed to be a premature notice of appeal from the corrected order dated February 1, 2021 (see CPLR 5520[c]); and it is further, ORDERED that the appeal from so much of the corrected order as, in effect, denied the petition and dismissed the proceeding on the merits insofar as asserted on behalf of Robert Rubino is dismissed as academic, without costs or disbursements; and it is further, ORDERED that the corrected order is affirmed insofar as reviewed, without costs or disbursements.

The petitioner commenced this habeas corpus proceeding on behalf of certain named convicted sex offenders who are subject to the requirement of the Sexual Assault Reform Act (hereinafter SARA) that they not reside within 1,000 feet of a school (see Executive Law § 259-c[14]; Penal Law § 220.00[14]).

The petitioner alleged that the Department of Corrections and Community Supervision (hereinafter DOCCS) was unlawfully confining the named individuals at the Fishkill Correctional Facility (hereinafter Fishkill) past the maximum expiration date of their incarceratory sentences due to their failure to secure SARA-compliant housing, rather than releasing them to the New York City Department of Homeless Services (hereinafter DHS) shelter system for the purposes of securing such housing.

In the corrected order appealed from, the Supreme Court, in effect, denied the petition and dismissed the proceeding as academic insofar as asserted on behalf of Dennis Barr, Michael Blount, Frederick Hightower, Herbert McQueen, and Jason Smith, and, in effect, denied the petition and dismissed the proceeding on the merits insofar as asserted on behalf [*2]of Robert Rubino.

The petitioner appeals. The Supreme Court correctly, in effect, denied the petition and dismissed the proceeding as academic insofar as asserted on behalf of Barr, Blount, Hightower, McQueen, and Smith, since they were released from Fishkill to SARA-compliant housing while this proceeding was pending before the court (see *Matter of Dreikausen v Zoning Bd. of Appeals of City of Long Beach*, 98 NY2d 165, 173), and the petitioner did not argue before that court that it should nonetheless address those claims because they fall within an exception to the mootness doctrine (see *Matter of Dering Point Assoc., LLC v Incorporated Vil. of Dering Harbor*, 199 AD3d 913, 914-915).

The appeal from so much of the corrected order as, in effect, denied the petition and dismissed the proceeding on the merits insofar as asserted on behalf of Rubino must be dismissed as academic.

Here, it is undisputed that Rubino was released from Fishkill to SARA-compliant housing during the pendency of this appeal.

Moreover, we reject the petitioner's contention that the broader issue raised herein falls within the exception to the mootness doctrine. The issue of whether DOCCS may lawfully detain SARA-restricted sex offenders after the time they would otherwise be released to parole or postrelease supervision due to their failure to secure SARA-compliant housing, instead of simply releasing them to the DHS shelter system for purposes of obtaining such housing, has already been decided by the Court of Appeals in *People ex rel.*

Johnson v Superintendent, Adirondack Corr. Facility (36 NY3d 187). As such, this appeal does not raise "significant or important questions not previously passed on, i.e., substantial and novel issues" that would qualify as an exception to the mootness doctrine (*Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 715; see *Lenape Resources, Inc. v Town of Avon*, 121 AD3d 1591, 1591; *People ex rel.*

Lynch v Poole, 57 AD3d 1490, 1491). CONNOLLY, J.P., MALTESE, ZAYAS and TAYLOR, JJ., concur. ENTER: Maria T. Fasulo Clerk of the Court