

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

THE PEOPLE OF THE STATE OF NEW YORK
ex rel. ROBERT JONES-HAYWOOD

Petitioner,

-vs-

Index No.
000016-2022

JOHN GARCIA, SHERIFF OF ERIE COUNTY
ANTHONY ANNUCCI, ACTING COMMISSIONER,
NEW YORK STATE DEPARTMENT OF CORRECTIONS
AND COMMUNITY SUPERVISION

Respondents.

Paul G. Dell, Esq.
Attorney for Petitioner

Letitia James, Attorney General of the State of New York
By: Michael T. Feeley, Esq.
Assistant Attorney General
Attorney for Respondents

DECISION AND ORDER

BOLLER, J.

The petitioner, Robert Jones-Haywood, has filed a petition for a Writ of Habeas Corpus alleging his detention at the Erie County Correctional Facility is in violation of Executive Law §259-i(3)(viii). The petitioner seeks an immediate release from custody.

Procedural History and Findings of Facts

The petitioner was arrested in Buffalo, New York on January 30, 2022. The petitioner was charged with Criminal Possession of a Weapon in the 2nd Degree, Criminal Possession of a

Weapon in the 4th Degree and three Vehicle & Traffic violations. At the petitioner's arraignment, he was remanded without bail and he was ordered held in custody by the Erie County Sheriff's Department. On January 31, 2022, the New York State Department of Corrections and Community Supervision (hereinafter referred to as DOCCS), filed a Notice of Violation (attached as an exhibit to petitioner's verified petition). The Notice of Violation consisted of six separate charges. The first five charges were "non-technical" violations and dealt specifically with the new criminal charges filed on January 30, 2022. The sixth charge was a "technical" violation and dealt with the petitioner's curfew violation. On February 4, 2022, the petitioner was held for the action of the Grand Jury after a preliminary hearing, presumably in Buffalo City Court. On March 24th, an Assistant District Attorney had the petitioner's case called in Criminal Special Term in Erie County Court and asked the petitioner be released on his own recognizance as the new criminal charges were to be no billed before the Grand Jury.

On April 12, 2022 the petitioner, through his attorney Paul G. Dell, Esq., filed this Writ of Habeas Corpus and Verified Petition. On April 18, 2022, the respondent, the New York Attorney General's Office filed their opposing affirmation. The matter came before this Court on April 19, 2022 for oral argument.

Conclusions of Law

On March 1, 2022, the "Less is More" legislation took effect significantly altering and amending Executive Law §259-i. The legislation purports to better facilitate the reintegration of individuals subject to community supervision and to reduce the number of individuals being held in custody. Among the new changes was a focus on decreasing the number of parolees being held in custody on parole violations, especially for "technical" violations.

The primary issue before the Court is whether the “Less is More” legislation is retroactive; and specifically, whether the petitioner is entitled to the new remedies outlined in the statute. Currently, the decisions throughout the state and in Erie County have been split. Some Courts have held the legislation applies retroactively. Other Courts have held it did not. On April 11, 2022 in *People ex re Walker v Garcia* (Erie County Supreme Court), a court of concurrent jurisdiction held that the legislation did not apply retroactively. The Court held, “A remedial statute is applied to procedural steps in pending actions, and is given retroactive effect only insofar as the statute provides for a change in the form of the remedy or a new remedy or cause of action for an existing wrong.” (*Aguaiza v Vantage Props, LLC*, 69 AD3d 422, 424 [1st Dept 2020]). The provision of the statute at issue here created a new right and remedy where previously one did not exist, therefore it is not to be applied retroactively.” This Court agrees with the holding in *Walker*.

The case before this Court, however, has a unique set of facts from other cases previously decided. In those cases, the petitioner had generally posted bail on their new criminal charges which remained pending. In some cases, those petitioners also had a preliminary revocation hearing (or were at least offered the opportunity to have a preliminary or final revocation hearing). In this case, there is no indication the petitioner had, or was offered, a preliminary revocation. More importantly, in contrast to similar cases, the defendant did not merely post bail on the new criminal charges, but rather was released upon the request of the prosecutor as the criminal charges underlying the parole violation were to be dismissed outright.

Under Executive Law §259-i(3)(f)(xi), “Incarceration shall not be imposed for any technical violation, except as provided in subparagraph (xii) of this paragraph.” Under subparagraph (xii)(2), the statute reads, “Sanctions for certain technical violations.

Reincarceration shall not be imposed for a sustained technical violation that involves: (a) violating curfew...” While the new criminal charges will be dismissed, DOCCS can still proceed with the violation concerning the arrest. The primary remaining charge, however, concerns the technical violation of a curfew violation; a charge specifically outlined in the statute as not eligible for reincarceration. Further, the petitioner appears to be held solely on the parole warrant due to the petitioner’s release on his own recognizance.

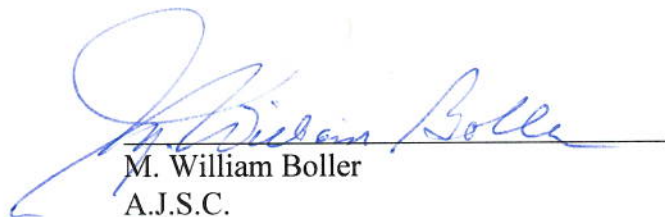
While the Court has determined that the “Less is More” statute is not retroactive, the Court is exercising its discretion in the interest of justice and granting the petitioner’s release.

ORDERED, that the petition for a writ of habeas corpus is **GRANTED**; and it is further

ORDERED, that Robert-Jones-Haywood may no longer be detained based solely on the parole warrant and must be released from custody.

This decision constitutes the order of this Court.

DATED: April 22, 2022


M. William Boller
A.J.S.C.