State of New York
Court of Appeals

Decided and Entered on the eighteenth day of February, 2021

Present, Hon. Janet DiFiore, *Chief Judge, presiding.*

Mo. No. 2020-832
The People &c. ex rel. Pamela Roth, on behalf of Roy Taylor,
Appellant,
v.
Cynthia Brann, &c.,
Respondent.

Appellant having appealed and moved for leave to appeal to the Court of Appeals in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, on the Court's own motion, that the appeal is dismissed, without costs, upon the ground that the order appealed from does not finally determine the proceeding within the meaning of the Constitution; and it is further

ORDERED, that the motion for leave to appeal is dismissed upon the ground that the order sought to be appealed from does not finally determine the proceeding within the meaning of the Constitution.

H Davis

Heather Davis
Deputy Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 77

THE STATE OF NEW YORK Ex Rel. PAMELA ROTH, ESQ., On Behalf Of ROY TAYLOR, Petitioner,	:	JUDGMENT AND DECISION
- against -	:	Index No. 19-100885
	:	SCID No. 30119-2019
CYNTHIA BRANN, Commissioner, New York City Department of Correction, Respondent.	:	Ind. Nos. 5342/15, 1614/17, 3065/17 and Docket No. 28311C/18

MICHAEL J. OBUS, J.:

Petitioner, now represented by counsel, filed a pro se habeas corpus writ challenging the bail set by Supreme Court Justice Curtis Farber in the above-captioned cases. For the following reasons, the petition is denied and the writ dismissed.

Petitioner's writ arises from a series of arrests. In the first, which led to Indictment Number 5342/15, petitioner is charged with criminal possession of a controlled substance in the third degree, criminal possession of a weapon in the second degree and lesser crimes. He apparently posted the bail set in that case, $50,000 cash or bond. On July 7, 2017, petitioner was re-arrested and subsequently charged in Indictment Number 1614/17 with two counts of criminal possession of a controlled substance in the third degree and a lesser offense. Bail on that second case was set at $10,000 cash or bond at Criminal Court arraignment, and on May 7 or 8, 2017, petitioner posted – or in the first case, may have re-posted – bail in both cases.

On August 13, 2017, petitioner was arrested on a third set of charges, including two counts of criminal possession of a controlled substance in the third degree and lesser crimes. While Criminal Court (Joanne Watters, J.) set bail in the amount of $75,000 bond

Ex 'A'

or cash, when petitioner appeared on September 13, 2017, before Justice Maxwell Wiley for arraignment on the indictment, Number 3065/17, Justice Wiley set bail on each of the three indictments at $300,000 cash or bond.

Petitioner thereafter brought a habeas corpus proceeding challenging the bail as excessive. Though evidently denied by Supreme Court, on November 9, 2017, the Appellate Division, First Department, issued an order setting bail on the first case, Indictment 5342/15, at the original $50,000; on the second case, Indictment 1614/17, at the original $10,000; and on the third case, Indictment 3065/17, in a new amount, $125,000 cash or bond. Petitioner subsequently posted, or re-posted, bond in each case and was again released from custody.

On June 28, 2018, petitioner was arrested a fourth time after an automobile accident, and was initially charged with criminal possession of a controlled substance in the third degree, operating a motor vehicle while ability impaired by drugs, aggravated unlicensed operation of a motor vehicle in the third degree, and leaving the scene of an accident without reporting. Once some of the suspected controlled substances proved to be inert, however, the felony possession charge was reduced to the seventh degree misdemeanor based on the simple possession of heroin and fentanyl. On July 3, 2018, the CPL 180.80 date, Criminal Court (Charlotte Davidson, J.), granted the People's request to set bail on the misdemeanor case at $5,000 cash or bond.

Finally, on July 16, 2018, the parties appeared before Justice Curtis Farber on all three felonies. Justice Farber, who had recently (July 9th) allocuted petitioner on the latter's request to proceed pro se, entertained the People's request to remand petitioner. After hearing from the parties, Justice Farber left intact the $50,000 bail left undisturbed by the

Appellate Division on Indictment Number 5342/15 and the $125,000 set by that Court on Indictment Number 3065/17, but raised the bail on the remaining Indictment, 1614/17, to $10,000 to $50,000 cash or bond, subject to surety review.

Whether petitioner's pro se writ seeks a reduction of the bail set in all four cases, or only that most recently changed by Justice Farber, is unclear, but his attorney appeared to focus only on the latter, without challenging, for example, the $5,000 bail set on the misdemeanor case. Viewing the bail set on Indictment Number 1614/17 alone or together with that set in all four cases, however, this Court concludes that there has been no abuse of discretion.

Petitioner's writ does not entitle him to a de novo bail determination or substitution of discretion or opinion. People ex rel. Klein v. Krueger, 25 NY2d 497, 500-01 (1969); People ex rel. Kuby v. Merritt, 96 AD3d 607, 608 (1st Dept.), lv. den. 19 NY3d 813 (2012); People ex rel. Hunt v. Warden, 161 AD2d 475 (1st Dept.), app. den. 76 NY2d 703 (1990). To the contrary, "the scope of review upon a habeas corpus petition following a denial of bail 'is quite narrow, being confined to a consideration of whether the denial constitutes an abuse of the court's statutory discretion pursuant to CPL 510.30 or a violation of a constitutional standard prohibiting excessive bail or its arbitrary refusal'." People ex rel. Siegal v. Sielaff, 182 AD2d 389, 390 (1st Dept. 1992), quoting People ex rel. Hunt v. Warden, supra, 161 AD2d at 476; accord People ex rel. Kuby v. Merritt, supra, 96 AD3d 607.

The relevant factors in setting the kind and degree of control or restriction necessary to assure a criminal defendant's return to court are set forth in CPL 510.30(2)(a). They include the defendant's "character, reputation, habits and mental condition," (2)(a)(i);

"employment and financial resources," (2)(a)(ii); "family ties and length of his residence if any in the community," (2)(a)(iii); "criminal record," (2)(a)(iv); in certain circumstances, a juvenile record, (2)(a)(v); "previous record if any in responding to court appearances when required or with respect to flight to avoid criminal prosecution," (2)(a)(vi); when the case involves a crime against a family or household member, any violation of an order of protection or "history of use or possession of a firearm," (2)(a)(vii); "the weight of the evidence against him in the pending criminal action or any other factor indicating probability or improbability of conviction," (2)(a)(viii), and "the sentence which may be . . . imposed upon conviction," (2)(a)(ix). "Where the record shows that the bail court considered the factors enumerated in CPL 510.30(2)(a), and the 'denial is supported by the record, it is an exercise of discretion resting on a rational basis and thus beyond correction in habeas corpus.'" People ex rel. Kuby v. Merritt, supra, 96 AD3d at 608-09 (citations omitted).

Here, the minutes of July 9 and 16, 2019, establish that Justice Farber was aware of the facts relevant to the statutory criteria of CPL 510.30(2)(a). Those facts included petitioner's educational background, three years of college, age, now about 58, and past clerical and custodial employment. It also included his prior criminal record, which included a first degree manslaughter conviction in 1983, a 2009 Class D drug felony, a 2013 Class B drug felony, and convictions – and thus potential ties – in two other states. Justice Farber was also aware, from petitioner's NYSID or "rap" sheet alone, that petitioner had five prior bench warrants, and had been the subject of probation and parole revocations. While petitioner claimed in court that he did not drive the car or possess the narcotics and packaging paraphernalia involved in the misdemeanor case, the three felony cases were supported, at the least, by evidence found sufficient by the respective grand juries and

reviewing courts. The final factor that would have been apparent to Justice Farber, the potential sentence, also weighs against petitioner, who faces mandatory State sentences and possible consecutive terms, as a predicate felon.

In summary, Justice Farber left intact the precise bail set by the Appellate Division on two of the three cases before him, $50,000 on Indictment 5342/15, and $125,000 on Indictment 3085/17. The $5,000 bail set by Criminal Court on the substantial misdemeanor charges – bail petitioner does not appear to directly challenge – was not an abuse of discretion. Justice Farber's decision to raise bail on the remaining case, Indictment 1614/17, from $10,000 to $50,000 following petitioner's fourth arrest was likewise not an abuse of discretion, and is therefore "beyond correction in habeas corpus." People ex rel. Lazer v. Werden, 79 NY2d 839, 840 (1992), quoting People ex rel. Parker v. Hasenauer, 62 NY2d 777, 779 (1984).

Finally, defense counsel's request that this Court review another Judges' CPL 30.30 calculation of 77 includable days, and dismiss one or more of the cases, is misplaced. That issue can be raised on direct appeal and is not cognizable on a habeas writ. People ex rel. Johnson v. Lacy, 243 AD2d 915 (3rd Dept. 1997), lv. den. 91 NY2d 806 1998); People ex rel. Best v. Vaughn, 239 AD2d 204 (1st Dept.), dism'ing lv. to app., 90 NY2d 931 (1997); People ex rel. Kitchen v. White, 158 AD2d 437 (1st Dept.), app. den. 76 NY2d 702 (1990).

The petition is denied and the writ is dismissed.

This opinion is the judgment and decision of the Court.

Dated: July 16, 2019
New York, New York

J.S.C.
HON. MICHAEL J. OBUS

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on March 19, 2020.

Present - Hon. Rolando T. Acosta, Presiding Justice,
Dianne T. Renwick
Barbara R. Kapnick
Angela M. Mazzarelli, Justices.

In re The People of the State of New York, ex rel. Pamela Roth, on behalf of Roy Taylor,
Petitioner-Appellant,

-against-

Cynthia Brann, Commissioner, New York City Department of Correction,
Respondent-Respondent.

M-86
M-8643
Index No. 100885/19
Ind. Nos. 5342/15
1614N/17
3065/17

Petitioner-appellant having moved by separate motions for reargument and renewal (M-86) and/or, in the alternative, for reargument or leave to appeal to the Court of Appeals (M-8643), from the decision and order of this Court, entered on November 12, 2019 (Appeal No. 10497, M-7499),

Now, upon reading and filing the papers with respect to the motions, and due deliberation having been had thereon,

It is ordered that the motions are denied in all respects.

ENTERED:

CLERK

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Present – Hon. Rolando T. Acosta, Presiding Justice,
Dianne T. Renwick
Barbara R. Kapnick
Angela M. Mazzarelli, Justices.

In re The People of the State of New York, ex rel. Pamela Roth, on behalf of Roy Taylor, Petitioner-Appellant,	Motion No.	**2020-04016**
	Index No.	100885/19
	Ind. Nos.	5342/15 1614N/17 3065/17
-against-	Case No.	2019-03948
	CONFIDENTIAL	
Cynthia Brann, Commissioner, New York City Department of Correction, Respondent-Respondent.		

Petitioner-appellant having moved for renewal and/or reargument of an order of this Court, entered March 19, 2020 (M-86, M-8643) which denied his motions for renewal/reargument of or, in the alternative, for leave to appeal to the Court of Appeals, from the decision and order of this Court, entered November 12, 2019 (Appeal No. 10497; M-7499),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTERED: January 21, 2021

Susanna Molina Rojas
Clerk of the Court

EX "A"

Supreme Court of the State of New York
Criminal Term
New York County

AUG 0 8 2019
DATE
I hereby certify that the foregoing paper is a true copy of the original thereof, filed in my office.

County Clerk and Clerk of the Supreme Court New York County
OFFICIAL USE

Part 77

Writ of Habeas Corpus

The State of New York
ex rel.
on behalf of
ROY TAYLOR

Petitioner

vs.

CYNTHIA BRANN, Commissioner of NYC Department of Corrections,

Respondent

SCID #: 30119-2019

Index #: 19-100885

DATE: JULY 2, 2019

Ordered that upon the papers submitted, this petition is

☐ GRANTED

☑ DENIED AND THE WRIT IS DISMISSED

See attached decision.

Date: JUL 16 2019

Hon. _____

HON. MICHAEL J. OBUS

Additional material from this filing is available in the Clerk's Office.