State of New York
Court of Appeals

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To be argued Tuesday, October 13, 2020 (arguments begin at 2 p.m.)

No. 73 People ex rel McCurdy v Warden *(papers sealed)*
No. 74 People ex rel Johnson v Superintendent
No. 75 People ex rel Ortiz v Breslin

These appeals were filed by level three sex offenders to challenge their indefinite detention in prison or prison-based residential treatment facilities (RTFs) after their prison terms expired or they were granted parole. All three offenders were subject to post-release supervision (PRS) and were held past their release dates by the Department of Corrections and Community Supervision (DOCCS) when they were unable to find housing that complied with the Sexual Assault Reform Act (SARA), which bars certain sex offenders from residing within 1,000 feet of any school grounds (Executive Law § 259-c[14]). DOCCS relied on Correction Law § 73(10), which authorizes it "to use any residential treatment facility as a residence for persons who are on community supervision."

In Case No. 73, Chance McCurdy argues that the authority conferred by Correction Law § 73(10) to place offenders in RTFs is limited by Penal Law § 70.45(3), which authorizes the Parole Board to place an inmate subject to post-release supervision in a residential treatment facility "for a period not exceeding six months immediately following release" from prison. Supreme Court agreed with McCurdy that Penal Law § 70.45(10) limits RTF detentions to a maximum of six months. It said DOCCS erred in relying on Correction Law § 73(10) because "that statute, unlike P.L. § 70.45(3), does not specifically apply to those sentenced to PRS. It is a black letter rule of statutory construction that where a general statute and a specific statute appear to be in conflict, the specific statute should govern over the general."

The Appellate Division, Second Department reversed, saying the six-month limitation imposed by the Penal Law "does not conflict with, or limit," DOCCS's authority under Correction Law § 73 to detain in RTFs "persons who are on community supervision," which is defined to include persons subject to PRS. Construing these statutes together with SARA, it said a sex offender who has served more than six months of PRS may be held in an RTF "in the event such offender is unable to locate SARA-compliant community housing."

In No. 74, Fred Johnson was sentenced to two years to life in prison in 2009 and was granted an open parole release date in 2017, but he was kept in prison for two more years because he could not find SARA-compliant housing. He argues the residency restriction imposed by SARA violates due process. The Appellate Division, Third Department denied his petition for a writ of habeas corpus, finding the restriction is rationally related to the legitimate state interest in protecting children "by keeping certain sex offenders at a distance from schoolchildren – thereby limiting opportunities for predation."

In No. 75, Angel Ortiz became eligible for conditional release in 2016, but he could not find SARA-compliant housing and DOCCS kept him in prison until his maximum sentence expired in 2018, then placed him on PRS in a residential treatment facility for eight more months. The Second Department rejected his claims that DOCCS's actions violated due process and constituted cruel and unusual punishment, saying Ortiz "has no fundamental right to be free from special conditions of PRS regarding his residence" and "DOCCS reasonably concluded" it could hold him in an RTF "to accomplish the aim of keeping such offenders at a distance from school children." It said DOCCS detained him to meet the goal of SARA "rather than to further punish" him.

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No. 76 People ex rel Negron v Superintendent

Raymond Negron was convicted of first-degree sexual abuse in 1994 and was sentenced to one to three years in prison. He completed his sentence in 1997 and was designated a risk level three sex offender under the Sex Offender Registration Act. Negron was later convicted of attempted second-degree burglary twice – first in 1998 and again in 2005 – with the most recent conviction resulting in a prison term of 12 years to life. He was granted parole in 2016 on the condition that he comply with the Sexual Assault Reform Act (SARA), which bars certain sex offenders from "entering into or upon any school grounds" or residing within 1,000 feet of a school. Because he was unable to locate SARA-compliant housing, he continued to be held at the Woodbourne Correctional Facility for ten months past his release date.

During that period, Negron brought a proceeding seeking his immediate release on the ground that SARA's school grounds restriction, contained in Executive Law § 259-c(14), did not apply to him. The statute provides that the restriction applies "where a person serving a sentence for an offense defined in [Penal Law articles 130, 135 or 263 or Penal Law §§ 255.25, 255.26 or 255.27] 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" is released. Negron argued that the school restriction applies only where the inmate is serving a sentence for one of the enumerated sex crimes and, in addition, either the victim was under the age of 18 or the inmate was designated a level three sex offender. Since Negron was in prison for attempted burglary, he contended he was not bound by it.

Supreme Court dismissed the proceeding, agreeing with the Parole Board's interpretation that Executive Law § 259-c(14) applies to all level three sex offenders, regardless of whether they were serving a sentence for one of the statute's enumerated offenses.

The Appellate Division, Third Department reversed and ruled Negron is not subject to the school grounds restriction. It said the statute is unambiguous and the restriction "applies either to (1) an offender serving a sentence for one of the enumerated offenses whose victim was under 18 years old, or (2) an offender serving a sentence for one of the enumerated offenses who was designated a risk level three sex offender. Because [Negron] was not serving a sentence for an offense delineated in Executive Law § 259-c(14), the statute does not apply to him." It noted that the Fourth Department, in People ex rel Garcia v Annucci (167 AD3d 199), found Executive Law § 259-c(14) is ambiguous and concluded that the legislative history supported the Parole Board's interpretation, but the Third Department said "we respectfully disagree."

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