

State of New York v Bartlett

2015 NY Slip Op 31403(U)

January 29, 2015

Supreme Court, Seneca County

Docket Number: 48932

Judge: Dennis F. Bender

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK
 SUPREME COURT COUNTY OF SENECA

 The State of New York, on relation of

IVAN TORRES
 DIN # 14-A-3973

Petitioner

JUDGMENT
 Index No. 48932

-against-

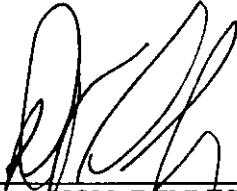
RICKEY BARTLETT, SUPERINTENDENT OF
 WILLARD DRUG TREATMENT CAMPUS, AND
 THE CHAIRWOMAN OF THE NEW YORK STATE
 BOARD OF PAROLE,

 Respondents

The petitioner herein has filed a petition for a writ of habeas corpus. The petitioner asserts he was not timely transferred to the Willard Drug Treatment program after his judicial sentence on August 28, 2014. The petitioner arrived at Willard on October 28, 2014. The Court now finds that the detention of the petitioner by the respondent is not illegal based on the particular facts of this case.

As noted in Return, per letter dated January 26, 2015, from Richard de Simone, Esq, Associate Counsel in Charge of the Office of Sentencing Review, the petitioner was never entitled to be sentenced under CPL 410.91. His criminal conviction includes an offense of DWAI by Drugs under V&T Law § 1192(4). Such conviction is not eligible for a sentence of parole supervision as it is not listed in CPL § 410.91(5). Further, the petitioner's criminal history includes a conviction of Attempted Burglary 2nd, which serves as an independent bar to the petitioner's current sentence of parole supervision. As a result, and as this Court previously ruled in People ex rel. Sanchez, Index 47278, it is up to the State or the petitioner to seek re-sentencing if so inclined. In light of the petitioner's illegal sentence, and limited to these particular circumstances, the Court finds the petitioner has failed to show his entitlement to immediate release, and accordingly, the petition is in all respects denied and dismissed, with no additional costs.

DATED: 29th day of January, 2015



 HON. DENNIS F. BENDER
 Acting Supreme Court Justice