

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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PEOPLE OF THE STATE OF NEW YORK
EX REL. Corey Stoughton, Esq.,
on behalf of

HOGAN JEFFREY, REGINALD JONES, MICHAEL
COUCHON, SEKOU KANE, NELSON CORPORAN,
JOSEPH BRYANT, CLAYTON BARRY, DOMINICK
WILLIAMS, UCEFF WADE, CECILIA HOWARD,
BRANDI FELCI, MARJORIE CHAMBERS, ALUDIEN
MARKS, BRIGHTON MONTGOMERY, NICHOLAS
KILGORE, JONATHAN PEREZ, EVA DOUBLERG,
KEITH JOHNSON, JASON BORRERO, PEDRO
VINCENT BARCIA, ABDULLAH SPENCEREL,
SERGIO BRUNO, DARLY BRITT, MALCOLM
DAWSON, BRIAN KING, ALLEN NANCE,
CHRISTOPHER ANDRETTA, HERBERT BARRON,
JOHN PIVETZ, GLEN SNYDER, SAMUEL SAEZ, and
TOLIB AKILOV,

Petitioners,

v.

CYNTHIA BRANN, Commissioner, New York City
Department of Correction; and ANTHONY ANNUCCI,
Acting Commissioner, New York State Department of
Corrections and Community Supervision,

Respondents.

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STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

**AFFIRMATION OF MARTIN
BOWE IN OPPOSITION TO
WRIT OF HABEAS CORPUS**

Index No. _____/2020
Scid No. _____
(_____, J.)

MARTIN BOWE, being duly sworn deposes and says under penalty of perjury:

1. I am Assistant Corporation Counsel assigned to the above-captioned proceeding. I submit this affirmation in opposition to petitioner's Verified Petition for Writ of Habeas Corpus, dated March 25, 2020, seeking an order directing the immediate release of 32

persons in the custody of the New York City Department of Correction (“DOC”) pursuant to C.P.L.R. § 7001.

2. Petitioner’s request should be denied for two reasons: (1) the Petition is barred as a successive abuse of the writ following the denial of essentially the identical writ which was brought and denied on March 20, 2020 by Justice Steven Statsinger, In the Matter of Petition for release Venus Williams, et al., *SCID No. 20042-20* (“Prior Writ”); and (2) the Petition fails to state a cause of action because the DOC is actively working to ensure the health and safety of persons in DOC custody through extensive sanitary and training efforts to combat the COVID-19 epidemic, as set forth in detail below and in the accompanying Affidavit of Patricia Sweeney dated March 25, 2020 (“Sweeney Aff.”), DOC’s Deputy Commissioner for Quality Assurance and Integrity.

A. The Petition Must Be Dismissed as an Abuse of the Writ due to the Substantially Similar Prior Writ Having Been Heard on the Merits and Denied..

3. It is well-settled that while the doctrine of *res judicata* does not bar successive writs brought by the same party, courts will normally dismiss a successive writ containing nothing new. See e.g., *People ex rel. Anderson v. Warden, N.Y.C. Correctional Institution For Men*, 68 Misc. 2d 463, 325 N.Y.S.2d 829 (Sup. Ct. Bronx County 1971) (citing *Weinstein, Korn & Miller*); *People ex rel. Gonzalez v. Deegan*, 29 A.D.2d 865, 288 N.Y.S.2d 362 (2d Dep’t 1968) (writ denied where writ had been previously denied). Indeed, in *McCleskey v. Zant*, 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991), the Supreme Court has held that when the government pleads abuse of the writ in response to a successive petition, the petitioner must demonstrate why a successive writ is not an abuse of the writ.

4. Here, while the petitioners are different parties than those presented in the Prior Writ, the argument is identical to the one presented by the same counsel who argued the

Prior Writ before the Court on March 20, 2020 in that it seeks a mass release of persons in DOC custody alleging that DOC is deliberately indifferent to the health and safety of the petitioners.

5. On March 20, 2020, Justice Statsinger held that:

THE COURT: I am going to deny the petition for writ of habeas corpus. I'm not going to make a long ruling now. I will eventually file something in writing. I am not prepared in this case that the constitutional standard of deliberate indifference is met. Deliberate indifference, in general, requires a dangerous condition; knowledge, either actual or constructive, *on the part of the incarcerating agency, and the failure to take any steps to remedy*. In this case although the first two are satisfied, there is a dangerous condition of a sort that is truly unprecedented, and the Department Of Corrections, clearly, knows about it. *I'm simply not prepared to find either that Corrections has done nothing to remedy the situation, or that release is the only way to mitigate the harm.*

See Transcript attached hereto as Ex. A (emphasis added). It is without question that the current petition presented the exact same argument presented in the Prior Writ. See e.g. Williams petition, SCID No. 20042-20, annexed hereto as Ex. B. For this reason alone, this petition should be denied as an abuse of the writ.

B. The Petition Should Be Dismissed Because Petitioners Have Not Shown that the Department of Correction is Deliberately Indifferent to the Petitioners' Rights.

6. As set forth in the accompanying Affidavit of Patricia Sweeney, the Deputy Commissioner of Quality Assurance and Integrity, dated March 25, 2020 ("Sweeny Aff."), DOC has undertaken substantial efforts in response to the COVID-19 pandemic to ensure the health and safety of persons in DOC custody to the greatest extent possible. See Sweeney Aff. annexed as Ex. C.

7. With a substantial professional background in both health and sanitation, Ms. Sweeney is responsible for ensuring that DOC and its staff are adhering to the rules mandated by regulatory agencies and its internal policies. Ms. Feeney explains that she has "been instrumental in ramping up DOC sanitation protocols and comprehensive cleaning measures to combat [COVID-19's] spread throughout our facilities. This includes implementing enhanced

cleaning and sanitizing procedures in areas with a lot of traffic, which include hallways and bathrooms.” *See* Ex. C ¶ 7.

8. As the Sweeney Aff. makes clear, DOC’s efforts are comprehensive and ongoing. *See* Ex. C. Petitioner cannot meet their burden of showing that DOC is deliberately indifferent to the health and safety of the petitioners. Accordingly, the petition should be denied.

9. For the foregoing reasons, Respondent respectfully requests that the Court dismiss the Verified Petition for Writ of Habeas Corpus and deny the relief requested therein in its entirety, together with such other and further relief as this Court deems just and proper.

Dated: New York, New York
March 25, 2020

/s/

Martin Bowe

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