

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM, PART 20

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In the Matter of the Application of :
EDITH CALVIN and DEXTER CAPERS, :
et al., individually and on behalf :
of all other persons similarly situated, :

Petitioners, :

For an Order pursuant to Article 78 :
of the Civil Practice Law and Rules, :

- against - :

CATHERINE ABATE, Commissioner of the :
New York City Department of Correction; :
NORMAN GOODMAN, County Clerk of New :
York County; **GLORIA D'AMICO**, County :
Clerk of Queens County; **WILBUR A.** :
LEVIN, County Clerk of Kings County; :
LEO LEVY, County Clerk of Bronx County; :
MARIO J. ESPOSITO, County Clerk of :
Richmond County; **THOMAS A. COUGHLIN III**, :
Commissioner of the New York State :
Department of Correctional Services; :
and **RAUL RUSSI**, Chair of the New York :
State Division of Parole, in Their :
Official Capacities, :

Respondents. :

**PROPOSED
SETTLEMENT AGREEMENT**

Index # 44831/91

(Lobis, J.)

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WHEREAS, Petitioners, who are newly-sentenced prisoners and finally adjudicated parole violators, commenced this CPLR Article 78 proceeding and sought orders under state law mandating that Respondents take all necessary steps to forthwith transfer them to state custody within time periods to be fixed by the Court; and

WHEREAS, Respondent Commissioner of the New York City Department of Correction filed a cross-claim against Respondent Commissioner of the New York State Department of Correctional

Services, seeking an order directing State DOCS to accept transfer of newly-sentenced adult males within 48 hours and other prisoners within 10 days of state-readiness; and

WHEREAS, the Court granted Petitioners' motion for class certification, pursuant to CPLR Article 9, and denied motions by Respondent County Clerks to dismiss the Petition, by State DOCS and Respondent Commissioner of the State Division of Parole to dismiss the Petition and the Cross-Claim of City DOC, and by City DOC to stay the proceedings, and ordered a hearing to further define the various Respondents' legal obligations to transfer Petitioners "forthwith;" and

WHEREAS, the claims of Petitioners who are newly-sentenced state prisoners against Respondent County Clerks have been severed from this proceeding by stipulation, pursuant to CPLR §603; and

WHEREAS, the remaining parties have entered into discussions for the purpose of resolving this proceeding by settlement, without admission of any wrongdoing or liability on the part of Respondents City DOC, State DOCS or State Parole,

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. This Order resolves the causes of action asserted in this proceeding solely insofar as such causes of action were based on the laws of the State of New York; it does not define or in any way limit the rights and obligations of the parties under any other body of law, including federal law. The orders issued by the federal courts in Benjamin v. Malcolm, 75 Civ. 3073 (S.D.N.Y.), are not affected by this settlement.

A. Obligations of City DOC

2. With respect to newly-sentenced inmates committed to the custody of State DOCS, in the absence of exigent circumstances, City DOC will take the steps necessary to complete the processing for transfer to state custody and will notify State DOCS of an inmate's readiness for transfer within five (5) business days of receiving accurate commitment orders and presentence reports from the sentencing court.

3. City DOC will notify the sentencing court within five (5) business days of sentencing if the presentence report or commitment order of a newly-sentenced inmate is missing or contains an error which prevents City DOC from notifying State DOCS that the inmate is ready for transfer. However, in counties in which the routine practice of the court clerks is to give these documents to City DOC with the inmate when the inmate is committed to the custody of City DOC after sentencing, City DOC will notify the sentencing court within three (3) business days of sentencing if the presentence report or commitment order is missing.

4. If State DOCS rejects a newly-sentenced inmate for transfer to state custody because of any error or omission (collectively "error") in the documents necessary for transfer, within five (5) business days of being advised by State DOCS of the reason for the rejection City DOC will either correct the error (if the error was made by City DOC) and renotify State DOCS of the inmate's readiness for transfer, or notify the appropriate authority of the error.

5. On a monthly basis, City DOC will provide Petitioners' counsel with copies of its Census report and either its "State Ready Transfers" report or an equivalent report which reflects the names, NYSID numbers, sentence dates, dates of City DOC's declaration of state readiness and dates of transfer to State DOCS for all prisoners sentenced to state prison during the preceding month. Also on a monthly basis, City DOC will furnish Petitioners' counsel with copies of its "Missing Court Documents" and "Amended Court Documents" lists, or equivalent documents concerning "problem cases," which reflect the names, NYSID numbers, indictment numbers, dates and counties of sentence for all newly-sentenced prisoners whose pre-sentence reports or commitment orders are missing or contain an error which is known to City DOC as of the date of the list. In addition, by November 1, 1992, City DOC will develop, and will thereafter furnish to Petitioners' counsel on a monthly basis, documents which reflect the following additional information:

a) With respect to "problem cases," the date that City DOC notified the sentencing court that court documents were missing or that there were errors in the court documents for any of these prisoners; the date the sentencing court supplied the missing or corrected documents to City DOC; the date City DOC notified State DOCS that each of these prisoners was "state ready;" and the date each prisoner was transferred to the custody of State DOCS; and

b) The name and NYSID number of any prisoner who was removed from the "state ready" list by State DOCS; the date City DOC was notified of the removal and the reason therefore; the date

the error was corrected by City DOC or that City DOC gave the appropriate agency notice of the error; and the date, if any, that the prisoner was restored to the "state ready" list.

6. Additionally, within a reasonable time, City DOC will develop, and will thereafter furnish to Petitioners' counsel on a monthly basis, documents which reflect:

a) The name, NYSID number and date of the final parole hearing for all prisoners who were held by City DOC solely pursuant to a Parole Warrant during the period covered by the report; and the date each parole violator was transferred to the custody of State DOCS; and

b) The name and NYSID number of all "court return" state prisoners in City DOC custody during the period covered by the report; the date City DOC notified State DOCS that each of these prisoners was "state ready;" and the date each prisoner was transferred to the custody of State DOCS.

7. Upon specific request, City DOC will provide Petitioners' counsel with any additional information it has concerning the transfer of or failure to transfer a specific prisoner to state custody, including, but not limited to, the reason for any delay in transfer.

B. Obligations of State Parole

8. Within five (5) business days after a final decision has been rendered in a parole revocation proceeding, State Parole will notify State DOCS of the determination, unless exceptional circumstances preclude notification within that time period. In

the event of such exceptional circumstances, State Parole will use its best efforts to notify State DOCS as quickly as possible of the final determination. In all cases, State Parole will notify State DOCS of final parole determinations by entering data concerning the determinations into State Parole's "VIOLATORS" system which shall be automatically transferred to the State DOCS' computer system each business day.

9. State Parole will notify City DOC of final decisions rendered in parole revocation proceedings by mailing to City DOC the PVL 113 and PVL 120 reports, which are comprehensive computer-generated lists containing relevant information about all parole violators in the custody of City DOC, in the format in use as of July 1, 1992. Additionally, State Parole will notify City DOC of whether determinations rendered by administrative law judges at final hearings are final or must be reviewed by the Parole Board, by delivering written notice to a City DOC employee present at the hearing site on the day of the final hearing, at the end of the hearing day.

10. From August 1, 1992, through November 1, 1993, State Parole shall furnish the PVL 113 and PVL 120 reports to Petitioners' counsel on a monthly basis. At a minimum, these documents and records must show the name and NYSID number of all parole violators in the custody of City DOC during the period covered by the report who received a final hearing and the date of their final hearing, and the date, if any, that a final determination was rendered by the State Parole Board in each case.

After November 1, 1993, State Parole will furnish the aforementioned documents and reports to Petitioners' counsel upon counsel's request.

C. Obligations of State DOCS

11. State DOCS will accept transfer of all newly-sentenced state prisoners, consisting of all adult and adolescent males and females detained in the custody of City DOC who have been committed to serve indeterminate terms of incarceration in state prison, within ten (10) business days of receiving notice from City DOC that these prisoners are ready for transfer.

12. State DOCS will accept transfer of all finally-adjudicated parole violators, consisting of all adult and adolescent males and females detained in the custody of City DOC who have been finally adjudicated in violation of parole and received time assessments which return them to state prison, within ten (10) business days of State DOCS "matching" information received from the State Parole computer with information in the NYSPIN system which indicates that these prisoners are ready for transfer. A "match" occurs when the State DOCS' computer extracts information from (i) the NYSPIN system, indicating that City DOC is holding a prisoner with a certain name and NYSID number solely on the basis of a parole warrant, with no open criminal charges or other holds, and (ii) the State Parole computer, indicating that State Parole has made a final determination regarding a prisoner with the same name and NYSID number to revoke parole and return that prisoner to the custody of State DOCS. This "matching" by

State DOCS' computer generates the "State Ready RPV" list of finally adjudicated parole violators who are ready for transfer, which shall be produced by State DOCS every business day.

13. State DOCS will accept the return to state custody of all adult and adolescent males and females serving indeterminate terms of incarceration in state prison who have been transferred by court order to the custody of City DOC to appear in court in New York City and whose transfer orders have been satisfied, within ten (10) business days of receiving notice from City DOC that the transfer order has been satisfied.

14. By October 1, 1992, State DOCS will remove the backlog of newly-sentenced state prisoners, finally-adjudicated parole violators and out-to-court state prisoners presently detained in the custody of New York City DOC while awaiting transfer to state prison. Finally-adjudicated parole violators will be given priority in transfer while this backlog is being removed.

15. From August 1 to November 1, 1992, State DOCS shall furnish to Petitioners' counsel, on the 1st and 15th day of each month, documents or records which are sufficient for counsel to monitor the transfer of all newly-sentenced state prisoners and finally-adjudicated parole violators to state prison. These documents shall include the "state ready" prisoner listing of newly-sentenced state prisoners who are ready for transfer, the "back-up" list compiled by State DOCS' Screening Unit on Rikers Island, which contains the names of newly-sentenced male prisoners who have been removed from the "state ready" list by State DOCS and

the reasons for their removal, and the "State Ready RPV" listing of affirmed parole violators. Additionally, the "state ready removal totals" report shall be provided to counsel once a month. From November 1, 1992 to November 1, 1993, State DOCS shall furnish the "state ready" prisoner listing, the "state ready removal totals" report and the "State Ready RPV" listing to Petitioners' counsel once a month, but will furnish the "back-up" list only if Petitioners' counsel requests it. After November 1, 1993, State DOCS shall furnish the afore-mentioned documents and records to Petitioners' counsel upon counsel's request. At a minimum, these documents and records must show:

a) The name and NYSID number of all newly-sentenced state prisoners appearing on the "state ready" list during the period covered by the report and the date each state prisoner first appeared on this list; and

b) The name and NYSID number of all finally adjudicated parole violators who appeared on the "State Ready RPV" list as "ready" for transfer and the date each finally adjudicated parole violator was "matched" on NYSPIN as ready for transfer. If any finally-adjudicated parole violator was removed from the "State Ready RPV" list by State DOCS during the period covered by the report, the report shall show, in addition to the foregoing information, the reason for the removal.

11. If, at any time Petitioners' counsel requests information concerning the date of and reason for a specific newly-sentenced state prisoner's removal from the "state ready" list by State DOCS

and the date, if any, that City DOC restored that prisoner's name to the "state ready" list, such information shall be provided by State DOCS. Additionally, if at any time Petitioners' counsel requests information concerning a specific parole violator's removal from the "State Ready RPV" list, including the date of and reason for the removal, and the date, if any, that the parole violator's name was restored to the "State Ready RPV" list, such information shall be provided by State DOCS.

D. Modification of this Agreement

16. The terms of this Settlement Agreement may be modified only upon agreement of the parties and approval of the Court, or by order of the Court, for good cause shown.

Dated: New York, New York
July 29, 1992