DOCKET NO. CV-20-5000704-S | STATE OF CONNECTICUT SUPERIOR COURT G.A. 19 | SUPERIOR COURT

2024 MAY 15 P 12: 15

DAVID TAYLOR : JUDICIAL DISTRICT OF TOLLAND --- HABEAS DOCKET

V. :

COMMISSIONER OF CORRECTION : MAY 15, 2024

MEMORANDUM OF DECISION

David Taylor was a sentenced inmate in the custody of the Department of Correction (DOC) at the time he filed the present habeas corpus petition on July 15, 2020. Taylor's claims do not challenge his underlying conviction and sentence; instead, as described in greater detail below, his claims fall under the rubric of conditions of confinement.

Taylor previously successfully appealed from an earlier judgment of dismissal in the present case. The Appellate Court provided the following summary:

> ...[Taylor claims that] the respondent, the Commissioner of Correction, violated his constitutional rights to (1) procedural due process, (2) equal protection of the law, and (3) freedom from cruel and unusual punishment. ...
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> The following procedural history and facts, as alleged in the petitioner's second amended petition (operative petition),[1] or as otherwise undisputed in the record, are relevant to this appeal. ... The petitioner, a citizen of the United Kingdom, is currently incarcerated at the Osborn Correctional Institution (Osborn) in Somers, serving a term of twenty-five years of incarceration for the crime of murder. In his operative petition, the petitioner asserts, in essence, three claims.
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> The first claim asserts that the respondent violated the petitioner's right to procedural due process. According to the petition, the respondent assigned the petitioner an overall risk score of three and a detainer score of three.[2] The

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[1] "The petitioner filed his first petition for a writ of habeas corpus on July 15, 2020, and his first amended petition on September 17, 2020. Subsequently, on December 11, 2020, the petitioner filed a 'motion for permission to file additional pages to the amended petition,' which was docketed as a second 'amended application for writ of habeas corpus.' Thus, the petitioner's second amended petition is the operative petition ...."

[2] "The respondent assigns each inmate an overall classification assessment score of one to five, with one representing the lowest security level and five representing the highest. See Conn. Dept. of Correction, Administrative Directive 9.2 (6) and (8) (effective July 1, 2006) (Administrative Directive 9.2). In determining an inmate's overall classification assessment score, the inmate's risks and needs

respondent also labeled the petitioner "a public safety risk." An Immigration and Naturalization Service and Immigration and Customs Enforcement detainer[3] was issued against the petitioner in 2010. As a result of this detainer, the petitioner faces deportation upon the completion of his sentence. The petitioner alleges that, by classifying him as "a public safety risk" and improperly assigning him a detainer score of three, the respondent has violated his right to procedural due process. Specifically, the petitioner contends that those classifications are false, stigmatizing, and result in punishment that is qualitatively different from that characteristically suffered by a person convicted of a crime. According to the petitioner, because he has been improperly classified, he has been denied rehabilitative programs, and his reputation has been, and will continue to be, injured.

The petitioner's second claim asserts an equal protection violation. ... The petitioner claims that he is being denied equal protection of the laws because the respondent has limited his access to rehabilitative programs that are available to all inmates pursuant to General Statutes §§ 18-81w,8 18-81x9 and 18-81z10—including reentry and discharge planning, and community release—because he is a British citizen.

The petitioner's third claim asserts that the respondent has violated his right under the eighth amendment to be free from cruel and unusual punishment. The petitioner, who is almost sixty-seven years old, alleges that the COVID-19 virus poses a sufficiently and objectively serious risk to his life because the virus has been particularly deadly for institutionalized populations and because he has numerous preexisting medical conditions. The petitioner further alleges that the respondent has acted with deliberate indifference toward him by failing to follow Centers for Disease Control and Prevention (CDC) guidelines—specifically, by failing to enforce mask wearing and social distancing.

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are assessed. Id., 9.2 (8). Seven factors determine an inmate's overall risk score. Id. Each individual factor is assigned a rating from one to five, with one representing the least risk and five representing the highest risk. See Office of Legislative Research, OLR Research Report: Department of Correction Inmate Classification (March 1, 2000) available at https://www.cga.ct.gov/2000/rpt/2000-R-0257.htm (last visited November 17, 2022). One of these factors is the presence of a detainer. See Administrative Directive 9.2 (8) (A) (5). 'After independently rating each factor, [the respondent] establishes an overall risk level. The highest rating assigned to any of the seven factors determines the inmate's overall risk level. Thus if an inmate has a two on six of the factors and a four on one factor, his overall rating is a four.' OLR Research Report: Department of Correction Inmate Classification, supra. Because the petitioner has a detainer lodged against him, he has been assigned a detainer score that affects his overall risk score."

[3] "According to the petitioner, the detainer is a civil detainer. An immigration detainer 'serves to advise another law enforcement agency that the [United States Department of Homeland Security (Department)] seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agency advise the Department, prior to release of the alien, in order for the Department to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible.' 8 C.F.R. § 287.7 (a) (2022)."

> In his prayer for relief, the petitioner "ask[ed] the court to order the commissioner to:
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> "(1) Reduce [his] detainer score to a 1 and [his] overall score to a 2, which would make [him] eligible for community release and other relevant programs.
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> "(2) Grant [him], as a low risk offender, and future deportee with over 85 [percent] of [his] sentence served, with a positive institutional record, community release here or in the [United Kingdom] under [General Statutes] § 18-91a, because of [his] deteriorating health, age, and high risk for COVID-19 with complications.
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> "(3) [Afford him] [a]ny other relief the court deems just and proper under the circumstances."

(Footnotes omitted and renumbered.) Taylor v. Commissioner of Correction, 216 Conn. App. 570, 572-577, 286 A.3d 449 (2022).

The matter was tried to this court over four days between January and March of 2024. At the onset of trial, it became apparent that Taylor's end of sentence (EOS) was rapidly approaching and that he would discharge from custody and be deported to the United Kingdom. The court requested that the parties address at an upcoming day of trial whether there is any relief a habeas court can grant Taylor upon the full execution of his sentence and discharge from custody and whether the petition should be dismissed on mootness grounds. Both parties addressed these issues when they again appeared before the court for trial. The parties rested on the last day of trial, March 25, 2024, three days prior to Taylor's EOS. The court must now resolve the mootness issue and determine if it still has subject matter jurisdiction over Taylor and his claims.

"It is a well-settled general rule that the existence of an actual controversy is an essential requisite to ... jurisdiction; it is not the province of ... courts to decide moot questions, disconnected from the granting of actual relief or from the determination of which no practical relief can follow." (Citations omitted; internal quotation marks omitted.) Delevieleuse v. Manson, 184 Conn. 434, 436, 439 A.2d 1055 (1981). "Mootness presents a circumstance wherein the issue before the court has been resolved or had lost its significance because of a change in the condition of affairs between the parties. ... Since mootness implicates subject matter jurisdiction ... it can be raised at any stage of the proceedings. ... The test for determining mootness ... is whether there is any practical relief [a] court

can grant. ... If no practical relief can be afforded to the parties, the [matter] must be dismissed." (Internal quotation marks omitted.) Hartney v. Hartney, 83 Conn. App. 553, 565-566, 850 A.2d 1098, cert. denied, 271 Conn. 920, 859 A.2d 578 (2004), citing and quoting Taylor v. Zoning Board of Appeals, 71 Conn. App. 43, 46, 800 A.2d 641 (2002); see also Paulino v. Commissioner of Correction, 155 Conn. App. 154, 160, 109 A.3d 516, 521, cert. denied, 317 Conn. 912, 116 A.3d 310 (2015).

The relief that Taylor requested in his operative amended petition cannot be granted by a habeas court after he reaches his EOS, discharges from custody because his sentence is fully executed, and then is deported to the United Kingdom. For Taylor to receive meaningful relief as requested, he would need to be incarcerated and in DOC's custody. DOC can no longer reduce or otherwise adjust his detainer score, nor make him eligible for community release or other programs, nor grant him community release in Connecticut or in the United Kingdom. Taylor has fully served his term of incarceration, is no longer in custody, and is not on probation, parole, or special parole. Therefore, the court finds that there is no habeas relief that can be granted, which renders this matter moot and deprives the habeas court of jurisdiction over Taylor and his claims.

An exception to mootness exists when an issue is capable of repetition, yet evading review. "To qualify under this exception, an otherwise moot question must satisfy the following three requirements: First, the challenged action, or the effect of the challenged action, by its very nature, must be of a limited duration so that there is a strong likelihood that the substantial majority of cases raising a question about its validity will become moot before ... litigation can be concluded. Second, there must be a reasonable likelihood that the question presented in the pending case will arise again in the future, and that it will affect either the same complaining party or a reasonably identifiable group for whom that party can be said to act as surrogate. Third, the question must have some public importance. Unless all three requirements are met, the appeal must be dismissed as moot.

(Internal quotation marks omitted.) Gainey v. Commissioner of Correction, 181 Conn. App. 377, 383, 186 A.3d 784 (2018); see also Loisel v. Rowe, 233 Conn. 370, 382-83, 660 A.2d 323 (1995). These three factors are referred to as Loisel factors and have been explained in greater detail.

"'The first element in the [Loisel] analysis pertains to the length of the challenged action. . . . If an action or its effects is not of inherently limited duration, the action can be reviewed the next time it arises, when it will present an ongoing live controversy. Moreover, if the question presented is not strongly likely to become moot in the substantial majority of cases in which it arises, the urgency of deciding the pending case is significantly reduced. (Citations omitted; footnote omitted.) Loisel v. Rowe, supra, 233 Conn. 383-84.'" Cooke v. Commissioner of Correction, 194 Conn. App. 807, 824-25, 222 A.3d 1000 (2019), cert. denied, 335 Conn. 911, 228 A.3d 1041 (2020).

"The second Loisel factor 'entails two separate inquiries: (1) whether the question presented will recur at all; and (2) whether the interests of the people likely to be affected by the question presented are adequately represented in the present litigation.' Loisel v. Rowe, supra, 233 Conn. 384. 'A requirement of the likelihood that a question will recur is an integral component of the 'capable of repetition, yet evading review' doctrine. In the absence of the possibility of such repetition, there would be no justification for reaching the issue, as a decision would neither provide relief in the present case, nor prospectively resolve cases anticipated in the future.' Id. 'Commonly referred to as the surrogacy concept, [the] second inquiry requires some nexus between the litigating party and those people who may be affected by the court's ruling in the future.' (Internal quotation marks omitted.) Doe v. Hartford Roman Catholic Diocesan Corp., 96 Conn. App. 496, 500-501, 900 A.2d 572, cert. denied, 280 Conn. 938, 910 A.2d 217 (2006)." Cooke v. Commissioner of Correction, supra, 194 Conn. App. 825-26.

"The third Loisel factor, '[t]he requirement of public importance is largely self-explanatory. Since judicial resources are scarce, and typically reserved for cases that continue to be contested

between the litigants, this court does not review every issue that satisfies the criteria of limited duration and likelihood of recurrence.' Id., 387. Typically, cases that raise a constitutional issue satisfy this factor. See, e.g., In re Emma F., 315 Conn. 414, 425, 107 A.3d 947 (2015) (noting that appellant's constitutional claim of violation of free speech rights was matter of public importance); State v. Mordasky, 84 Conn. App. 436, 442, 853 A.2d 626 (2004) ('[f]inally, because the defendant has raised a constitutional issue with respect to his competence to enter into a plea agreement, he has presented an issue that qualifies as a question of public importance')." Cooke v. Commissioner of Correction, supra, 194 Conn. App. 826-27.

The facts and circumstances of Taylor's case fail to satisfy the first part of the Loisel test. Although no information was provided to this court about precisely how many inmates in DOC custody are foreign nationals who face deportation upon discharging from their Connecticut sentences, it is improbable that Taylor is the only inmate with that status. The issues raised by Taylor presented questions and a live controversy for years. Other inmates who face deportation, especially those who have multi-year sentences, will similarly not have an inherently limited amount of time to bring an action and have a habeas court adjudicate their claims. Thus, such claims or actions can be reviewed the next time they arise when they present an ongoing live controversy. Furthermore, the types of claims Taylor raised together with the length of inmate sentences makes it unlikely that the substantial majority of such cases will become moot, greatly reducing any urgency to decide this case.

The Cooke case is instructive. There, the habeas court denied the petitioner's writ of mandamus directing the Office of the Chief Public Defender to provide him with legal assistance in preparing his brief and oral argument before the Appellate Court. Id., at 823. The respondent argued that this claim was moot because Cooke had already filed his appellate brief and presented his oral arguments, thus there was no practical relief that the Appellate Court could grant him. Id., at 824.

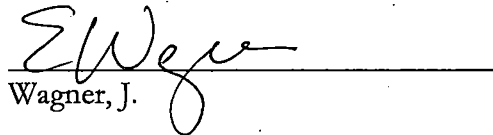
The Appellate Court conducted a "capable of repetition, yet evading review" analysis under the Loisel test and determined that Cooke satisfied all three Loisel factors.

As to the first factor, our appellate rules themselves were an important consideration. Id., at 825. The Appellate Court noted that "[o]ur rules of appellate practice necessitate that the petitioner file a brief [within forty-five days] and attend oral argument." Id. Non-compliance by a party with either requirement could easily result in dismissal of the appeal. "Our appellate procedural rules have the effect of creating an inherently limited time-frame in which the petitioner's appeal is prosecuted." Id. Additionally, the Appellate Court noted that the only way the petitioner could raise his claim was by filing a brief and arguing the case before the Appellate Court. Id. Thus, in order to have his claim considered by the Appellate Court, the requirements outlined by our rules of appellate practice forced the petitioner to render his own claim moot. The Appellate Court explained that "[t]he way the petitioner has raised this issue before this court, and enabled us to reach the merits of his claim, was by filing a brief and arguing his case. ... In other words, it would be impossible for the petitioner, or any other litigant, to seek redress on this matter in a similar manner without mooting his claim." Id. The Appellate Court, concluded, therefore, that "the petitioner's claim relates to an inherently limited action that will likely be moot in a substantial majority of cases and satisfies the first Loisel factor." (Footnote omitted.) Id.

Contrary to Cooke, Taylor faced no similar time-sensitive procedural rules, as strictly enforced as our rules of appellate practice, that would result in dismissal of his habeas corpus petition for non-compliance. Should other inmates who face deportation bring the same claims in other habeas corpus petitions, it is not likely that they will face an inherently limited amount of time before their claims become moot. The court finds, therefore, that Taylor cannot satisfy the first part of the Loisel test. Consequently, the court concludes that the present matter and its claims fail to satisfy the capable of repetition, yet evading review exception.

CONCLUSION

Having found the matter is moot and does not satisfy the exception that the claims are capable of repetition, yet evading review, and having further found that there is no meaningful habeas corpus relief that this court can grant to the petitioner, judgment shall enter dismissing the petition for a writ of habeas corpus pursuant to Practice Book § 23-29 (1), (2), (4), and (5).



Wagner, J.

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by Kristen McKeon, Asst. Clerk 5/15/24