

New York County Index No. 451609/20

To be argued by
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(15 MINUTES REQUESTED)

New York Supreme Court

Appellate Division - First Department

THE PEOPLE OF THE STATE OF NEW YORK,
ex rel. **COREY STOUGHTON,**
on behalf of **VENUS WILLIAMS, et al.,**

Petitioners-Appellants,

- against -

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

Respondents-Appellees.

On Appeal from the Supreme Court of the State of New York,
New York County

**RESPONDENT'S BRIEF FOR
OFFICE OF THE SPECIAL NARCOTICS PROSECUTOR**

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SUPREME COURT OF THE STATE OF NEW YORK
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-against-

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

Respondents-Appellees.

INTRODUCTION

Petitioner Ricardo Gonzalez appeals from April 13, 2020 order of the Supreme Court, New York County Steven M. Statsinger, J., denying his petition for a writ of habeas corpus. Petitioner asserts that the habeas court erred in determining that petitioner was not entitled to release from custody based upon his claim that his federal and state due process were being violated as a result of the risk of his exposure to COVID-19 while incarcerated. As discussed below, petitioner's claims are without merit

BACKGROUND

Petitioner Ricardo Gonzalez ("Gonzalez") is 44 years old and is charged under New York County Indictment No. 3995/2019 with one count of Operating as a Major

Trafficker (P.L. §220.77(3)), six counts of Criminal Possession of a Weapon in the Second Degree (P.L. §265.03), one count of Criminal Possession of a Weapon in the Third Degree (P.L. §265.02(7)), six counts of Criminal Possession of a Firearm (P.L. §265.01-b(1)), four counts of Criminal Possession of a Controlled Substance in the First Degree (P.L. §220.21(1)), one count of Criminal Possession of a Controlled Substance in the Third Degree (P.L. §220.16(1)), one count of Conspiracy in the Second Degree (P.L. §105.15), one count of Criminal Possession of Marijuana in the Second Degree (P.L. §221.25), and three counts of Criminally Using Drug Paraphernalia in the Second Degree (P.L. §220.50).

For months, Gonzalez supplied a Bronx street level narcotics organization that was responsible for heroin overdoses in the Soundview section of Bronx County. Gonzalez coordinated the delivery of heroin at least four times a month with the leader of this organization confirmed by eavesdropping warrants, video surveillance and Gonzalez's detailed drug ledger. After law enforcement executed a search warrant at a heroin mill in which Gonzalez and another were present, and other locations, law enforcement recovered approximately fifteen kilograms of heroin in brick form and pre-packaged glassines, six firearms, one of which was an assault weapon (AR-15), in a concealed compartment in a dresser, magazines for the firearms, pounds of marijuana, over \$140,000, scales, rubber bands, kilo presses, money counters, drug ledgers, nineteen cellphones, a cellphone jammer, face masks and other drug paraphernalia. Based on sales detailed in Gonzalez's ledger, Gonzalez received over \$2,000,000 from

January 2019 to September 2019, and is believed to have profited approximately \$600,000 during that time.

Since his arrest, Gonzalez has been remanded pending trial. His bail status was initially imposed by the Honorable Anne Swern, and upheld after four subsequent bail applications - on or about January 16, 2020, March 16, 2020, March 31, 2020, and May 11, 2020 by the Honorable Abraham Clott, the Honorable Felicia Mennin, the Honorable Althea Drysdale, and the Honorable Steven Statsinger, respectively. The last three bail applications were focused on Gonzalez's release due to the COVID-19 pandemic based upon an underlying Type I diabetes medical condition. Petitioner argued he was a medically vulnerable person who was housed in inadequate conditions at Rikers Correctional Facility facing death. Unpersuaded, the court found that based upon the facts of the case, petitioner's criminal history as a narcotics trafficker, for which he was incarcerated for ten years for Conspiracy to Distribute Heroin and received five years probation for Attempted Criminal Possession of a Controlled Substance in the Third Degree, petitioner's medical condition, and repeated failed attempts for release, remand was the least restrictive method to ensure petitioner's appearance.

In addition to the four bail applications, a writ of habeas corpus was entered on behalf of petitioner and others on March 20, 2020. In that filing, petitioner argued that based on petitioner's age and medical condition he was at a higher risk of contracting COVID-19, and such risk could not be mitigated in City jails. Petitioner alleged that

release was required to address the risk of serious medical harm, and failure to release petitioner constituted deliberate indifference. Petitioner relied on information from medical experts and the New York City Board of Correction, in conjunction with international and stateside infection rates. Yet, petitioner neglected to provide medical records for his condition and detail the conditions in which he was confined to at Rikers Facility. In respondent's papers, filed on April 8, 2020, respondent argued that petitioner was being treated for his Type I diabetes while housed at Rikers Facility, and information to the contrary was not submitted nor supported by petitioner's claims (JA261). On April 13, 2020, after oral arguments, the Honorable Steven M. Statsinger denied said petition stating that the conditions at Rikers Island did not constitute deliberate indifference to the inmates' medical needs, and the Court was not prepared to find either that Corrections had done nothing to remedy the situation or that release of petitioner is the only way to mitigate the harm.

On appeal, petitioner argues that respondent was and is deliberately indifferent to petitioner's serious medical need in that (1) respondent knew or should have known of the risk COVID-19 posed to the inmate population in City jails based upon guidance from the City Board of Correction and medical professionals, (2) respondent's response to COVID-19 within City jails was unreasonable, and (3) respondent's steps to control the spread of COVID-19 within City jails are and were recklessly insufficient. Notably, yet again, petitioner has not provided any information regarding the medical care and treatment he is receiving in Rikers Facility or, alternatively, the medical care and

treatment available to him upon release. For the reasons set forth in the New York County District Attorney's Office brief dated May 22, 2020, which is incorporated by reference herein, the order denying the petition for a writ of habeas corpus should be affirmed.

CONCLUSION

The court's dismissal of the petition for habeas corpus should be affirmed on the grounds that (1) petitioners failed to provide the Court with a factual basis to support their claims of federal and State due process violations; (2) release from detention is not the proper remedy for the claims made in this petition; (3) and even if the Court addresses the substance of petitioners' claims, they have failed to show a violation of their due process rights under the federal or State constitutions.

Respectfully submitted,

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May 22, 2020

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