

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF CAYUGA: SPECIAL TERM

-----X  
STATE OF NEW YORK: EX REL. A NEW :  
BEGINNING INNOCENCE PROJECT : AFFIDAVIT IN SUPPORT OF  
"WE THE PEOPLE:" On behalf of : EX PARTE MOTION FOR A  
NELSON RODRIGUEZ, 88-A-5497 : SUMMARY JUDGMENT  
: PURSUANT TO CPLR § 3212  
: Petitioner/Relator :  
-----X Index # 2012-0358  
STATE OF NEW YORK )  
 ) .:ss  
COUNTY OF CAYUGA )

I, NELSON RODRIGUEZ, being duly sworn, deposes and says:

1. That I am the Petitioner (herein after relator) in the above entitled action for whom Mr. Carlos Davila, President of A NEW BEGINNING INNOCENCE PROJECT and its members, a non-for profit Corporation duly registered with the State of New York and Attorney Generals Office, that assists actually innocent men to get a day in Court, did file on behalf of the relator, the afore-mentioned Petition under the provisions of CPLR § 7002.

2. Relator moves this Court Pursuant to CPLR §§ 2213 (a) & 2217 (b) by Ex Parte Motion, for a Summary Judgment Pursuant to CPLR §§ 3212 (a) & (b); and 3215 (a) & (b), seeking a default Judgment to be entered in the above entitled action for the foregoing reasons as asserted below:

3. Relator asserts that the Court demanded by way of its Order, dated April 2, 2012, that respondent must Show Cause why an Order should not be entered herein releasing the relator from the respondent's custody, Auburn Correctional Facility and, the Court further added that relator's Petition showed sufficient cause with

supporting affidavit and all other papers upon which the Petition is based to warrant his immediate release.

4. Respondent failed to contest relator's CPLR § 7002 Petition by way of sworn affidavit, in violation of CPLR § 7008 (a) & (b); this Court's Order, dated April 2, 2012; this Court's Order, dated May 16, 2012; this Court's Order, dated, June 13, 2012; and this Court's deadline, dated, July 12, 2012 (See Exhibits "A" & "B")

5. Respondent never provided and/or produced sworn affidavit(s) from any agency, department, records custodian, County Clerk's Office, Supreme Court Clerk's Office, District Attorney's Office, and The Commissioner of Correctional Services and Community Supervision and his affiliates, attesting to the legality of relator's incarceration.

6. Respondent never provided and/or produced any Certified documentation in violation of CPLR § 4540 (a) & (b); the Holdings in Martens v Martens, 284 NY 363, 31 NE2d 489, rearg den 285 NY 607, Jackson v Miller, 6 Wend (NY) 228; People v Garneau, 120 AD2d 112, 507 NYS2d 931, lv den 69 NY2d880; to dispute the Authenticity of relator's Certified documentary proof, which has been attested to by Mr. Carlos Davila, his members, attorneys, paralegal clerks, and thousands of citizens who have provided signatures in person and on line by way of electronic filing, in support of relator's Writ of Habeas Corpus and, of the Court's April 2, 2012 Order that Oral argument shall not be required on the return date of this

proceeding, as there is "sufficient cause appearing" (See Exhibit "A")

7. Respondent's failure to contest relator's assertions as set forth in his Petition in its entirety, supported by undisputed documentary proof attached thereto as Exhibits "A" through "I", renders this Action and any and all subsequent proceedings hereinafter Ex Parte.

8. Therefore, based upon the above mentioned irrefutable facts, relator moves this Court to enter a default judgment against relator's captors for failing to meet the burden of going forward, that is, offering evidence to contradict relator's prima facie case. See Matter of Philip M, 82 NY2d 238, 244, 604 NYS2d 40; Commissioner of Social Services v Philip De G, 59 NY2d 137, 140, 463 NYS2d 761; Farmers' Loan & Trust v Siefke, 144 NY 354, 359, 39 NE 358.

9. In as such, relator hereby prays this Honorable Court finalizes this Action by executing its Order of April 2, 2012, granting relator's release forthwith Pursuant to CPLR § 7010 (a); However, in the interim Pursuant to CPLR § 7009 (e), relator requests the following injunctive relief:

a) Released on own recognizance;

b) setting of Bail;

c) sequestered to the nearest hotel under armed guard with ankle bracelet monitoring device optional.

WHEREFORE, based upon court's Order, relator having met each and every element of burden to warrant his immediate release and, any further delay by relator's captors will magnify the prejudice relator has suffered as a result of his unjust incarceration and wrongful conviction; all that remains for this Honorable Court to do is Execute the Order dated, April 2, 2012; not withstanding any injunctive relief in the interim.

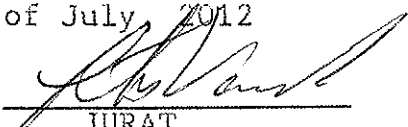
Auburn, New York  
July 23, 2012

  
Nelson Rodriguez

Sworn to before

Me this 23 day

of July, 2012

  
\_\_\_\_\_  
JURAT

Lebertus Vanderwerff  
Notary Public, State of New York  
Office in Cayuga Co. No. 01VA6183653  
Commission expires 03/31/16

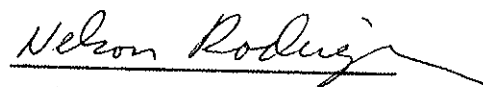
V E R I F I C A T I O N

STATE OF NEW YORK)  
COUNTY OF CAYUGA) <sup>SS.:</sup>

Nelson Rodriguez, being duly sworn, deposes and says that deponent is the relator in the above-encaptioned proceeding, that he has read the foregoing Ex parte motion and knows the contents thereof, that the same is true to the deponent's own knowledge, except as to matters therein stated upon information and belief, which matters deponent believes to be true.

Sworn to before me this  
23 day of July, 2012



  
Nelson Rodriguez

J U R A T

Labertus Vanderwerff  
Notary Public, State of New York  
Cayuga Co. No. 01VA6130953  
Commission expires 02/31/16