

144163101010 / Court: 230

No.

EX PARTE	X	IN THE 230TH DISTRICT
	X	COURT OF
	X	
	X	
	X	
JOSE LUIS ROMERO	X	HARRIS COUNTY, TEXAS

Order Granting Relief on the Application for Writ of Habeas Corpus and Declaring Executive Order GA-13 Unconstitutional, Unlawful and Null and Void

BE IT REMEMBERED that on this day came to be considered Jose Luis Romero’s (“Applicant”) Application for Writ of Habeas Corpus.

On July 29, 2019, Mr. Romero was arrested on an outstanding warrant from 2014 for Theft- third offense, a state jail felony. Relying on his attorney’s advice that he would be eligible for release due to earned time credit for good time and trustee work, in May, on February 12, 2020, Mr. Romero pled guilty and was sentenced to ten months in the Harris County Jail. Counsel for Mr. Romero based his advice on the Harris County Sheriff’s Office’s known policy of providing jail credit of 3 days for every 1 day that a person is incarcerated if that person works as a trustee in the jail.

Applicant earned time credit because he served as a trustee when he was incarcerated in the Jail, and accordingly Applicant’s scheduled release date was May 20, 2020. But before Mr. Romero could be released on commutation for his earned time credit, on March 29, 2020, the Governor issued Executive Order

GA-13 (“Executive Order” or “GA-13”). As applicable here, the Executive Order purports to “preclude the grant of commutation of time for good conduct, industry, and obedience to achieve the release of any person who has previously been convicted of or is currently serving a sentence for a crime that involves physical violence or the threat of physical violence.” Order at 2-3. The Sheriff determined that Mr. Romero had “previously been convicted of ... a crime that involves physical violence or the threat of physical violence” and did not release Mr. Romero from the jail when he reached his accrued time.

The Harris County Sheriff’s Office website continues to list May 20, 2020 as Applicant’s “out date.” Applicant’s wife believed he was going to be released from the jail on May 20, 2020. On the evening of May 20, 2020, Ms. Ruiz called the Harris County Jail to find out why she had not heard anything about her husband’s release. She was informed that Mr. Romero would instead be released on December 26, 2020, due to Executive Order GA-13.

All jail stays are traumatic for the people detained, but Mr. Romero’s has been especially so. Mr. Romero suffers from Graves Disease, an autoimmune disorder that makes him especially vulnerable to COVID-19. He also was supposed to have three tooth extractions before he turned himself in. He has not received proper medical treatment while in jail. Mr. Romero also contracted COVID-19 while incarcerated. Additionally, Mr. Romero’s father passed away in March, while Mr. Romero was confined in the Harris County Jail, and he was

unable to say goodbye.

On May 27, 2020, Applicant applied for a writ of habeas corpus challenging the legality and constitutionality of the Executive Order that the Sheriff has found bars his release. Applicant argued that the Executive Order does not apply to him, and in any case exceeds the statutory and constitutional limitations of the Governor's powers by suspending criminal laws, including Article 42.032, the law that affords the Sheriff discretion to release people on good time credits, with no authority under the Disaster Act and in violation of the suspension of laws and separation of powers clauses of the Texas Constitution.

The Court agrees with Applicant.

The Court finds that Applicant continues to be detained in the Harris County Jail because the Harris County Sheriff has determined that the Executive Order bars Applicant from being released on schedule from his accrued time.

The Court finds that Applicant was previously convicted of "attempted felon in possession of a firearm," a felony offense that the Harris County Sheriff has categorized as a crime "involv[ing] physical violence or the threat of physical violence" under the Executive Order.¹

¹ The Court finds that categorization is wrong; "attempted felon in possession of a firearm" is not an offense "involv[ing] physical violence or the threat of physical violence." Thus, Mr. Romero should be released on his earned time credit on that basis. But even if the Executive Order were to apply,

The Court concludes the governor acted outside his legal authority in issuing the Executive Order, including by suspending the Code of Criminal Procedure provisions relating to release for good time and other credits. The Texas Disaster Act of 1974 permits a Governor during a declared disaster to suspend “the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.” Tex. Gov’t Code § 418.016(a). The provisions of the Texas Code of Criminal Procedure targeted by GA-13, including Tex. Code Crim. Proc. Art. 42.032 and related provisions, pursuant to which Mr. Romero should have been released on May 20, are not “regulatory statute[s]” and may not be suspended under the suspension authority or any other authority granted to the Governor under the Disaster Act. The Governor’s attempt to do so is therefore *ultra vires*.

It is for good reason that the Disaster Act does not grant the Governor such unlimited suspension authority: it would be unconstitutional to do so. The suspension of laws is strictly the province of the Legislature under art. I, § 28 of the Texas Constitution, which states that “[n]o power of suspending laws in this State shall be exercised except by the Legislature,” and which the Executive

as detailed *infra* it is *ultra vires* and unconstitutional and cannot bar Mr. Romero’s release.

Order violates. Further, by attempting to usurp this exclusive legislative authority, the Executive Order also violates art. 2 § 1 of the Texas Constitution, which provides for the separation of powers among the three branches of government and states that “no person... being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.”

To the extent the Governor’s Executive Order purports to suspend provisions of the Texas Code of Criminal Procedure, including Art. 42.032 “and all other relevant statutes and rules” relating to release on commutation for good time and other credits, the Executive Order is hereby declared unconstitutional and *ultra vires*. GA-13 violates well-established separation of powers principles and exceeds the Governor’s emergency powers. Specifically, GA-13 violates the Tex Const. art. I, § 28 (suspension of laws power exclusive to the Legislature), art. 2 § 1 (separation of powers), and exceeds the Governor’s authority under the Texas Disaster Act of 1974. Accordingly, GA-13 is *ultra vires*, unconstitutional, and null and void. The Governor acted outside of his legal authority in issuing Executive Order GA-13 and it is not binding on this Court or the Sheriff.

Accordingly, having considered the arguments of the applicant, by and through the applicant’s counsel, the Court ISSUES a writ of habeas corpus and now ORDERS the Harris County Sheriff to release Applicant from custody on commutation due to accumulation of earned time credit.

SIGNED this ___day of _____, 2020,

Signed:
5/28/2020

A handwritten signature in black ink, appearing to be the initials 'JM' or similar, enclosed within a horizontal oval shape.

Judge Presiding