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Dispo

To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

2015 MAY 18 PM 4: 08
PUTNAM COUNTY
CLERK

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM**

-----X,
In the Matter of the Application of
Frank Banks, H,

DECISION & ORDER

Petitioner,

Index No. 2456/2014

-against -

Sequence No. 1
Motion Date:3/20/15

TINA MARIE STANFORD, as the Chairwoman
of the State Board of Parole,

Respondent.

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

-----X
GROSSMAN, J.S.C.

The following papers, numbered 1 to 19, were considered in connection with Petitioner's Order to Show Cause dated December 12, 2014, seeking an Order annulling the parole board's denial of his parole application, and ordering a de novo hearing.

PAPERS	NUMBERED
Order to Show Cause	1
Respondent's Verified Answer dated January 30, 2015/Exhs. A-K	2-13
Petitioner's Response to Annexed Exhibit dated 3/4/15	14
Petitioner's Verified Reply dated February 25, 2015 Exhs. A-B	15-17
Respondent's Sur-Reply/Exh. A	18-19

On February 26, 1987, Petitioner Frank Banks was convicted of murder in the second degree, manslaughter in the first degree, attempted robbery in the first degree, and criminal

possession of a weapon in the second degree. The court sentenced Petitioner to an indeterminate term of imprisonment of twenty-five years to life for the murder conviction, twelve and one-half to twenty-five years for the manslaughter conviction, and seven and one-half to fifteen years for each of the attempted robbery and criminal possession of a weapon convictions. The manslaughter, attempted robbery and weapons sentences were ordered to run consecutively with each other, and all three were ordered to run concurrently with the murder sentence. At the time, Petitioner was 26 years old.

On July 21, 2010, Petitioner appeared before the parole board, but was denied parole, as it was "determined that if you were released at this time it would so deprecate the serious nature of the crime as to undermine respect for the law and there is a reasonable probability that you will not live and remain at liberty without again violating the law" (Petition, Exh. E). The parole board stated it based its decision on the following factors:

"This was a crime in a continuation of a criminal history in which you have been undeterred by prior court imposed incarcerations. Your instant offense is Murder 2, Manslaughter 1, CPW 2, and Attempted Robbery 1 in which you in concert with others entered a dispatch garage, your accomplice ordered the employee to lie on the floor. When the victim failed to give you the money, you shot and killed the victim at point blank range. Your criminal record going back to 1978 is assaultive and larcenous in nature. The panel notes your quantitative profile listing your accomplishment in obtaining a GED and certificate among your accomplishments and support, however discretionary release on parole is not granted merely as a reward for good conduct or positive programming."

(Petition, Exh. E).

In July 2012, the parole board denied Petitioner's second application for parole, stating, inter alia:

"After careful and thoughtful review of your institutional record including your goals and accomplishments in programming, your release plans, including community resources that may be available to you, and your personal interview,

including the rehabilitative efforts you have undertaken, and your needs for a successful community reintegration, as well as program completions, educational accomplishments, letters of support, and having applied risk and needs principals and tools as well as all other relevant factors, it is the determination of this Board having considered (1) whether there is a reasonable probability that if released, you will live and remain at liberty without violating the law; (2) whether your release is compatible with the welfare of society; and (3) whether your release would so deprecate the seriousness of the offense as to undermine respect for the law.

The Board notes both your accomplishments in programming and your institutional adjustment, however discretionary release on parole is not granted merely as a reward for good conduct or positive programming * * *."

(Petition, Exhs. C-D).

On July 29, 2014, Petitioner appeared before the parole board for the third time. By then, he had served approximately 27 years of his sentence. In denying parole, the Board stated summarily:

"After a careful review of the record and interview, the panel has determined that if released at this time, your release would not be compatible with the welfare of society. The heinous nature of the instant offense of Murder 2, Manslaughter 1, CPW 2, and Attempted Robbery 1 involved you while acting in concert in an attempted robbery, shooting the victim causing his demise. Your actions clearly displayed a propensity for violence and a callous disregard for the sanctity of human life. The Panel has considered all the required statutory factors as well as your risk to the community, rehabilitative efforts, needs for successful reintegration, release plans, institutional adjustment, community support, community opposition and parole packet. However, despite your positive efforts while incarcerated, your release would greatly undermine respect for the law and trivialize the tragic loss of life which you caused."

(Petition, Exh. C; Answer, Exh. F at 9).

On August 5, 2014, Petitioner filed an appeal of the denial (Petition, Exh. A). No decision was rendered (Answer at ¶11).

"Parole release determinations are discretionary and will not be disturbed as long as they meet the statutory requirements of Executive Law §259-i." Friedgood v. New York State Board

of Parole, 22 A.D.3d 950 (3d Dept. 2005). “While all relevant statutory factors must be considered, respondent is not required to give them equal weight or to articulate each and every factor that was considered in making its decision.” Friedgood, supra. However, “decisions of the Board require flexibility and discretion, and the guidelines used to arrive at these decisions are not meant to establish a rigid, numerical policy invariably applied across-the-board to all [inmates] without regard to individualized circumstances or mitigating factors.” Montane v. Evans, 116 A.D.3d 197, 202 (3d Dept. 2014)(internal quotations omitted).

Upon review of the papers before it, this Court’s finds that the Board’s decision to deny parole to Petitioner was arbitrary and capricious, irrational and improper. Despite the existence of, inter alia, Petitioner’s low risk of recidivism, his family support, his remorse, his planned employment upon release, his lack of substance abuse, and his earning of a master’s degree while incarcerated, the Board summarily denied his application without any explanation other than by reiterating the laundry list of statutory factors. The Court summarily concluded that “the Parole Board denied petitioner’s request to be released on parole solely on the basis of the seriousness of the offense,” and its “explanation for doing so was set forth in conclusory terms, which is contrary to law.” Matter of Perfetto v. Evans, 112 A.D.3d 640, 641 (2d Dept. 2013), citing Matter of Gelsomino v. New York State Bd. of Parole, 82 A.D.3d 1097, 1098 (2d Dept. 2011); see also Thwaites v. New York State Bd. of Parole, 34 Misc.3d 694, 701 (Sup.Ct. [Orange] 2011)(Ecker, J.); see generally Matter of Silmon v. Travis, 95 N.Y.2d 470, 476 (2000).

In light of the above, the Court need not address any of Petitioner’s other assertions.

As such, it is hereby

ORDERED that the petition is granted and the determination is annulled; and it is hereby

ORDERED that the matter is remitted to Respondent for a de novo hearing on the matter of Petitioner's release to parole supervision within sixty (60) days of the date of this Court's order, and a decision is to be issued within thirty (30) days of the date of such hearing.

The foregoing constitutes the Decision and Order of the Court.

Dated: Carmel, New York
May 14, 2015



HON. VICTOR G. GROSSMAN, J.S.C.

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