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### Decision in CPLR Article 78 proceedings - Bouknight, Richard

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X

In the Matter of the Application of  
RICHARD BOUKNIGHT,

Petitioner,

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

-against-

JOHN P. KEANE, Superintendent of the  
Sing Sing Correctional Facility;  
RAUL RUSSI, Chairman of the New York  
State Board of Parole,

Respondents.

-----X

SCARPINO, J.

This is an Article 78 proceeding wherein the petitioner seeks an order vacating a determination of the New York State Board of Parole which denied parole release after a hearing. The respondents oppose the Petition. The Petition is granted to the extent that respondents' April 2, 1991 determination is vacated, and a new hearing is ordered in accordance with this Decision and Order.

The petitioner is currently serving a sentence of eight-and-a-third to twenty-five (8 1/3 to 25) years,

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ON 9/11 19 92  
WESTCHESTER  
COUNTY CLERK

DECISION AND ORDER

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following his 1984 conviction for Attempted Murder in the Second Degree and Robbery in the First Degree. The petitioner appeared before the Parole Board on April 2, 1991. After a brief hearing, the Board denied parole release solely upon the seriousness of the underlying offense (see hearing transcript, page 8). This determination was affirmed by the Parole Board Appeals Unit on January 17, 1992.

In this proceeding, the petitioner contends that the Parole Board placed undue and exclusive reliance upon the seriousness of the offense, and did not consider evidence of petitioner's outstanding institutional record or release plans. The respondents contend that petitioner's institutional record and release plans were mentioned, that they are not required to give equal weight or consideration to any particular factor, and that the seriousness of the offense may provide a sufficient basis to justify denial of parole.

The hearing in this case is transcribed on eight

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typed pages and includes the Board's one-page decision and a one-page cover sheet. Of the other six pages, four and one-half are devoted to a discussion of the underlying offense, one-half of one page concerns petitioner's relationship with his wife, and the other one-half concerns petitioner's institutional record. That portion of the testimony concerning the underlying offense is comprised mostly of unwarranted speculation as to the nature and quality of the evidence at the petitioner's trial and the function and quality of the judicial system. In addition, the record does not reflect what documents or information were received or considered by the Board with respect to petitioner's institutional record or release plans.

Pursuant to Executive Law § 259-i(2)(c), certain factors must be "considered" in making parole release decisions. According to Webster's New Collegiate Dictionary, the word "considered" means "matured by extended deliberative thought". Neither the transcript nor the decision evidence any extended deliberative thought with

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respect to any of the factors lists in Executive Law §  
259-i.

In addition, while the seriousness of the offense may constitute sufficient reason for denying discretionary parole release (People ex rel. Thomas v Superintendent Arthur Kill Correctional Facility, 124 AD2d 848, appeal denied 69 NY2d 611), and it is not necessary that all the factors be discussed in the Board's decision (People ex rel. Hadershanji v NYS Board of Parole, 97 AD2d 368), it is necessary that the record reflect that the Board had and considered relevant information (see People ex rel. Herbert v NYS Board of Parole, 97 AD2d 128). A determination based on incomplete or erroneous information must be vacated (see Matter of Rice v Hammock, 99 AD2d 644, appeal withdrawn 62 NY2d 804). In the instant case, the record does not reflect that the Board received or considered the numerous letters of recommendation by correction officers and prison staff written on petitioner's behalf, nor does the record reflect the receipt or consideration of information with respect to

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petitioner's completion of the Pre-Release Transitional Program, or his completion of continuing education programs. Therefore, the presumption that the Board complied with their statutory duty and considered all relevant factors is clearly rebutted. The lack of any detailed reasons in the decision, coupled with the Board's failure to indicate on the record what information they received and considered, frustrates intelligent review, and requires vacatur (see Matter of Canales v Hammock, 105 Misc.2d 71).

In accordance with the foregoing, the Petition is granted to the extent that the Parole Board's decision is vacated, and the Parole is directed to immediately schedule and hold a de novo hearing and provide a decision in accordance with this Decision and Order.

THIS IS THE DECISION AND ORDER OF THE COURT.

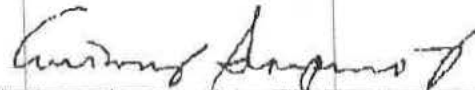
The following were considered:

1. Order to Show Cause with Affirmation, by Bennet Goodman, Esq., dated February 7, 1992, with exhibits; and

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- 2. Verified Answer, by Susan A. Winston, Esq.,  
dated March 30, 1992, with exhibits.

Dated: White Plains, New York  
September 11, 1992



HON. ANTHONY A. SCARPINO, JR.  
Westchester County Court Judge

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Attention: Susan A. Winston, Esq.