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February 2020

### Art. 78 Petition - FUSL000046 (2002-04-23)

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

In the Matter of the Application of

Petitioner,

- against -

BRION TRAVIS, Chairman, New York  
State Division of Parole,  
Respondent.

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

Index No. 3045-0A

RJI No. \_\_\_\_\_

VERIFIED PETITION

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

The Petition of [REDACTED] (hereafter "Petitioner") respectfully  
alleges that:

1. Petitioner is currently incarcerated at the [REDACTED]  
Correctional Facility in [REDACTED]. He is serving an aggregate sentence of nine to eighteen years in consequence of his plea of guilt to two counts of robbery in the first degree and one count of manslaughter in the first degree. The sentence was imposed by the Queens County Court on October 8, 1992. Pre-Sentence Investigation report Pet.'s Ex. 1 at 6 (hereafter "PSR"). He was considered for and denied parole on March 20, 2001. He will again be considered for parole in March 2003. He is currently 27 years old.

2. Petitioner was born in [REDACTED] and is a naturalized citizen of the United States. Pet.'s Ex. 1 at 1. He grew up in [REDACTED]. Petitioner, at age 45, after becoming disaffected and alienated from life, joined the [REDACTED] gang. Bet. ls. jEx. 2, Parole Board Hearing Minutes at 2-3.

3. On April 1, 1992 Petitioner was arrested and charged with the instant offenses in connection with his gang activities. The charges arose out of three separate incidents. In the first transaction, the gang robbed the help of a restaurant in [REDACTED]. Pet.'s Ex. 1 at 2. K tM second 7 they robbed the driver and owner of a livery car. Id. In the third, the gang

1 was involved in a dispute with members of a rival gang. Id. As a result of the resulting shoot-out, one of the rival gang members was killed. Id. )  
 Petitioner was 17 years old.

4. Petitioner pled guilty to two counts of robbery first degree and one count manslaughter in the first degree, and was sentenced to nine to eighteen years for his crime.

if 5. Petitioner has expressed remorse repeatedly and sincerely. When he was interviewed prior to sentencing, he "expressed . . . deep regret and remorse." Pet.'s Ex. 1 at 5. According to the interviewer, his remorse may well "have been genuine." Id. At sentencing, Petitioner again expressed remorse. [REDACTED] No. 0708-92 (Sup. Ct. [REDACTED] Cty. [REDACTED], Pet.'s Ex. 3 Sentencing Transcript, at 3. According to the Court: "It's one of the few times saying that — in a Probation Report saying that the defendant, in their opinion, is showing genuine remorse. I'm glad to see that." Id. at 3-4. Petitioner again expressed his remorse before the Respondent. Pet.'s Ex. 2 at 4, 6-7.

6. As the Court who sentenced Petitioner observed, Petitioner's remorse was "a first step, ix what we hope will be a more productive life after that, Mr. [REDACTED]." Id. at 4. In line with the Court's sentiments, Petitioner immediately took steps toward becoming a productive member of society during his imprisonment. Pet.'s Ex. 4 (55 pages of accomplishments) at 1-2. Petitioner has made obtaining his education and vocational training the top priorities. After earning his G.E.D., he went on to earn a Bachelor of Science degree in August 1999 from [REDACTED] at his own personal expense. Id. Petitioner then went on to complete several trade programs and learned an employable skill as a computer analyst and programmer. He first earned certificates as a basic computer operations instructor. He then completed a two year apprenticeship program as a computer operations instructor. After two and a half years, the New York State Department of Labor Issued Petitioner a certificate as a "computer program/analyst." 327v

7. Petitioner successfully completed numerous other rehabilitative programs offered by the Department of Correctional Services (hereafter "DOCS"). These include DOCS' Alcohol, Substance Abuse Training program (hereafter "A.S.A.T.") and served as a facilitator during 5 training cycles of 12 weeks each. He also completed two courses in Nonviolent Conflict Resolution offered by the Alternatives to Violence project. Id.

8. Throughout his imprisonment, Petitioner has been meaningfully employed by DOCS. He has worked as a teacher's aide, an industrial worker, a carpentry apprentice, a laundry laborer, a pre-release counselor, an administrative runner and group leader in the Administrative Bldg., a masonry apprentice, a horticulture student and porter. Petitioner has also completed DOCS' Inmate Program Associate program, a parental skill program, and earned a certificate in AIDS education. Id. He has also received outside clearance and worked in the community outside the prison at the time he appeared before the Respondent's Parole Board. In sum, Petitioner is the archtypical model prisoner. In fact, during his entire nine years of imprisonment, he has not had a single disciplinary infraction.

9. Petitioner has satisfied all rehabilitative goals set for him by DOCS. Pet.'s Ex. 4. No further rehabilitative programs are available to him.

10. In sum, Petitioner has an exemplary institutional record. Respondent agrees. During the hearing at issue, the Commissioner acknowledged Petitioner's achievements. Pet.'s Ex. 2.

11. Upon information and belief, the crime victim's representatives did not make any statements to Respondent opposing Petitioner's parole.

12. Upon information and belief, the District Attorney who prosecuted Petitioner did not oppose Petitioner's release.

13. The Sentencing Court did place a letter of recommendation in Petitioner's favor on record before the Respondent.

14. The decision denying parole release to Petitioner focused solely on the "serious nature" of the offense and unreasonably ignored all the evidence in Petitioner's favor militating toward release.

15. Petitioner submitted an administrative appeal from this decision on July 27, 2001. Pet.'s Ex. 5.

16. On January 4, 2002, the Respondent notified Petitioner that the Appeals Unit had been unable to render its findings in regard to the administrative appeal that was perfected. Pet.'s Ex. 6. Petitioner's administrative remedies are deemed exhausted. Tit. 9, N.Y. Codes, R. & Regs. § 8006.2(c)(1995).

17. New York law promulgates three criteria to be used by Respondent in assessing whether a particular parole applicant is fit and suitable for parole. N.Y. Exec. Law § 259-i(2)(c)(A)(McKinney Supp. 2001). New York

law also promulgates seven factors for Respondent to use in assessing whether a particular parole applicant meets the criteria for parole. N.Y. Exec. Law § 259-i(1)(a), (2)(c)(A)(i-v). These criteria apply to all parole applicants, regardless of crime of conviction. EL 1

P 18. Under the relevant statutory criteria, id., Petitioner is fit and suitable for parole in all material and statutorily relevant respects.

D/R 19. In fact, persons convicted of taking a human life are the most qualified for parole because they have the lowest recidivism rate. Pet.'s Ex. 7 at 15-6. Moreover, of those who recidivate (defined as committing a new offense or a technical rule violation), most do so by violating a supervision rule instead of committing a new offense. Pet.'s Ex. 7 at 20-1. Further, of those few returned for new offenses, homicide/manslaughter offenders are the least likely to be returned for the kind of offense for which they were originally committed. Instead, they are "most likely to be rearrested for a property crime." Id. Lastly, persons with college education are even less likely to recidivate. Id. at 13. Petitioner, as noted, has a college education.

17/R 20. Although they are the most qualified for parole, persons convicted of taking a human life are the second-to-last least likely to be released (only sex offenders have a lower release rate). Upon information and belief, the Respondent currently grants less than five percent of the parole applications it receives from homicide/manslaughter offenders. This contrasts sharply with the release rate of homicide/manslaughter offenders before Governor Pataki took office. Before Governor Pataki took office, Respondent granted twenty-eight percent of the parole applications it received from homicide/manslaughter offenders. In other words, before Governor Pataki took office, more than one-in-five homicide offenders were granted parole. After he took office, a scant one-in-twenty are granted parole.

py/R 21. On the other hand, Respondent continues to release thousands of offenders convicted of burglary, robbery, assault, weapons offenses, theft and drug-related offenses at substantially higher rates. For example, upon information and belief, Respondent grants parole applications of robbery offenders at the rate of forty-two percent (42%); of assault offenders at twenty-three percent (23%); of weapons offenders at forty percent (40%); of burglary offenders at sixty-four (64%). Pet.'s Ex. 8; Pet.'s Ex. 9. These offenders, however, have much higher recidivism rates than homicide

) offenders. While persons convicted of murder recidivate at a rate of nine-point-seven percent (9.7%), those convicted of robbery first degree recidivate at a rate of fifty-four-point-five percent (54.5%); of robbery second degree at a rate of fifty-eight-point-nine percent (58.9%); of assault in the first degree thirty-six-point-two percent (36.2%); of assault in the second degree at thirty-one-point-eight (31.8%); of weapons offenses at forty-two-point-six (42.6%); of burglary first at fifty-six percent (56%); and of burglary second at fifty-five-point-four percent (55.4%). Id.

D 22. In short, Respondent denies release en masse to those most qualified for it, i.e., persons convicted of homicide/manslaughter offenses, while regularly granting release to those least qualified for it. This is patently irrational.

D 23. Petitioner is similarly situated to both the so-called "non-violent offenders" Respondent routinely releases on parole and the fortunate few homicide offenders who have been granted parole by Respondent: all are judged by Respondent by the exact same criteria and factors.

O 24. No rational basis exists for treating Petitioner differently from those offenders that Respondent has released on parole. As to the so-called "non-violent offenders" Respondent routinely releases, it is patently irrational to release the persons least fit for parole (those with the highest recidivism rates), while denying parole to those who are most fit (those with the lowest recidivism rates). As to the homicide offenders Respondent has released, there is no rational basis for treating Petitioner differently from them as there is no material difference between them.

P 25. Respondent's irrational decision-making can only be explained as a result of Governor Pataki's overt and covert campaign to eliminate parole for all so-called "violent felony offenders," especially those convicted for taking human life. That campaign has perverted the parole decision-making process because, as noted, it has resulted in the regular grant of parole to those least qualified for it and the wholesale denial of parole to those most qualified for it.

V.S. 4- 26. Governor Pataki was elected in 1994 after promising, among other things, to bring back the death penalty and to eliminate parole for persons convicted of offenses involving the unlawful use of force. In every State-of-the-State address Governor Pataki has given since he took office, he has called for the elimination of parole. 1995 N.Y. Laws at 2274 ("We must end

v)  
 parole for violent felons."); 1996 N.Y. Laws at 1835-36 ("[W]e will continue to strengthen our criminal justice laws. . . . Under our plan, criminals who commit one violent felony will not and cannot ever be released on parole."); 1997 N.Y. Laws at 1887 ("This year we must end parole for all violent felons."); 1998 N.Y. Laws at 1443 ("And, it's time to end parole for all violent felons."); 1999 N.Y. Laws at 1441 ("Now we must take the next and last step in reforming our system of parole. We must end it."); 2000 N.Y. Laws at A-10 ("Last year, I asked for your support in ending parole for all felons. . . . Today, I renew that call."). Upon information and belief, Respondent [REDACTED] and individual parole commissioners have attended each of Governor Pataki's State-of-the-State addresses. Upon information and belief, Governor Pataki directly communicated his policy to Respondent.

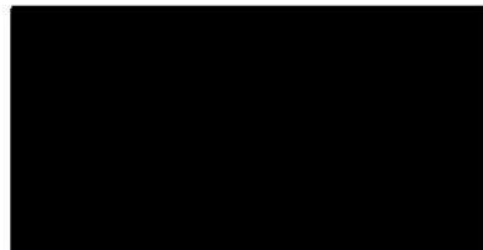
Vr<sup>\*1</sup> 27. The intrusion of the Pataki Policy, political pressure or public opinion into the parole release decision-making process is itself irrational. The proper parole release decision-making process does not include punitive factors. The proper function of a parole board does not include re-sentencing a parole applicant. The proper parole release decision-making process does not include the consideration of political pressure or public opinion. No such factors are relevant under New York law. The only proper decision-making process entails an evaluation as to whether a person is fit, under the controlling criteria and factors, for parole.

VERIFICATION

STATE OF [REDACTED] )  
COUNTY OF [REDACTED] S.S.:

[REDACTED] being duly sworn, deposes and says:

I am the Petitioner in this matter and am fully familiar with the facts, circumstances, papers and proceedings herein. The allegations made in this Petition are made upon my own knowledge and are true to the best of my knowledge. As to allegations made upon information and belief, I believe them to be true.



Sworn to before me this

7.3 day of April, 2002

*Leonard A. Williams*  
\* \* \* NOTARY PUBLIC \* \* \*

LEONARD A. WILLIAMS  
Notary Public, State of New York  
No. 43-4904323  
QuBilied in Richmond County  
CmynasiMI Empires jy3y25