February 2022

Art. 78 Response - FUSL000106 (2020-07-08)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS
----------X
In the Matter of the Application of
[redacted]

ANSWER AND RETRUN

Petitioner,

Index No. 51338-2020
Hon. Hal B. Greenwald,
J.S.C.

-against-

NYS DOCCS, ANTHONY J. ANNUCCI, ACTING COMMISSIONER, AND TINA M. STANFORD, CHAIRWOMAN, NYS BOARD OF PAROLE,

Respondent,
----------X

Respondent, by and through its attorney, LETITIA JAMES, Attorney General of the State of New York, Elizabeth A. Gavin, Assistant Attorney General, of counsel, submits the following answer and return upon the petition:

1. Respondent deny the allegations of the petition except to the extent they are confirmed by the attached records.

PRELIMINARY STATEMENT

2. Petitioner was sentenced to a term of 25 years to life upon his conviction of Murder in the second degree, Robbery in the first degree, and Criminal Possession of a Weapon in the second degree. Exhibit 2. The conviction stems from Petitioner and co-defendants causing the death of a New York City police officer during a shootout that ensued when police arrived at the bicycle shop that was being robbed by Petitioner and co-defendants. Exhibit 1.

3. Petitioner appeared for his initial Parole Board Release Interview (not a Hearing) on August 14, 2019. Exhibit 7. Discretionary release was denied, and Petitioner was ordered held for another 24 months. Exhibit 8. Petitioner perfected his administrative appeal on

December 19, 2019. Exhibit 9. The Appeals Unit issued its decision dismissing the appeal on May 6, 2020. Exhibits 10-11. This Article 78 proceeding followed.

4. As a preliminary matter, while not raised in the petition, it should be noted that the petitioner is not in any way prejudiced by the failure of the Appeals Unit to issue a Findings Statement within four months. Nor does the failure to act make the underlying administrative decision constitutionally defective nor invalidate the administrative decision. Rather, per 9 N.Y.C.R.R. §8006.4(c), the sole consequence is that the petitioner may deem his administrative remedy to be exhausted and may immediately seek judicial review of the underlying determination. Graham v New York State Division of Parole, 269 A.D.2d 628, 702 N.Y.S.2d 708 (3rd Dept 2000), leave to appeal denied 95 N.Y.2d 753, 711 N.Y.S.2d 155 (2000); People ex rel. Tyler v Travis, 269 A.D.2d 636, 702 N.Y.S.2d 705 (3rd Dept 2000); Lord v State of New York Executive Department Board /Division of Parole, 263 A.D.2d 945, 695 N.Y.S.2d 461 (4th Dept 1999), leave denied 94 N.Y.2d 753, 700 N.Y.S.2d 427 (1999); reargument denied 95 N.Y.2d 826, 712 N.Y.S.2d 450 (1999); D'Joy v New York State Division of Parole, 127 F.Supp2d 433, 442 (S.D.N.Y. 2001).

PETITIONER'S CLAIMS

5. In the instant litigation, Petitioner raises the following issues which were preserved by his administrative appeal: 1) the Board failed to give meaningful consideration to Petitioner's adolescence at the time of the instant offense; 2) the Board failed to explain its departure from the COMPAS instrument; 3) the Board improperly relied on community opposition that reflected only a general penal philosophy; 4) the Board failed to explain the reasons for denial in detail; 5) the Board impermissibly relied on the seriousness of the offense; 6) the Board failed to recognize mitigating factors surrounding Petitioner at the time of the

instant offense; and 7) the Board ignored other relevant parole factors such as release plans and lack of a prior criminal history.

6. Petitioner also raises one new issue: that the Board considered, and relied upon, erroneous information contained in the parole file consisting of a victim impact statement addressed to Petitioner's brother. Since this new argument was not raised by the petitioner in his administrative appeal before the Parole Board, it is deemed to be waived and may not be raised for the first time in an Article 78 proceeding. As such, it must be dismissed. Cruz v Travis, 273 A.D.2d 648, 711 N.Y.S.2d 360 (3rd Dept 2000); Moore v New York State Board of Parole, 233 A.D.2d 653, 649 N.Y.S.2d 830 (3rd Dept 1996); Matter of Samuels v Kelly, 143 A.D.2d 506, 533 N.Y.S.2d 46 (4th Dept 1989), leave to appeal denied 73 N.Y.2d 707, 539 N.Y.S.2d 300 (1989); Beyah v Leonardo, 182 A.D.2d 868, 581 N.Y.S.2d 897 (3rd Dept 1992); Hernandez v Alexander, 64 A.D.3d 819, 881 N.Y.S.2d 707 (3rd Dept. 2009); Santos v Evans, 81 A.D.3d 1059, 916 N.Y.S.2d 325 (3rd Dept. 2011); Tafari v Evans, 102 A.D.3d 1053, 958 N.Y.S.2d 802 (3rd Dept. 2013); Del Rosario v Stanford, 140 A.D.3d 1515, 34 N.Y.S.3d 696 (3d Dept. 2016); Peterson v Stanford, 151 A.D.3d 1960, 59 N.Y.S.3d 219 (4th Dept. 2017); Brunson v New York State Department of Corrections and Community Supervision, 153 A.D.3d 1077, 60 N.Y.S.3d 577 (3d Dept. 2017). Failure to raise the issue at the administrative level is not preserved for appellate review, regardless as to whether or not the Appeals Unit timely responded to the appeal. Nicoletta v New York State Division of Parole, 74 A.D.3d 1609, 904 N.Y.S.2d 788 (3rd Dept. 2010), lv.dism. 15 N.Y.3d 867, 910 N.Y.S.2d 33. A defendant raising a different angle of complaint about a parole matter than raised at the lower level is unpreserved for appeal. People v Escalera, 121 A.D.3d 1519, 993 N.Y.S.2d 605 (4th Dept. 2014). Nonetheless, I will respond to all arguments raised.

STANDARD OF REVIEW

7. Pursuant to the Executive Law, discretionary release to parole is not to be granted "merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law, **and** that his release is not incompatible with the welfare of society **and** will not so deprecate the seriousness of his crime as to undermine respect for the law." Executive Law § 259-i(2)(c)(A) (emphasis added); accord Matter of Hamilton v. New York State Div. of Parole, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014). Executive Law § 259-i(2)(c)(A) requires the Board to consider criteria which is relevant to the specific inmate, including, but not limited to, the inmate's institutional record and criminal behavior.

8. While consideration of these factors is mandatory, "the ultimate decision to parole a prisoner is discretionary." Matter of Silmon v. Travis, 95 N.Y.2d 470, 477, 718 N.Y.S.2d 704, 708 (2000). Thus, it is well settled that the weight to be accorded each of the requisite factors is within the Board's discretion. See, e.g., Matter of King v. Stanford, 137 A.D.3d 1396, 26 N.Y.S.3d 815 (3d Dept. 2016); Matter of Delacruz v. Annucci, 122 A.D.3d 1413, 997 N.Y.S.2d 872 (4th Dept. 2014); People ex rel. Herbert v. New York State Bd. of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881 (1st Dept. 1983). The Board need not explicitly refer to each and every one of them in its decision, nor give them equal weight. Matter of Campbell v. Stanford, 173 A.D.3d 1012, 1015, 105 N.Y.S.3d 461 (2d Dept. 2019); Matter of Marszalek v. Stanford, 152 A.D.3d 773, 59 N.Y.S.3d 432 (2d Dept. 2017). In the absence of a convincing demonstration that the Board did not consider the statutory factors, it must be presumed that the Board fulfilled its duty. Matter of McClain v. New York State Division of Parole, 204 A.D.2d 456, 611 N.Y.S.2d 629 (2d Dept. 1994).

9. On review, the Court's "role is not to assess whether the Board gave the proper weight to the relevant factors," Matter of Hamilton, 119 A.D.3d at 1271, 990 N.Y.S.2d at 717 (quotation omitted), or to "substitute its judgment for that of the Board," Matter of Garcia v. New York State Div. of Parole, 239 A.D.2d 235, 240, 657 N.Y.S.2d 415, 419 (1st Dept. 1997). Under Executive Law § 259-i(5), actions undertaken by the Board are deemed to be judicial functions and are not reviewable when made in accordance with law. Matter of Kelly v. Hagler, 94 A.D.3d 1301, 942 N.Y.S.2d 290 (3d Dept. 2012); Matter of Kirkpatrick v. Travis, 5 A.D.3d 385, 772 N.Y.S.2d 540 (2d Dept. 2004); Matter of Cruz v. Travis, 273 A.D.2d 648, 711 N.Y.S.2d 360 (3d Dept. 2000). When construing this language, the Court of Appeals held that "so long as the Board violates no positive statutory requirement, its discretion is absolute and beyond review in the courts." Matter of Briguglio v. N.Y. State Bd. of Parole, 24 N.Y.2d 21, 29, 298 N.Y.S.2d 704, 710 (1969) (quoting Matter of Hines v. State Bd. of Parole, 293 N.Y. 254, 257 (1944)). Thus, the petitioner has the heavy burden of showing the Board's determination is irrational "bordering on impropriety" before judicial intervention is warranted. Matter of Silmon, 95 N.Y.2d at 476, 718 N.Y.S.2d 704; Matter of Marszalek v. Stanford, 152 A.D.3d 773, 59 N.Y.S.3d 432 (2d Dept. 2017).

THE BOARD PROPERLY CONSIDERED PAROLE

10. The record as a whole, including the interview transcript, reflects that the Board considered the appropriate factors, including: the instant offenses of Murder in the second degree, Robbery in the first degree, and Criminal Possession of a Weapon in the second degree; Petitioner's lack of a criminal history; Petitioner's age at the time of the offense, the diminished culpability of youth associated with age, and Petitioner's growth and maturity since; Petitioner's institutional efforts including periods of drug use, violent conduct, and general disobedience but an improved disciplinary record since December 2015, completion of mandatory programs,

participation in additional volunteer programs and training courses, and certificates from AVP; and release plans to enroll in the Ready, Willing & Able program. The Board also had before it and considered, among other things, the case plan, the COMPAS instrument, the sentencing minutes, a letter from the District Attorney, statements in opposition to Petitioner's release, and Petitioner's parole packet featuring post-release plans and letters of support and assurance.

11. After considering all required factors, the Board acted within its discretion in determining release would not satisfy the standards provided for by Executive Law § 259-i(2)(c)(A). In reaching its conclusion, the Board permissibly relied on the serious instant offenses, letters in opposition to Petitioner's release from the community and the District Attorney, and the recommendations of the Court contained in the sentencing minutes. See Matter of Robinson v. New York State Bd. of Parole, 162 A.D.3d 1450, 81 N.Y.S.3d 235 (3d Dept. 2018); Matter of Jones v. New York State Dep't of Corr. & Cmty. Supervision, 151 A.D.3d 1622, 57 N.Y.S.3d 265 (4th Dept. 2017); Matter of King v. Stanford, 137 A.D.3d 1396, 26 N.Y.S.3d 815 (3d Dept. 2016); Matter of Kirkpatrick v. Travis, 5 A.D.3d 385, 772 N.Y.S.2d 540 (2d Dept. 2004); Matter of Walker v. Travis, 252 A.D.2d 360, 676 N.Y.S.2d 52 (1st Dept. 1998); Matter of Applegate v. New York State Bd. of Parole, 164 A.D.3d 996, 997, 82 N.Y.S.3d 240 (3d Dept. 2018); Matter of Porter v. Alexander, 63 A.D.3d 945, 881 N.Y.S.2d 157 (2d Dept. 2009); Matter of Applewhite v. New York State Bd. of Parole, 167 A.D.3d 1380, 91 N.Y.S.3d 308, 311 (3d Dept. 2018), appeal dismissed, 32 N.Y.3d 1219 (2019); Matter of Clark v. New York Bd. of Parole, 166 A.D.3d 531, 89 N.Y.S.3d 134 (1st Dept. 2018); Matter of Rodriguez v. New York State Bd. of Parole, 168 A.D.3d 1342, 92 N.Y.S.3d 482 (3d Dept. 2019); Matter of Copeland v. New York State Bd. of Parole, 154 A.D.3d 1157, 63 N.Y.S.3d 548 (3d Dept. 2017); Matter of Porter v. Alexander, 63 A.D.3d 945, 881 N.Y.S.2d 157 (2d Dept. 2009); Matter of Delman v. New York State Bd. of

Parole, 93 A.D.2d 888, 461 N.Y.S.2d 406, 407 (2d Dept. 1983).

THE BOARD GAVE MEANINGFUL CONSIDERATION TO PETITIONER'S ADOLESCENCE AT THE TIME OF THE INSTANT OFFENSE

12. Petitioner's contention that the Board failed to give meaningful consideration to his adolescence at the time of the instant offense is without merit. The decision explicitly acknowledges Petitioner's age at the time of the offense, and the interview transcript clearly demonstrates the Board took into consideration his youth, attendant circumstances, and subsequent growth as required. 9 N.Y.C.R.R. § 8002.2(c); Matter of Allen v. Stanford, 161 A.D.3d 1503, 78 N.Y.S.3d 445 (3d Dept.), lv. denied, 32 N.Y.3d 903 (2018); Matter of Hawkins v. New York State Dep't of Corr. & Cmty. Supervision, 140 A.D.3d 34, 30 N.Y.S.3d 397, 400 (3d Dept. 2016). For example, the Board discussed how Petitioner was naïve, impressionable, and looked up to his uncle and what his school and home life was like at the time. Exhibit 7, p. 7, 12. The Board also discussed how Petitioner felt lost and started acting out and how things changed for him over time while incarcerated. Exhibit 7, p. 19-20, 23. Also discussed were Petitioner's original poems reflecting a theme of how boys become men. Exhibit 7, p. 24. Petitioner points to select fragments of comments by the Commissioner that are removed from the context of this broader discussion of Petitioner's youth and immaturity at the time of the crime.

THE BOARD CONSIDERED THE COMPAS INSTRUMENT AND DID NOT DEPART FROM IT

13. There is no merit to Petitioner's contention that the Board failed to explain its departure from the COMPAS instrument. The Board considered the COMPAS instrument and did not depart from it. That is, the decision was not impacted by a departure from a scale. Notice of Adoption, NY Reg, Sept. 27, 2017 at 2. For example, the Board did not find a reasonable

probability that Petitioner will not live and remain at liberty without violating the law but rather concluded, *despite* low risk scores, release would be inappropriate under the other two statutory standards. This is entirely consistent with the Board's intention in enacting the amended regulation.

THE BOARD PERMISSABLY RELIED ON CUMMUNITY OPPOSITION

14. Petitioner's claim that the Board improperly relied on community opposition reflecting only a general penal philosophy is without merit. The Board may receive and consider written communications from individuals, other than those specifically identified in Executive Law § 259-i(2)(c)(A), opposing an inmate's release to parole supervision. Matter of Applewhite v. New York State Bd. of Parole, 167 A.D.3d 1380, 91 N.Y.S.3d 308, 311 (3d Dept. 2018) ("Contrary to petitioner's contention, we do not find that [the Board's] consideration of certain unspecified 'consistent community opposition' to his parole release was outside the scope of the relevant statutory factors that may be taken into account in rendering a parole release determination"), appeal dismissed, 32 N.Y.3d 1219 (2019); Matter of Clark v. New York Bd. of Parole, 166 A.D.3d 531, 89 N.Y.S.3d 134 (1st Dept. 2018) ("the Board permissibly considered letters in opposition to the parole application submitted by public officials and members of the community"); Matter of Grigger v. New York State Div. of Parole, 11 A.D.3d 850, 852–53, 783 N.Y.S.2d 689, 691 (3d Dept. 2004) (recognizing 259-i(2)(c)(A)(v)'s list is not the exclusive information the Board may consider and persons in addition to victims and their families may submit letters), lv. denied, 4 N.Y.3d 704, 792 N.Y.S.2d 1 (2005). Petitioner also claims the community opposition conveyed purely penal philosophy, equating any reliance on such opposition with adoption of the views motivating it. However, a decision will not be reversed simply because material expressing personal penal philosophy or erroneous information was included in submissions which

otherwise were properly considered. See Matter of Duffy v. New York State Dep't of Corr. & Cmty. Supervision, 132 A.D.3d 1207, 1209, 19 N.Y.S.3d 610 (3d Dept. 2015) ("The Board's decision will be upheld if there is nothing indicating it was influenced by, placed weight upon, or relied upon any improper matter, in the victim's family statement or otherwise"); Matter of Bailey v. New York State Div. of Parole, Index No. 973-16, *Decision & Judgment* dated Aug. 17, 2016 (Sup. Ct. Albany Co.) (Hartman A.J.S.C.) (even assuming PBA letters contained inaccuracies or were inflammatory, Board would be permitted to consider them for what they were worth and will be presumed not to have relied on inappropriate matters therein unless decision indicates otherwise).

THE BOARD EXPLAINED THE REASON FOR DENIAL IN DETAIL

15. The Board's decision satisfied the criteria set out in Executive Law § 259-i(2)(a) and 9 N.Y.C.R.R. § 8002.3(d), as it was sufficiently detailed to inform Petitioner of the reasons for the denial of parole. Matter of Applegate v. New York State Bd. of Parole, 164 A.D.3d 996, 997, 82 N.Y.S.3d 240 (3d Dept. 2018); Matter of Kozlowski v. New York State Bd. of Parole, 108 A.D.3d 435, 968 N.Y.S.2d 87 (1st Dept. 2013); Matter of Little v. Travis, 15 A.D.3d 698, 788 N.Y.S.2d 628 (3d Dept. 2005); Matter of Davis v. Travis, 292 A.D.2d 742, 739 N.Y.S.2d 300 (3d Dept. 2002); People ex rel. Herbert v. New York State Bd. of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881 (1st Dept. 1983). The Board addressed many of the factors and principles considered in individualized terms and explained those that ultimately weighed most heavily in its deliberations.

THE BOARD PERMISSABLY RELIED ON THE SERIOUSNESS OF THE OFFENSE

16. Petitioner's positive postconviction activities did not preclude the Board from placing greater emphasis on the serious nature of his criminal behavior. See Matter of Hamilton v. New York State Div. of Parole, 119 A.D.3d 1268, 1273-74, 990 N.Y.S.2d 714, 719 (3d Dept. 2014); Matter of Torres v. New York State Div. of Parole, 300 A.D.2d 128, 128-29, 750 N.Y.S.2d 759, 760 (1st Dept. 2002); Matter of Walker v. Travis, 252 A.D.2d 360, 676 N.Y.S.2d 52 (1st Dept. 1998); Matter of Garcia v. New York State Div. of Parole, 239 A.D.2d 235, 239-40, 657 N.Y.S.2d 415, 418 (1st Dept. 1997); People ex rel. Thomas v. Superintendent of Arthur Kill Corr. Facility, 124 A.D.2d 848, 508 N.Y.S.2d 564 (2d Dept. 1986), lv. denied, 69 N.Y.2d 611, 517 N.Y.S.2d 1025 (1987).

THE PRESENCE OF MITIGATING FACTORS DID NOT PRECLUDE THE BOARD FROM EMPHASIZING THE SERIOUS NATURE OF THE CRIMINAL BEHAVIOUR

17. The presence of mitigating factors does not automatically entitle Petitioner to release or preclude the Board from emphasizing the serious nature of his criminal behavior. See People ex rel. Herbert v. New York State Bd. of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881 (1st Dept. 1983). While Petitioner claims the Board should have further explored his home life and how his older uncle was able to convince him to participate in the instant offense, a review of the transcript reveals the Board covered both of those topics. Exhibit 7, p. 12. The nature and extent of a parole interview are solely within the discretion of the Board. Matter of Briguglio v. New York State Bd. of Parole, 24 N.Y.2d 21, 28-29, 298 N.Y.S.2d 704, 710 (1969).

THE BOARD CONSIDERED RELEVANT PAROLE FACTORS SUCH AS RELEASE PLANS AND LACK OF PRIOR CRIMINAL HISTORY

18. Inasmuch as Petitioner contends the Board failed to consider requisite factors, there is a presumption of honesty and integrity that attaches to Judges and administrative fact-finders.

See People ex rel. Carlo v. Bednosky, 294 A.D.2d 382, 383, 741 N.Y.S.2d 703 (2d Dept. 2002); People ex. rel. Johnson v. New York State Bd. of Parole, 180 A.D.2d 914, 916, 580 N.Y.S.2d 957, 959 (3d Dept. 1992). The Board is presumed to follow its statutory commands and internal policies in fulfilling its obligations. See Garner v. Jones, 529 U.S. 244, 256, 120 S. Ct. 1362, 1371 (2000). A review of the record reveals the Board considered the appropriate factors including Petitioner's post-release plans and lack of a prior criminal history.

19. Petitioner also objects to the Board's characterization of his disciplinary record because his only violent conduct ticket was over 20 years ago. The Board may place greater weight on an inmate's disciplinary record even though infractions were incurred earlier in the inmate's incarceration. Matter of Karlin v. Cully, 104 A.D.3d 1285, 1286, 960 N.Y.S.2d 827, 828 (4th Dept. 2013); Matter of Warmus v. New York State Dep't of Corrs. & Cmty. Supervision, Index No. 7516-17, *Decision, Order & Judgment* dated Sept. 10, 2018 (Sup. Ct. Albany Co.) (O'Connor, A.S.C.J.).

THE BOARD PROPERLY CONSIDERED THE VICTIM IMPACT STATEMENT

20. There is no merit to Petitioner's claim that the Board considered, and relied upon, erroneous information contained in the parole file consisting of a victim impact statement addressing Petitioner's brother. As previously mentioned, because this new argument was not raised by the petitioner in his administrative appeal before the Parole Board it is deemed to be waived and may not be raised for the first time in an Article 78 proceeding. As such, it must be dismissed.

21. We nonetheless note that, while the victim impact statement was given in anticipation of Petitioner's brother's appearance before the Board in 2013, it was properly included in Petitioner's file and permissibly considered. The statement included relevant information regarding the victim and the instant offense, and it was clear from Petitioner's

interview transcript that the Board was able to distinguish the two brothers and the respective roles they played during the crime they committed together.

22. There is no indication that the Board relied upon the statements specifically addressing Petitioner's brother in its decision. Erroneous information, if not used in the decision as a basis for parole denial, will not lead to a reversal. Matter of Khatib v. New York State Bd. of Parole, 118 A.D.3d 1207, 988 N.Y.S.2d 286 (3d Dept. 2014); Matter of Restivo v. New York State Bd. of Parole, 70 A.D.3d 1096, 895 N.Y.S.2d 555 (3d Dept. 2010); Matter of Grune v. Bd. of Parole, 41 A.D.3d 1014, 838 N.Y.S.2d 694 (3d Dept. 2007); see also Matter of Gordon v. Stanford, 148 A.D.3d 1502, 50 N.Y.S.3d 627 (3d Dept. 2017); Matter of Perea v. Stanford, 149 A.D.3d 1392, 53 N.Y.S.3d 231 (3d Dept. 2017).

23. It should also be noted that the victim impact statement that Petitioner points to was inadvertently produced to counsel. Such statements are confidential and should not be disclosed unless expressly authorized by the victim or by court order. 9 NYCRR § 8002.4(e).

CONCLUSION

24. Petitioner has failed to demonstrate the Board's decision was not made in accordance with the pertinent requirements or was so irrational as to border on impropriety. Parole release is a discretionary function of the Board, and the petitioner has not demonstrated any abuse by the Board has occurred.

25. In the event of an unfavorable court ruling on the merits, the proper remedy is to remand the matter for a *de novo* interview. Matter of Quartararo v. New York State Div. of Parole, 224 A.D.2d 266, 637 N.Y.S.2d 721 (1st Dept.), lv. denied 88 N.Y.2d 805, 646 N.Y.S.2d 984 (1996); accord Matter of Ifill v. Evans, 87 A.D.3d 776, 928 N.Y.S.2d 480 (3d Dept. 2011); Matter of Hartwell v. Div. of Parole, 57 A.D.3d 1139, 868 N.Y.S.2d 828, 829 (3d Dept. 2008); Matter

of Siao-Pao v. Travis, 5 A.D.3d 150, 772 N.Y.S.2d 511, 512 (1st Dept. 2004), lv. denied 3 N.Y.3d 603, 782 N.Y.S.2d 697 (2004). In this event, a minimum of sixty days would is respectfully requested.

WHEREFORE, the respondent respectfully requests that the petition be denied, and the proceedings dismissed.

RECORD BEFORE THE RESPONDENT

A copy of the administrative agency's records in this matter is submitted herewith:

EXHIBIT 1) Pre-Sentence Investigation Report. **The Report is exempt from disclosure pursuant to CPL § 390.50 and submitted for ***in camera*** review only. An inmate is not entitled to the pre-sentence investigation report as a part of the Parole Board Release Interview process. Allen v. People, 243 A.D.2d 1039, 663 N.Y.S.2d 455 (3d Dept. 1997). Only the sentencing Court which originally issued and/or adjudicated the report is authorized under CPL § 390.50 to release this highly confidential material. Blanche v. People, 193 A.D.2d 991, 598 N.Y.S.2d 102, 103 (3d Dept. 1993).

EXHIBIT 2) Sentence and Commitment Order

EXHIBIT 3) Sentencing Minutes

EXHIBIT 4) Parole Board Report. **Only Part I may be disclosed to Petitioner. Pursuant to New York State Public Officers Law § 87(g), Part II (marked "confidential" at the top) is exempt from disclosure as intra-agency materials containing evaluative opinion information and is submitted for ***in camera*** review only. Zhang v. Travis, 100 A.D.3d 829, 782 N.Y.S.2d 156 (3d Dept. 2004).

EXHIBIT 5) COMPAS Instrument (**redacted portion to petitioner)**

EXHIBIT 6) Case Plan

EXHIBIT 7) Board Interview Transcript

EXHIBIT 8) Parole Board Release Decision Notice

EXHIBIT 9) Submission on Administrative Appeal

EXHIBIT 10) Statement of Appeals Unit Findings and Recommendation

EXHIBIT 11) Administrative Appeal Decision Notice

Dated: Poughkeepsie, New York
July 8, 2020

LETITIA JAMES
Attorney General of the
State of New York
Attorney for Respondent

BY: _____
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Elizabeth A. Gavin affirms under the penalty of perjury pursuant to Section 2106 of the Civil Practice Law and Rules, that she is an Assistant Attorney General in the office of Letitia James, Attorney General of the State of New York, the attorney for the respondent.

Your affiant has read the foregoing Answer and Return knows the contents thereof; that the same is true to her own knowledge, except as to matters stated therein to be alleged on information and belief and to the extent that affiant relies upon records of the Department of Corrections and Community Supervision and respondent and, as to those matters, he believes them to be true.

DATED: Poughkeepsie, New York
July 8, 2020

Elizabeth A. Gavin
Assistant Attorney General