

Fordham Law School

## FLASH: The Fordham Law Archive of Scholarship and History

---

NYS Supreme Court Decisions in Art. 78  
Proceedings

Court Litigation Documents

---

November 2019

### Decision in Art. 78 proceedings - Walls, James (2016-10-17)

Follow this and additional works at: <https://ir.lawnet.fordham.edu/pdd>

---

#### Recommended Citation

"Decision in Art. 78 proceedings - Walls, James (2016-10-17)" (2019). Parole Information Project  
<https://ir.lawnet.fordham.edu/pdd/10>

This Parole Document is brought to you for free and open access by the Court Litigation Documents at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in NYS Supreme Court Decisions in Art. 78 Proceedings by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

SUPREME COURT-STATE OF NEW YORK  
IAS PART-ORANGE COUNTY

Present: HON. CATHERINE M. BARTLETT, A.J.S.C.

RECEIVED  
NYS OFFICE OF THE CLERK  
GENERAL

OCT 14 2016

CLERK OF COURT  
STATE OF NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

-----X  
In the Matter of the Application of  
JAMES WALLS,

Petitioner,

-against-

NEW YORK STATE BOARD OF PAROLE,

Respondent.

To commence the 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.

Index No. 3711/2016

Motion Date: October 3, 2016

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

The following papers numbered 1 to 3 were read on this CPLR Article 78 proceeding for a judgment vacating Respondent's November 20, 2015 decision denying parole for Petitioner, and ordering a *de novo* parole hearing:

- Order to Show Cause - Petition / Exhibits ..... 1-2
- Answer and Return / Exhibits ..... 3

Upon the foregoing papers the petition is disposed of as follows:

Petitioner seeks a judgment pursuant to CPLR §7804 vacating the November 20, 2015 decision of the Respondent New York State Board of Parole (hereinafter "Parole Board") which denied Petitioner release on parole, and an order directing a *de novo* parole hearing. Petitioner contends *inter alia* that (1) the Parole Board made no finding of reasonable probability that he

*L de novo*  
*61*

would not live and remain at liberty without violating the law and did not properly consider his low COMPASS risk assessment, (2) the Board's decision was predetermined, (3) the Board relied exclusively on the serious nature of Petitioner's offense and his mens rea at the time of the offense, and (4) the Board failed to offer guidance as to what Petitioner needs to do to improve his chances of release on parole.

The Executive Law provides that the Board's determination to deny parole "shall be deemed a judicial function and shall not be reviewable if done in accordance with law." Executive Law §259-i(5). As the Third Department observed in *Matter of Hamilton v. NYS Division of Parole*, 119 AD3d 1268 (3d Dept. 2014), "[t]he Court of Appeals has long interpreted that language – in both current and prior statutes – to mean that 'so long as the Board violates no positive statutory requirement, its discretion is absolute and beyond review in the courts' (*Matter of Hines v. State Bd. of Parole*, 293 N.Y. 254, 257... [1944]; see *Matter of Silmon v. Travis*, 95 N.Y.2d 470, 476-478 ... [2000])." *Hamilton, supra*, 119 AD3d at 1269. Thus, barring a violation of statutory requirements, "[a] parole determination may be set aside only when the determination to deny the petitioner release on parole evinced 'irrationality bordering on impropriety.'" *Matter of Goldberg v. NYS Board of Parole*, 103 AD3d 634, 634-635 (2d Dept. 2013). See, *Matter of Russo v. NYS Board of Parole*, 50 NY2d 69, 77 (1980).

Executive Law §259-i(2)(c)(A) provides that "[d]iscretionary release on parole shall not 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.”

The statute further directs that the Parole Board, in making its parole release decision, consider (as applicable here):

- “(I) the institutional record including program goals and accomplishments, academic achievements, vocational education, training or work assignments, therapy and interaction with staff and inmates;
- (iii) release plans including community resources, employment, education and training and support services available to the inmate;
- (vii) the seriousness of the offense with due consideration to the type of sentence, length of sentence, and recommendations of the sentencing court, the district attorney, the attorney for the inmate, the presentence probation report as well as consideration of any mitigating and aggravating factors, and activities following arrest prior to confinement; and
- (viii) prior criminal record, including the nature and pattern of offenses, adjustment to any previous probation or parole supervision and institutional confinement.”

However, the Parole Board “need not expressly discuss each of these guidelines in its determination.” *Matter of King v. NYS Division of Parole*, 83 NY2d 788, 791 (1994). *See, Matter of Goldberg, supra*, 103 AD3d at 634; *Matter of Stanley v. NYS Division of Parole*, 92 AD3d 948 (2d Dept. 2012); *Matter of Huntley v. Evans*, 77 AD3d 945, 947 (2d Dept. 2010); *Matter of Hamilton, supra*, 119 AD3d at 1270. Moreover, it is “not required to give equal weight to each statutory factor.” *Matter of Goldberg, supra; Matter of Stanley, supra; Matter of Huntley, supra. See, Matter of Hamilton, supra*, 119 AD3d at 1271.

In this case, the Parole Board ruled:

This panel notes your growth and productive use of time, however, discretionary release shall not be granted merely as a reward for good conduct or efficient performance of

duties while confined. After carefully reviewing your record and conducting a personal interview, parole is denied. You stand convicted of the serious offense of multiple counts of murder 2<sup>nd</sup>, robbery 1<sup>st</sup>, and burglary 2<sup>nd</sup> and grand larceny-auto 3<sup>rd</sup> in connection with your actions wherein two women were raped and shot with four children in the home. You described your role as a lookout during a robbery which went terribly wrong and you fled the scene and was arrested out of state. This offense represents a continuation of your criminal history which includes a prior burglary. The panel makes note of your program goals and accomplishments including your completion of vocational, ASAT and art, risk and needs assessment and your improved disciplinary record which has been clean since 2007. Also, your release plans, letters of assurance, shallow expression of remorse, and sentencing minutes have been reviewed and considered. During the interview, you minimized our responsibility for your actions and the harm that you caused these families which shall ever be impacted by your actions that day. After deliberating, reviewing your overall record and statutory factors, discretionary release is not presently warranted as your release would trivialize the tragic loss of life and harm and furthermore would be incompatible with the welfare of society and would so deprecate the serious nature of your crimes as to undermine respect for the law.

Petitioner has not shown that the Parole Board failed to consider the statutory factors; or that the record fails to support the Board's conclusion that Petitioner's release is not presently warranted as his release would trivialize the tragic loss of life, would be incompatible with the welfare of society, and would so deprecate the seriousness of Petitioner's offenses as to undermine respect for the law; or that the Board's determination was unlawfully set forth in conclusory terms.

The record explicitly shows that the Commissioners reviewed and considered information bearing on all of the pertinent statutory factors, including the circumstances of Petitioner's crime, the sentencing minutes, his criminal history, his disciplinary record in prison, his rehabilitation efforts in prison, his letters of support, his post-release plans for living and employment, and the COMPAS Re-Entry Risk Assessment and Case Plan. The Board rendered a parole release decision in accord with the criteria set forth in Executive Law §259-i(2)(c)(A), and its conclusions are supported by the record.

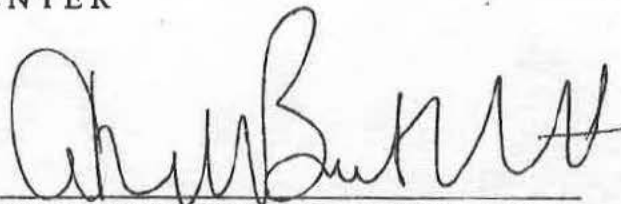
Petitioner has not demonstrated that the Parole Board's decision evinces irrationality bordering on impropriety. Contrary to Petitioner's argument, the Executive Law does not require a finding of reasonable probability that Petitioner would not live and remain at liberty without violating the law as a predicate for the denial of parole, and the fact that the Board made no such finding reflects its careful consideration of Petitioner's low COMPASS risk assessment. Petitioner has failed to establish that the Board's decision was predetermined and not the result of its application of the criteria set forth in Executive Law §259-i(2)(c)(A) to the facts of record. Moreover, as the record plainly shows, the Board did not rely exclusively on the seriousness of Petitioner's offense or his mens rea at the time of the crime in denying parole. The Board's determination was explicitly founded *inter alia* on Petitioner's entire criminal history, his minimization of his responsibility for the tragic results of this home invasion - rape - murder (characterizing himself as a mere lookout "in the wrong place, at the wrong time, with the wrong people"), and the shallowness of his remorse for his victims. Finally, the Board was not required to offer Petitioner explicit guidance as to what he should do to improve his chances of release on parole.

In view of the foregoing, the Petition is without merit and must be denied. It is therefore ORDERED, ADJUDGED AND DECREED, that the Petition is dismissed.

The foregoing constitutes the decision, order and judgment of the court.

Dated: October 17, 2016  
Goshen, New York

ENTER



HON. CATHERINE M. BARTLETT, A.J.S.C.

HON. C. M. BARTLETT  
JUDGE NY STATE COURT OF CLAIMS  
ACTING SUPREME COURT JUSTICE