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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
In the Matter of the Application of
JAMES WARD - 91B0433,

DECISION AND ORDER

INDEX NO. 7670/2017

Petitioner,

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

-against-

NEW YORK STATE BOARD OF PAROLE,

Respondent.

-----X
P R E S E N T : HON. ELAINE SLOBOD, JSC



The following sets of papers numbered 1 to 4 were considered on the petitioner's application for a judgment (1) annulling the determination of the Parole Board which denied him parole and (2) granting him a *de novo* hearing:

Order to show cause; Ward affidavit; petition and exhibits	1-3
Answer and return and exhibits 1-11 (exhibits 2, 3, and 10 submitted separately for <i>in camera</i> review)	4

Upon review of the foregoing, it is hereby ORDERED that the petitioner's application is denied and the petition dismissed.

In 1991, the defendant was convicted of Murder in the Second Degree and Attempted Rape in the First Degree in the choking death of a woman who resisted the defendant's attempt to rape her. The petitioner came before the Parole Board for the second time in March, 2017. Among the factors cited by the Parole Board

in denying release to the petitioner were the range of emotions that he displayed before the Board (laughing at one point) and his apparent lack of insight into the trigger for his crime.

The record indicates that the Parole Board considered all relevant factors, including the petitioner's case plan. See *Dolan v New York State Board of Parole*, 122 AD3d 1058 (3d Dept 2014), lv app den 24 NY3d 915 (2015). The Board's decision is not to be disturbed unless it borders on "impropriety." See *Russo v New York State Board of Parole*, 50 NY2d 69, 77 (1980).

It is clear in this case that the Board gave great weight to the seriousness of the offense, but it is also clear that that was not the only factor. The Board's decision was not irrational. See *Jackson v Evans*, 118 AD3d 701 (2d Dept 2014).

This decision constitutes the order of the Court.

E N T E R

Dated: February 5, 2018
Goshen, New York



HON. ELAINE SLOBOD, JSC

JAMES WARD - 91B0433
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