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### Art. 78 Petitioner's Reply - FUSL000147 (2022-01-11)

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STATE OF NEW YORK  
COUNTY OF DUTCHESS

SUPREME COURT

**In the Matter of**

██████████,

Petitioner.

-against-

**REPLY AFFIRMATION**

**CPLR ARTICLE 78**

**Tina M. Stanford, Chair of the  
New York State Parole Board,**

██████████

Respondent.

Kathy Manley, duly authorized to practice law in the State of New York, hereby affirms the following under the penalties of perjury:

1. Respondent states, on Page 7-8 of the Answer:

“Here, the record reflects that the Board considered the appropriate factors and acted well within its discretion in determining that negative factors, including petitioner’s apparent lack of insight into his own conduct, empathy, and seeming inability to identify, resolve or avoid the cause for his criminal behavior outweigh the more positive steps he has made...”

2. As discussed in the Petition, there was no “lack of insight or empathy” and no “inability to identify, resolve or avoid the cause for his criminal behavior” [which is really the same thing as lack of insight into the conduct.] In his personal statement, ██████████ stated:

“On that night, after hours of partying, I left the ██████████ bar with ██████████ and returned to my house, where we continued to drink and use cocaine... I ... saw ██████████ handling my gun. I immediately became enraged, and in the heat of the moment, I snatched the gun away from her and fired the gun repeatedly.

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...[A]fter some volunteer programs in prison, I had an epiphany. I realized that I had primary issues from my past that angered me in the present...

I [saw] ██████████ holding my gun and I felt weak, violated, and enraged. And those emotions caused me to react horribly...” (Exhibit “C” to the Petition, at 1-2)

3. The horrible reaction that Mr. [REDACTED] had in shooting Ms. [REDACTED] was and remains inexplicable. As pointed out in the letter from [REDACTED], there can't really be any explanation of that which makes sense because, as Mr. [REDACTED] said in the interview, it was a moment of "pure insanity." However, the inexplicable nature of the shooting in no way points to a lack of insight on the part of [REDACTED]. He realized and expressed that his actions were caused by a lethal combination of a substance abuse addiction and building unresolved anger which exploded. He has also worked successfully over many years to deal with those underlying issues, and, as shown by the COMPAS scores, is now very *unlikely* to violate the law again.

4. On Page 10 of the Answer, Respondent stated (emphasis supplied):

"The Board explained that it [departed from the low COMPAS scores] in light of petitioner's lack of insight into his criminal behavior and his continued criminal thinking *as shown by his disciplinary history* of persistent gambling and contraband possession showing a continuing disregard of rules and a substitution of new manipulative and addictive behaviors, once the opportunity for drug and alcohol use were institutionally denied him."

5. First, [REDACTED] disciplinary history has been *completely clean for over ten years* so any reliance on those old violations to deny release is simply not supported by the record. Further, it is submitted that had he wished to engage in substance abuse while in prison, that option would have been readily available to him, as shown by the countless disciplinary violations *other people* have had for substance abuse in prison. He chose to remain sober, even while committing other violations, such as gambling. In short, contrary to Respondent's claim, his disciplinary history, especially over the past decade, *shows that he is strongly committed to sobriety and knows how to follow rules, and that he is likely to be law-abiding upon release.*

6. Finally, Respondent stated, on Page 11 of the Answer:



“The Board may consider the inmate’s limited expression of remorse, which can be shown by failing to acknowledge his drug-impaired state was a contributing factor.”

7. First, there was no “limited expression of remorse.” As shown in the Petition, Mr. ██████ expressed strong, honest and compelling remorse many times, both in his personal statement and during the interview. It was not clear how he could have shown more remorse than he did. In the interview, he stated:

“...I have a mom, I have a sister, so I can’t imagine how I would feel with that loss. ... The thing that haunts me – one of the things I think about mostly is the courtroom... I could see my mom... and I could see Ms. ██████ and I always tell people... She was the same as my mom... I robbed the ██████ family, I robbed ██████ obviously, I took her parent’s child, there’s nothing that can replace that.” (Exhibit “A” to the Petition, at 15-16)

8. Secondly, as noted above with the quote from his personal statement, ██████ did, both in the statement and during the interview, acknowledge that “his drug-impaired state was a contributing factor.” He talked about how he had been partying for hours and then came home and continued to drink and use cocaine leading up to the shooting. He also discussed how he had become addicted to both alcohol and cocaine, and how this led to his life spiraling out of control. Thus, both the claim that the remorse was “limited,” and the claim about not acknowledging how substance abuse was a contributing factor were contradicted by the record.

### CONCLUSION

9. Based on the foregoing, the Court should grant a *de novo* hearing, and make it clear that: 1) the Board may not base denial on findings which are clearly not supported by the record (the Board must state, at least briefly, how the record supports its findings); 2) the Board may not deny release simply by repeating the words of the statute without real explanation; and 3) the Board may not deny release based only on the seriousness of the offense.

10. Finally, Petitioner respectfully requests that if the Court grants a *de novo* hearing, that the interview occur within 30 days of the decision.

AFFIRMED: January 11, 2022.

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