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STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In the Matter of the Application of
EDDIE WILLIAMS, #85-A-1408,

DECISION AND JUDGMENT

Petitioner,

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

Index No. 446-15

-against-

NEW YORK STATE DEPARTMENT OF
CORRECTIONS AND COMMUNITY SUPERVISION,
Respondent.

(Supreme Court, Albany County)

APPEARANCES:

Eddie Williams, 85-A-1408
Petitioner, Pro-Se
Otisville Correctional Facility
P.O. Box 8
57 Sanitorium Road
Otisville, New York 10963-0008

Eric T. Schneiderman
Attorney General of the State of New York
Attorney for Respondent
Melissa Latino, Esq., of counsel
The Capitol
Albany, New York 12224-0341

Connolly, J.:

In this CPLR article 78 proceeding, petitioner seeks review of the March 26, 2014 determination by the Board of Parole denying his application for discretionary parole release. Respondent opposes the petition.

Petitioner appealed the Board's determination, however a determination on such appeal was not rendered within four months of his submission. As a result of the appeals unit's failure to decide the administrative appeal within four months, petitioner is entitled to treat his administrative remedy as exhausted and seek judicial review of the underlying determination (*see Matter of Lord v. State*

Executive Department Board/Division of Parole, 263 AD2d 945 [4th Dept 1999]; *People ex rel. Tyler v. Travis*, 269 AD2d 636 [3d Dept 2000]; 9 NYCRR § 8006.4[c]).

At the March 26, 2014 parole hearing, the Board determined:

DENIED - Hold for 24 months, Next appearance Date: 03/2016

> After carefully reviewing your record, a personal interview & considering statutory requirements, after due deliberation, this panel concludes that discretionary release is denied. You stand convicted of the serious offenses of Murder 2nd and Burglary 1st involving your actions causing the death of a wheelchair bound woman. Her cause of death was strangulation and she had been beaten. This brutal crime of a disabled individual deprived a woman, loved by her family, of her life. The panel makes note of your program goals and accomplishments, risks and needs assessment, your clean discipline record and community opposition to your release. Also, your record including your release plans, your entire packet entitled "Redemption Record", and sentencing minutes have been reviewed and considered. Discretionary release shall not be granted merely because of good conduct or program completion while confined, but after consideration of the specific factors enumerated in the law. After reviewing your overall record and statutory factors, discretionary release is not presently warranted as there is a reasonable probability you would not live at liberty without again violating the law and furthermore, your release would be incompatible with the welfare of society and would so deprecate the serious nature of the crime as to undermine respect for the law.

The Board's actions are judicial in nature and may not be reviewed if done in accordance with the law. Decisions regarding release on parole are discretionary and will not be disturbed if they satisfy the statutory requirements (Executive Law § 259-i; *Matter of Walker v. New York State Div. of Parole*, 203 AD2d 757 [3d Dept 1994]) and there is no showing of "irrationality bordering on impropriety" (*Matter of Russo v. New York State Bd. of Parole*, 50 NY2d 69, 77 [1980]; *Matter of Silmon v. Travis*, 95 NY2d 470, 476 [2000]; *Matter of Saunders v. Travis*, 238 AD2d 688 [3d Dept 1997]; *Matter of Felder v. Travis*, 278 AD2d 570 [3d Dept 2000]).

Petitioner advances the following arguments in this proceeding, incorporating the arguments made in his appeal: 1) that the Board of Parole ("Board") inappropriately based its decision solely on the nature of the instant offense; 2) that the Board applied Executive Law 259-c(4) to petitioner's

needs in the community and not as a measure of rehabilitation; and 3) the use of community opposition after five prior parole denials is arbitrary and capricious.

The Parole Board is 'not required to articulate every factor considered or give equal weight to each [statutory] factor" (*Matter of Rodriguez v Board of Parole*, 100 AD3d 1179, 1180 [3d Dept 2012]; *see Matter of Vaughn v Evans,* 98 AD3d 1158, 1160 [3d Dept 2012]; *Matter of Maricevic v Evans*, 86 AD3d 879, 880 [3d Dept 2011]). As outlined above and as evident in the record before it, the Board did consider the relevant factors. For instance, in addition to the serious nature of the underlying crime, the Board considered petitioner's disciplinary record and programming, institutional achievements, sentencing minutes, proposed release plans and COMPAS Re-entry Risk Assessment (*see Matter of Maricevic*, 86 AD3d at 880; *Matter of Motti v Alexander*, 54 AD3d 1114, 1115 [3d Dept 2008]). The seriousness of the offense is still a valid factor for consideration, and the board properly inquired into that (*see*, Executive Law § 259-i(1)(a) and (2)(c); *Matter of Rios v. New York State Div. of Parole*, 24 AD3d 1147 [3d Dept 2005]). If the Board afforded greater weight to petitioner's criminal behavior, that does not render the denial of parole irrational or improper. (*see Hamilton v New York State Div. Of Parole*, 2014 N.Y. App. Div. LEXIS 5417 [3d Dept July 24, 2014]; *Matter of Anthony v. New York State Div. of Parole*, 17 AD3d 301 [1 st Dept 2005], lv denied 5 NY3d 708 [2005]). In addition, the Board's decision was sufficiently detailed to apprise petitioner of the reasons for his denial of parole release (*Matter of Davis v. Travis*, 292 AD2d 742 [3rd Dept 2002]; *Matter of Whitehead v. Russi*, 201 AD2d 825 [3rd Dept 1994]). The Board is not required to enumerate or give equal weight to each factor it considered (*see*, *Matter of MacKenzie v Evans*, 95 AD3d 1613 [3d Dept 2012]; *Matter of Serrano v Alexander*, 70 AD3d 1099 [3d Dept 2010]) nor must the Board recite the precise statutory language of the first sentence of Executive Law 259-i(2)(c)(A)

(*see Matter of Silvero v Dennison*, 28 AD3d 859 [3d Dept 2006]). The Board is vested with discretion to determine whether release was appropriate, notwithstanding the minimum period of incarceration set by the sentencing Court. (*Cody v. Dennison*, 33 AD3d 1141 [3d Dept 2006], lv. denied, 8 NY3d 802 [2007]). Further, as stated above, the record indicates that the Board used the "COMPAS Risk and Needs Assessment" instrument (*see Matter of Lashway v Evans*, 110 AD2d 1417, 1418 [3d Dept 2013]), "which is a document created and intended to bring the Board into compliance with recent amendments to Executive Law § 259-c (4)" (*Matter of Linares v Evans*,112 AD3d 1056 [3d Dept 2013]). Petitioner argues that during the hearing one of the Commissioners noted that the COMPAS was used to "see what your needs might be in the community", and, accordingly, "applied the COMPAS exclusively as a tool to see what petitioner's needs might be in the community" (Petition, ¶27). Such contention is without merit. Initially, petitioner has failed to note that the transcript demonstrates that Commissioner Alexander stated in such quoted sentence that the COMPAS is used "to see what your needs *and risks* might be in the community." Further, the Commissioner discussed the risk findings of the COMPAS. Based upon the record, petitioner has failed to demonstrate that the Board inappropriately utilized the COMPAS nor that it "exclusively used it as a tool to see that petitioner's needs might be in the community".

Finally, petitioner contends that the use of community opposition is improper, however, pursuant to Executive Law §259-i, the Board must consider whether the release of a petitioner is compatible with the safety and welfare of the community and the Board may consider communications from individuals for or against an individuals release to parole (*see* 9 NYCRR §8000.5(c)(2). In this case, however, respondent has failed to demonstrate to the Court what community opposition, if any, was relied upon by the Board in making its determination. The

Court is unable to determine from the record what community opposition was considered. As such "community opposition" was specifically mentioned by the Board and the record fails to contain any evidence that such opposition exists, and as it is not for this Court to determine the extent of the weight the Board gave to such unidentified and unproduced opposition, but rather for the Parole Board to make such determination, the matter must be remitted for a *de novo* parole hearing.

The Court observes that certain records of a confidential nature relating to the petitioner were submitted to the Court as a part of the record. The Court, by separate order, is sealing all records submitted for *in camera* review.

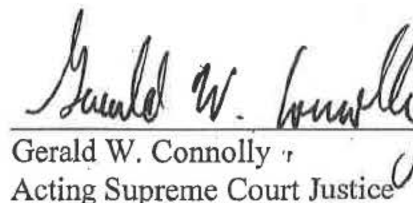
Therefore, it is hereby

ORDERED AND ADJUDGED that the petition is granted solely to the extent that the Board's March 26, 2014 determination denying petitioner parole release is annulled and the matter is remitted to the Board of Parole for re-hearing.

This Memorandum constitutes the Decision and Judgment of the Court. This original Decision and Judgment is being returned to the attorney for respondent. A copy of the Decision and Judgment, along with the underlying papers, are being forwarded to the County Clerk for filing. **The signing of this Decision and Order shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the provision of that rule regarding filing, entry, or notice of entry.**

SO ORDERED.
ENTER.

Dated: May 8, 2015
Albany, New York



Gerald W. Connolly
Acting Supreme Court Justice

Papers Considered:

1. Order to Show Cause dated February 9, 2015; Petition dated January 21, 2015 with accompanying exhibits;
2. Answer dated April 20, 2015 with accompanying exhibits A-I; Affirmation of T. Tracy dated April 17, 2015 with accompanying exhibits A-F; Memorandum of Law in Support of Respondent's Answer;
3. Reply dated April 23, 2015.