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Decision in Art. 78 proceedings - Williams, Eddie (2017-04-21)

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DMG

SUPREME COURT - STATE OF NEW YORK
DUTCHESS COUNTY

Present:

Hon. MARIA G. ROSA

Justice.

EDDIE WILLIAMS,

Petitioner,

-against-

TINA M. STANFORD, CHAIR OF THE NEW
YORK STATE PAROLE BOARD,

Respondent.

DECISION, ORDER &
JUDGMENT

Index No: 640/2017

The following papers were read on this Article 78 petition:

NOTICE OF PETITION
PETITION
EXHIBITS A-K

LETTER OF ASSISTANT ATTORNEY GENERAL
JEANIE STRICKLAND SMITH
DATED APRIL 14, 2017

This is an Article 78 proceeding in which petitioner challenges a decision of the Board of Parole denying him parole release. His notice of petition seeks an order vacating the parole board's decision and granting him immediate release or, in the alternative, an immediate *de novo* hearing before a new parole board. In opposition to the petition, the Attorney General's Office has sent the court a letter consenting to the issuance of an order awarding petitioner a *de novo* parole interview.

Based on the foregoing, it is

ORDERED that the August 30, 2016 parole board determination denying petitioner parole release and the affirmance of that determination on administrative appeal are hereby vacated. It is further

ORDERED that the Board of Parole shall conduct a *de novo* hearing within 60 days of the date of this decision and order. None of the commissioners who participated in the August 30, 2016 hearing shall participate in the *de novo* hearing. To the extent petitioner seeks an order from this court granting him immediate release, such relief would not be proper based upon the vacatur of a parole board determination. The proper relief to be afforded under such circumstances is to remand the matter back to the parole board for a *de novo* determination.

This constitutes the decision, order and judgment of the court.

Dated: April 21, 2017
Poughkeepsie, New York

ENTER:



MARIA G. ROSA, J.S.C.

Kathy Manley, Esq.
74 Chapel Street, 2nd Floor
Albany, NY 12207

State of New York
Office of the Attorney General
One Civic Center Plaza, Suite 401
Poughkeepsie, NY 12601-3157

Pursuant to CPLR §5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

April 14, 2017

POUGHKEEPSIE REGIONAL OFFICE
DIVISION OF REGIONAL AFFAIRS

Honorable Maria G. Rosa
Dutchess County Supreme Court
10 Market Street
Poughkeepsie, New York 12601

RE: EDDIE WILLIAMS v. TINA STANFORD, Chair, Board of Parole
Index No. 640/2017.
Return Date: April 24, 2017, consent to de novo

Dear Judge Rosa:

The respondent consents to the issuance of an order awarding petitioner a *de novo* interview to determine his eligibility for parole release for the following reason. Petitioner had a Parole Board Release Interview on March 22, 2016 and release was denied. On appeal, the Appeals Unit voted 2-1 to vacate and order a *de novo*. The dissenting Commissioner who voted to affirm was Commissioner Elovich who wrote a reason for voting to affirm. Commissioner Elovich then participated in the *de novo* interview, which is the subject of current litigation that was held on August 30, 2016.

Commissioner Elovich should not have participated in the *de novo* interview, as she had been on the Appeals Unit panel and voted against the *de novo* in a dissenting opinion. For this reason, the Board of Parole will consent to a second *de novo* interview.

Respondent respectfully request that an order be issued by the Court reflecting respondent's consent to a *de novo* and dismissing the petition as moot. The Board of Parole will conduct a *de novo* hearing within 60 days of the Court's Order. By agreeing to the *de novo*, the lawsuit should be dismissed as moot. Remand for a *de novo* means all possible relief has been granted. Matter of Evans v. Dennison, 58 A.D.3d 998, 869 N.Y.S.2d 922 (3d Dept. 2009); Matter of Hartwell v. Div. of Parole, 57 A.D.3d 1139, 868 N.Y.S.2d 828 (3d Dept. 2008).

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April 14, 2017

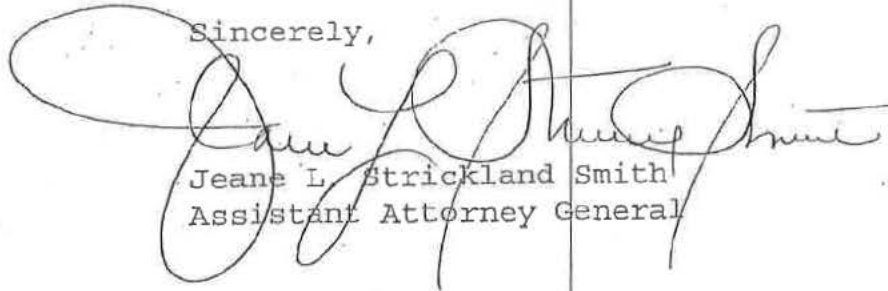
Williams v. Stanford, Chair, Bd. of Parole

Index 640-2017

Accordingly, there is no further relief to which the petitioner would be entitled.

Thank you for the Court's consideration.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Jeane L. Strickland Smith', is written over the typed name and title.

Jeane L. Strickland Smith
Assistant Attorney General

✓ cc: Kathy Manley, Esq.
Attorney for Petitioner
74 Chapel Street, 2nd Floor
Albany, New York 12207
(518) 434-1493