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Art. 78 Petitioners' Replies

Article 78 Litigation Documents

Art. 78 Petitioner's Reply - FUSL000134 (2022-06-23)

STATE OF NEW YORK
COUNTY OF DUTCHESS

SUPREME COURT

In the Matter of

███████████████

                         Petitioner.

       -against-

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

                        Respondent.

REPLY AFFIRMATION

CPLR ARTICLE 78

Index No:

       Kathy Manley, duly authorized to practice law in the State of New York, hereby affirms

the following under the penalties of perjury:

       1.   First, Respondent notes that ████████ said that his intent in bringing the

potentially lethal devices onto the subway was to make a "big noise" and that it was "crazy."

This is true, but, as Petitioner also stated, he soon realized how completely irrational, reckless

and dangerous this was. (Exhibit "A" at 9-10)

       2.   Significantly, when a person is mentally ill and delusional[1], as Mr. ████ was at

the time, there is often no way they will be able to later successfully explain their delusional

intent in any way that makes sense. That is the case here, but *this reality in no way signals a*

continuing risk, a lack of acceptance of responsibility or a lack of insight.

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[1] As stated in the Petition, if there was any reason to believe Petitioner had these types of delusions before or after
the week in question, more digging at the underlying cause might be in order. However, given that this was clearly
an aberration from an otherwise completely law-abiding and productive life, his insight into what led to the offense
was sufficient, and it is hard to know what more he could have said in that regard.

3.   Mr. ████'s exemplary institutional record and completely low COMPAS scores show he poses no risk. For example, after many years of working with Petitioner, who is a wonderful teacher's aide, the GED teacher, ████████ wrote a letter in support of him, stating:

> "As the teacher for the High School Equivalency class at Sing Sing Correctional Facility, I have known inmate ████████ as the Teacher's aide in my classroom for approximately six years….
> Mr. ████ has *always shown integrity and respect* in all his dealings with all staff and prisoners. He has been very helpful in teaching, especially science and mathematics.
> I wish Mr. ████ the best in his future. *He has much to contribute.*" (Exhibit "C" at 20, emphasis supplied)

4.   Moreover, Mr ████'s statements show acceptance of responsibility, remorse, and as much insight into what led to the offense as can be expected under the circumstances.

5.   ████ ████ wrote many letters of apology to his victims (through the apology bank.) He included one in his parole packet – it was written in 2015, years before he was eligible for parole, and it was very heartfelt, stating:

> "Dear Ms. ████████:
> I am writing you this letter because I affected you awfully with the fire I caused on the subway in December 1994. I know that any apology will not be enough to make this better, but I want you to understand how very sorry I am that I hurt you. … I apologize sincerely to your family also.
> I have admitted my guilt for my awful actions. I know they must have had a profound effect on your life. I've spent a long time in prison for my crime, but that sentence cannot begin to undo your pain. …I want you to fully understand that I know what I did was very, very wrong. … I have no greater regrets than for the hurt I caused you and your family…" (Exhibit "C" at 13)

6.   Moreover, during the Interview, Mr. ████ stated:

> "…[T]hese were very good people who didn't deserve anything like this…it was just a terrible thing to do to anyone… It was a horrible, horrible thing I did to them." (Exhibit "A" at 27-28)

7.   On Page 6-7 of the Answer, Respondent stated:

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"Petitioner's attempt to constrain discretionary parole release decisions to a mandate to implement a statistical analysis is as clear a distortion of the parole process, as clear a distortion on this record as the petitioner's claims of rehabilitation, acceptance of responsibility, remorse, empathy for his victims and acquired insight into his own motivations and actions."

8. There were no distortions. As shown above and in the Petition, ▇▇▇▇▇▇ has a very impressive institutional record showing a great deal of rehabilitation from the person he was for a brief period of time when he caused so much harm and created even more risk. And his statements quoted above show he clearly accepted responsibility and expressed remorse and as much insight as he could be expected to provide under the circumstances.

9. Moreover, Petitioner in *no way* attempted "to constrain discretionary parole release decisions to a mandate to implement a statistical analysis." In fact, the Petition cited to Section 8002.2(a) of the New York Codes, Rules and Regulations, regulations which were not dealt with in the Answer. As stated in the Petition, Section 8002.2(a) provides that if a board chooses to depart from low risk COMPAS scores, it must specify which scale of the assessment it is departing from *and provide individualized reasons for such departure.*

10. The Petition argued that Respondent failed to properly explain the COMPAS departure herein. The reason given was based *only* on the circumstances of the offenses of conviction – the Decision stated:

> This panel departs from your low risk score of felony violence due to the instant offense, in which though your criminal behavior you showed great disregard for human life. … You engaged in criminal conduct which impacted an entire community.…" (Exhibit "A" at 30-31)

11. As noted in the Petition, in *Voii v. Stanford*, Index No. 2020-50485 (Dutchess Co. 2020), the court noted that reliance on the circumstances of the offense to explain a COMPAS

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departure does *not* suffice, stating:

"…The Board asserts that it is departing from COMPAS because of the 'tragic reckless nature of the crimes themselves.' *However, the COMPAS Risk Assessment contains twelve categories, none of which involve the nature of the underlying crimes.* Thus the alleged 'individualized' reason provided by the Board for the departure is unrelated to any scale contained in the COMPAS Assessment." *Voii*, supra, at 7, emphasis supplied.

12.   As argued in the instant Petition, the denial of release herein was improper

because it was based almost completely on the circumstances of the offense, because the

COMPAS departure was not adequately explained, because the claims regarding acceptance of

responsibility, remorse and insight were not supported by the record, and because it relied on

erroneous information.

<div align="center">CONCLUSION</div>

13.   Based on the foregoing, the Court should grant a *de novo* hearing.

AFFIRMED: June 23, 2022.

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