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Via Overnight Mail

July 25, 2022

Appeals Unit
New York State Board of Parole
Harriman State Campus Building #2
1220 Washington Avenue
Albany, NY 12226

Re: [REDACTED] [REDACTED] DIN [REDACTED], Administrative Appeal # [REDACTED]
Perfection of Appeal of Denial of Parole

Dear Appeals Unit,

Mr. [REDACTED] [REDACTED] (DIN [REDACTED]) was convicted of murder in the 2nd degree on February 15, 2005 by guilty plea and was sentenced to 18 years to life at 19 years old. Mr. [REDACTED] has served more than 18 years of his sentence. Mr. [REDACTED] was eligible for parole on May 11, 2022 and his parole interview was held on January 26, 2022 before Commissioners Coppola, Berliner, and Mitchell. On January 26, 2022, the Commissioners denied Mr. [REDACTED] his parole release. This parole denial was not consistent with the standards of Executive Law 259-i(2)I(A) and should be reversed.

Under Executive Law 259, the Parole Board must determine whether there is a “reasonable probability” that the “incarcerated individual ... will live and remain at liberty without violating the law, and that his or her release is not incompatible with the welfare of society and will not so deprecate the seriousness of his or her crime as to undermine respect for law.” In making this determination, the Parole Board must consider the incarcerated individuals COMPAS scores as well as “(i) the institutional record including program goals and accomplishments, academic achievements, vocational education, training or work assignments, therapy and interactions with staff and incarcerated individuals ... and (iii) release plans including community resources, employment, education and training and support services available to the incarcerated individual.”

Evidence presented at the parole hearing included low COMPAS scores in arrest and absconding, family support and substance abuse, and Mr. [REDACTED] has a construction job with his cousin waiting for him upon release. Further, the record showed substantial academic achievements, as well as sustained engagement in therapeutic programming on spiritual and emotional development. The Commissioners disregarded Mr. [REDACTED] low COMPAS scores

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and appear not to have reviewed certain evidence presented in the parole file supporting Mr. [REDACTED] release. Mr. [REDACTED] deserves his release on parole.

The Commissioners first concluded that:

“During the interview you refused to accept responsibility for any of your actions. While serving this term you demonstrated a complete lack of insight despite the panel attempting to engage you in a meaningful way about your behavior.”

(Parole Board Interview Transcript (“PBIT) p. 48). This statement is not corroborated by the evidence presented at the parole interview.

First, Mr. [REDACTED] stated that he “felt remorse” for his crime and he pleaded guilty to take responsibility for what happened:

“This is from me. I felt remorse from day one. Why? Because I knew I did something and I made a mistake ... I wasn’t functioning right. I felt totally different after this incident. You know what I mean, I felt like a different person. That’s number one ... I was remorseful from day one.”

(PBIT p. 13). Mr. [REDACTED] explained that he did not intend to kill the victim. Mr. [REDACTED] had a gun in his pocket, but the victim grabbed him, and they began tussling. The gun went off in Mr. [REDACTED] pocket “through the coat” hitting the victim. (PBIT pp. 6-7). Mr. [REDACTED] wrote a detailed letter explaining that he had not intended to kill the victim, and this was included in the police report. (PBIT p. 4). Commissioner Berliner acknowledged that he had the letter, but he said that he could not read it because Mr. [REDACTED] had “unique handwriting.” (PBIT pp. 4-5). Commissioner Berliner did ask Mr. [REDACTED] “While you shot him, you didn’t intend to kill him” (PBIT p. 7), and Mr. [REDACTED] answered “[Not] at all.” (PBIT p. 7). The Commissioner noted that the police report appeared to verify what Mr. [REDACTED] stated about how the shooting occurred. (PBIT p. 12).

Commissioner Berliner stated that the Commissioners would consider whether there were aggravating or mitigating factors with respect to the crime (PBIT p. 11). The circumstances of Mr. [REDACTED] crime – that he never intended to kill the victim and that he felt immediate remorse – should have been considered a mitigating factor, but it was not. It was irrational for the Board to acknowledge a mitigating factor and then disregard this factor in its decision.

Commissioner Berliner also stated that they would “consider what was said [by the judge] at sentencing as we formulate a decision, especially any comments relative to parole consideration.” (PBIT p. 2). The judge who sentenced Mr. [REDACTED] was the Honorable Judge [REDACTED]. (PBIT p. 2). When asked by Commissioner Berliner if Mr. [REDACTED] remembered anything that was stated at the sentencing, Mr. [REDACTED] stated that the Honorable Judge Weinberg “said that I will be home again.” (PBIT p. 2). Nevertheless, the Commissioner responded,

“Well, he was predicting what the Parole Board would do, which I don’t think he should have went that far, the judge, but that’s a good point.” (PBIT p. 2). As Commissioner Berliner himself acknowledged, this statement by the Honorable Judge ██████ that the circumstances of the crime warranted Mr. ██████ coming “home again” should have been considered a mitigating factor, but without any explanation, it was not.

Contrary to the Commissioners’ assertion that Mr. ██████ failed to demonstrated “insight” into his “behavior” (PBIT p. 48), Mr. ██████ explained how his childhood traumas led to his entry into crime. In response to Commissioner Mitchell’s question about why Mr. ██████ went “into the street” and became involved in gangs, Mr. ██████ explained that when he was 14, his father put the “first piece” of crack in his hands because his father was on drugs. (PBIT p. 29). Mr. ██████ said that he felt that he needed to make money to pay the rent because his father was “smoking it all up.” (PBIT p. 29). He said: “So that’s when I went out there, I didn’t know what I was doing. I had dudes that I looked up to and these dudes happened to be in that gang.” (PBIT p. 29). Mr. ██████ went on to explain that when he was in “residential” and “OCFS,” he felt safe. Specifically, Mr. ██████ stated that “... I kind of liked it, you know what I mean, I could do things and, you have, it was kind of fun ... I liked it better than being on the streets ... Not to say that later I wanted to come to prison ... but it was embedded in me that maybe this is where my life was headed.” (PBIT p. 30). Mr. ██████ also stated, “When you come up in the system – I used to like being juvenile facilities more than I did the streets because it was like I got rec time, play time, I got individuals I can associate with.” (PBIT p. 8). Commissioner Mitchell stated that, previously, he “was missing that piece” of Mr. ██████ history, but he then “g[ot] it.” (PBIT p. 29). Thus, contrary to the Commissioners’ assertions, Mr. ██████ did offer his insight into the reasons for his entry to crime and this testimony should have been considered as mitigating evidence, but, again, without any explanation, was not.

Once Mr. ██████ was sentenced, he worked to completely change his life. He obtained his paralegal certificate (PBIT p. 8) and also completed the Aggression Replacement Training (ART) – twice – and “passed with flying colors.” (PBIT p. 21). Although Mr. ██████ has never engaged in substance abuse (PBIT p. 39), he completed the Alcohol and Substance Abuse Training program, and he also took meditation and mindfulness classes at the School for Evangelism and Discipleship while he was in solitary confinement. (PBIT p. 22) Mr. ██████ has taken so many classes that he is close to achieving certification as a minister. (PBIT p. 23). He has also taken 40 college credits and is working towards an Associate of Arts degree. (PBIT pp. 22 – 24).

Although Mr. ██████ has engaged in sustained and substantial academics and self-improvement programming, he also had a number of disciplinary tickets. (PBIT pp. 47 - 48). Mr. ██████ explained this to the Commissioners by stating that a number of the tickets were due to his being targeted by officers and other inmates because of his prior involvement with the Bloods gang:

“I caught a charge in Elmira dealing with the Bloods ... It was something that happened with my bunk. He ended up getting stabbed. They found the gun [a little gun knife] in my vicinity. ... he thought I was the one that stabbed him. ...

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It was an organized hit and he is known as a Blood gang member. I ended up taking it to trial and I won. ... Most of these tickets are the same thing.”

(PBIT pp. 14 -15). Importantly, Mr. [REDACTED] had not in fact stabbed the victim and was vindicated at trial. Later, Mr. [REDACTED] was assaulted in Elmira. (PBIT p. 15).

To support that many of his disciplinary tickets were not his fault, Mr. [REDACTED] noted that he did not have any disciplinary charges after he was moved from Southport to Upstate. “Did you see the disciplinary? It’s totally different. You have less contact with officers ... My disciplinary record [there] is totally different.” (PBIT pp. 21). Most of Mr. [REDACTED] tickets occurred years ago, when he was imprisoned at Southport, Elmira, and Attica. Since Mr. [REDACTED] was moved to Upstate in 2015/2016, he has had very few tickets and has instead engaged in considerable efforts at rehabilitation.

In addition to his considerable academic achievements and sustained and substantial engagement in productive programming, Mr. [REDACTED] also has very low COMPAS score for “arrest and absconding”; a low COMPAS score “family support” and a low “substance abuse” COMPAS score. (PBIT p. 48). The Commissioners apparently could not find the letters that Mr. [REDACTED] parents had sent confirming all his family support and the job that awaits him (PBIT p. 27-28; 38). While the Commissioners did not read these letters, they apparently believed Mr. [REDACTED] that the letters exist (PBIT p. 45 - Commissioner Berliner: “I don’t see it there, but I have no doubt about it.”), Commissioner Berliner noted: “You have the “lowest score” on “family support ... [so] they know that you have family on the outside supporting you”) (PBIT p. 40), but, once again, without explanation, they did not take this evidence into consideration either.

Notwithstanding all the evidence showing that the statutory factors support Mr. [REDACTED] release, the Commissioners stated that “none” of these factors “outweighs the gravity of your actions and the senseless loss of life you caused.” (PBIT p. 48). The Commissioners stated: “More compelling, however, are your serious 10 of murder second degree, which involved you causing the death of a male victim by shooting him during an altercation. The 10 represents a continuation and escalation of criminal conduct that remains a concern to this panel. (PBIT p. 47) As previously noted, however, and as the police report made clear, the shooting was unintentional, and Mr. [REDACTED] immediately expressed remorse and pled guilty. Further, this crime was Mr. [REDACTED] first state sentence (PBIT p. 9, 40, 48). And again, at sentencing, the Honorable Judge [REDACTED] had told Mr. [REDACTED] that he would one day go home. (PBIT p. 2). The Commissioners “depart[ed]” from Mr. [REDACTED] COMPAS scores (PBIT p. 48) and unjustifiably disregarded all the evidence supporting Mr. [REDACTED] parole release.

Mr. [REDACTED] was a neglected child who, at 14, turned to crime to pay the rent because his father was on drugs. His crime was completely unintentional, he expressed remorse immediately, and he pled guilty. Mr. [REDACTED] has done a great deal during his imprisonment to improve his mind and his maturity, and he has family support and a job waiting for him upon release. As Mr. [REDACTED] stated:

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“I know I can do something good, man, productive ...” (PBIT p. 32). “I am a leader in mind and spirit. I can change people’s minds. I can change the youth’s minds ... I can go into ... different reentry programs and I can tell them about my situation and I pretty much can get to them”. (PBIT p. 45). I changed and I matured. I am doing things [like] a lot of people [who] aren’t in prison and it has been difficult, man. It has been real difficult and I still figured out a way to rise above all of that because there were a lot of things that were dragging me down and I still was rising up above it.

(PBIT p. 44).

DOCCS also failed to provide Mr. [REDACTED] and undersigned counsel with documents it was required to provide. DOCCS failed to provide Mr. [REDACTED] with a copy of his COMPAS Risk Assessment in advance of the interview, as it is required to do pursuant to Directive 8500 (“It will be copied and provided to the inmate prior to the Parole Board appearance.”). Also, DOCCS failed to provide undersigned counsel with a complete copy of the parole file as was requested by counsel by letter on May 16, 2022. Counsel was not provided the letters of support submitted, nor the COMPAS Risk Assessment, nor anything else besides the parole interview transcript. Both the failure of DOCCS to provide Mr. [REDACTED] with a copy of his COMPAS in advance of the parole interview and to provide counsel a copy of Mr. [REDACTED] complete parole file warrant a de novo review.

Further, there is no evidence that the Board contacted the sentencing judge or trial counsel for a statement as it is required to do. As such, a de novo is warranted.

Based on all the evidence presented at the interview, Mr. [REDACTED] should have been granted parole. The Commissioners’ decision was not based on the evidence presented at the hearing and is arbitrary, capricious, irrational, and improper

We respectfully request that the Commissioners’ decision of January 26, 2022 be reversed, and that Mr. [REDACTED] be released on parole.

Respectfully submitted,



Dominique Bravo, Esq.