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STATE OF NEW YORK
COUNTY OF DUTCHESS

SUPREME COURT

In the Matter of [REDACTED],
Petitioner.

-against-

PETITION

CPLR ARTICLE 78

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

**Index No:
RJI No:**

Respondent.

The Petition of [REDACTED] respectfully shows and alleges:

PRELIMINARY STATEMENT

1. The Parole Board Decision denying parole to [REDACTED] was illegally based entirely on the circumstances of the offense, did not provide detailed reasons, and deviated from the low COMPAS findings without proper explanation. The Decision noted many positive facts regarding Petitioner’s great success while in prison; lack of any other convictions; and plethora of support from DOCCS personnel and community and family members, and then inexplicably denied release based only on the nature of the offense.

STATEMENT OF FACTS

2. [REDACTED] was convicted of Murder in the second degree for stabbing his girlfriend to death in 2002, and he was sentenced to fifteen years to life. (Minutes of parole hearing, attached as Exhibit “A” at 2) The instant offense was Mr. [REDACTED]’s *only conviction*. (Exhibit “A” at 9-10) The judge noted at the time that this was one of a very few occasions when he had gone below 25 years to life in a murder case after trial. (See Sentencing Minutes, attached as Exhibit “B,” at 15-16.)

Sentencing

3. Petitioner has *always* taken responsibility for the offense – he only went to trial because his attorney thought he had a strong defense of Extreme Emotional Disturbance. (Exhibit “A” at 9; Exhibit “B” at 2.) The judge, as factfinder, convicted him of murder, yet realized that “something” was wrong with Petitioner at the time of the murder, and so he had a doctor examine him prior to sentencing. (Exhibit “B” at 2, 6) That doctor, who had no contact with the defense, found that Petitioner lacked the requisite intent to kill, that he needed mental health treatment, and that t “*a prolonged or indefinite period of incarceration*” was not necessary. (Exhibit “B” at 3-4, 6-7). When he sentenced Petitioner, the judge said:

“I am not going to change my verdict... but I will use this report.

And I must tell you that as defense counsel has made out, maybe if he had this doctor, *maybe things would have been different*. ...[I]n the very last sentence of the very last paragraph ...he says: I believe a prolonged or indefinite period of incarceration is not needed here.

Now sometimes I think it’s the reason they make these benches higher than everybody else out there, you see an awful lot. I knew there was something wrong with him...

That’s one of the reasons I ordered what we call a 390 hearing. I can see something is out there, but I can’t put a label on it and I let a doctor do it.

And quite possibly if he would have been defendant’s doctor and not the other person, maybe my verdict would have been different. ...

But if you read the report of Dr. [REDACTED]... it is his professional opinion that a prolonged or indefinite period of incarceration is not needed, and he wants Mr. [REDACTED] to go through psychiatric help during his incarceration.

It is for that reason that I am sentencing him to the 15 years to life.

I might say that this is the fourth – *fourth time in my entire history on the bench that after trial I have not given out 25 years to life*. ...There were three other occasions in 18 years...” (Exhibit “B” at 6-7, 14-16, emphasis supplied.)

Institutional Record

3. As noted in the above Decision, Petitioner [REDACTED] has an exemplary institutional record, no disciplinary violations since 2011, and, as discussed below, a huge amount of accomplishments, including become a leader and role model to other inmates.

Personal Growth

4. Petitioner has successfully completed a plethora of programs which have helped him confront the demons of his past, and taught him how to communicate effectively, and deal with stressors nonviolently and constructively. Those programs include the Alternatives to Violence Project (AVP), Aggression Replacement Therapy (ART), as well as a host of programs run by Network Support Services, the Osborne Association, Crimion, and the Otisville Lifers and Long Termers Organization, as well as classes dealing with Sexual Harassment and Stress Management. (See Summary of Activities and individual Certificates - Exhibit "D" at 31-33, 36, 39, 40-42, 45, 64-72; and 2019 letter and Certificate attached as Exhibit "E" at 4-5)

5. He successfully completed the ART Program in 2005, and completed not only basic and advanced AVP training, but also took part in an AVP Support Group, and became an AVP facilitator. (Exhibit "D" at 69-72) The AVP Support Group Certificate stated:

"The [12 week] Support Group provided a forum that allowed more personal discussion on topics such as manhood, family, relationships, prison dilemmas, reconciliation, to name a few.

Mr. [REDACTED] has shown great effort in continuing to explore alternatives to violence. We commend him on his participation." (Exhibit "D" at 71)

6. Petitioner completed all of the Osborne Association's programs, including one on Alternatives to Domestic Violence. (Exhibit "D" at 16, 68) Osborne's Family Services Specialist, [REDACTED], wrote a letter in support of him, stating:

“Mr. ██████████ has completed the entire Osborne program of courses... which consists of Breaking Barriers – a course focusing on developing and applying personal responsibility, Healthy Relationships – a set of classes designed to foster higher awareness and communication among couples, and Healthy Marriages – a full day workshop attended by couples as a means to strengthen their knowledge of each other and to practice conflict resolution techniques. *I would count Mr. ██████████ as one of the most accomplished participants in terms of his understanding of the material and in his applying it to his everyday life.*

In my association with Mr. ██████████, I continually witness an abiding respectful attitude towards his peers and a propensity to include them in constructive projects. I can see that *his peers hold him in high regard* and I would add that his demeanor always appears buoyant yet even...” (Exhibit “D” at 16, emphasis supplied)

7. Mr. ██████████ also completed many classes and programs offered by Network Therapeutic Community over the years, including Anger Management, Free Life Dynamics, Life Without Violence, Self Improvement, etc. (Exhibit “D” at 33, 36, 41, 67) He became a group leader in Network (Exhibit “D” at 2) In October, 2017, Petitioner received a Certificate from Network which stated “In recognition of your participation in the NETWORK Therapeutic Community and for having demonstrated dedicated commitment to changing, growing and contributing to your community. Your efforts are commended.” (Exhibit “D” at 36)

8. Recently, since his transfer to Fishkill, Petitioner successfully completed two 16 week Network Programs – Countering the Criminal Thinking Pattern, and Anger Management. (Exhibit “E” at 4)

9. The letter (from Network Program Coordinator ██████████ and Staff Advisor ██████████) about those programs also noted his longtime extensive involvement in Network, that he is currently the Network Residential Program clerk at Fishkill, stating:

“...Mr. ██████████ has completed over *six hundred (600) hours of therapeutic group sessions*. That time includes his time spent at Otisville as well as at Fishkill Correctional Facilities...”

As of December 6, 2018, Mr. ██████████ is the Network Residential Program clerk here at Fishkill.” (Exhibit “E” at 4)

10. Crimion is another therapeutic organization whose programs Petitioner has taken full advantage of – he completed all of the programs they offered. (Exhibit “D” at 31-32, 42) In April, 2016, Crimion’s Executive Director, [REDACTED], wrote a letter in support of him, stating:

“...Mr. [REDACTED] completed the entire Crimion Program between September, 2010 and April, 2016. The Way to Happiness course is the first one a student takes and helps the individual develop a new set of guidelines which lead away from criminality... The other courses are Learning Improvement, Successful Parenting Skills, Understanding and Overcoming Addiction, Handling Suppression, Personal Integrity, Communication Tools and Conditions of Life.

...Mr. [REDACTED] referred seventeen inmates to the Crimion Program.

Mr. [REDACTED]’s instructor reported that he was an excellent student who demonstrated that he had a desire to improve himself and learn skills he could apply to his life. We hope his work at self-improvement will be taken into account when he comes up for his parole hearing.” (Exhibit “D” at 42)

11. In 2016, [REDACTED] completed a fifteen-week Reconciliation Workshop run by the Otisville Lifers and Long Termers Organization – his Certificate of Appreciation stated:

“...[W]e recognize your unyielding sacrifice, dedication, discipline, self-disclosure, and your desire for the process or reconciliation to begin... As a result of this healing, our lives have changed forever... We appreciate your time and the contribution that you have offered to this process and humanity.” (Exhibit “D” at 39)

12. More recently, in February, 2019, Petitioner successfully completed the New Day/New Mind 24 week program on “Breaking the Cycle of Negativity by promoting Self Awareness and identifying and Conquering self-defeating behavioral attributes.” (Exhibit “E” at 5)

13. Moreover, Petitioner took it upon himself to contact a psychologist who could treat him as needed upon release. That doctor, [REDACTED] even visited Petitioner in 2016 and wrote a letter in which he discussed Petitioner’s remorse and insight, stating:

“...I found [Mr. [REDACTED]] to be quite reflective and remorseful about the crime he committed as well as about the pain he caused the family of the deceased. ...He

has displayed the insight to request weekly individual psychotherapy after he is released, and I have agreed to provide this for him.” (Exhibit “D,” at 15)

Education

14. [REDACTED] also pursued his education while incarcerated. He obtained an Associate’s Degree in Finance *with Honors* from [REDACTED] College in 2010, and was also inducted into the Delta Epsilon Tau International Honor Society. (Exhibit “D” at 47-49)

Leadership Role, History of Service, and Letters/ Reports of Praise from Staff

15. [REDACTED] not only successfully completed many programs over the years, but he then went on to become a teacher and facilitator in some of them, giving other men the benefit of what he had learned in transforming his life. He also garnered a great deal of praise from correctional officers and others for these efforts, and for his extensive volunteer work.

Commendable Behavior Reports and Letters from Staff

16. Over the years *many different correctional officers wrote letters and Commendable Behavior Reports* because they often saw him go above and beyond in order to accomplish tasks and help others. In May, 2017 CO [REDACTED] highly recommended him for release, writing:

“...I have observed [Mr. [REDACTED]’s] positive work efforts on many occasions. He displays leadership skills and takes initiative and pride in all his work and volunteer efforts.

[REDACTED] has shown a *great sense of accountability, atonement and remorse by going above and beyond with whatever is asked...* In addition, he always steps up to do whatever is needed of him making him a *positive influence and role-model for other inmates.*

Therefore, I believe [REDACTED] is a *highly recommended* candidate for parole release. ...He will become a productive member of his community...” (Exhibit “D” at 1)

Similarly, in April, 2017, CO [REDACTED] also recommended Petitioner for release, stating:

“...I have been observing inmate [REDACTED] ... for over three years.

I believe [REDACTED] is a model inmate who has gained the respect of his peers as an IGRC representative and Network group leader. He always helps out on the unit...

...I believe he is rehabilitated and can return to society..." (Exhibit "D" at 2)

17. CO [REDACTED] wrote a Commendable Behavior Report in February, 2017 with regard to [REDACTED] involvement in the Network program, stating:

"...Upon entering the program [Mr. [REDACTED]] was very proactive in taking on roles in the community that were beneficial to other members and himself. He has applied the values put forth by the Network structure and has shown himself to be a positive role model. ...It is my sincere belief that when Mr. [REDACTED] is released, he will be a productive member and valuable asset to the community." (Exhibit "D" at 3)

18. Very recently, in 2019, the Coordinating Chaplain at Fishkill, [REDACTED], wrote a letter in support of Petitioner's release, stating:

"...I have had numerous opportunities to speak with and get to know Mr. [REDACTED]. His is an Executive Team and Central Office approved Facilitator who volunteers his time in our various [groups] as an alter server ... as well as ... for the sick and elderly long term care and cognitively impaired inmates in the RMU.

...He is also my clerk in the church and has taken advantage of pastoral counseling... We have been able to discuss matters related to the reverence for life, respect for authority, personal and social responsibility, rehabilitation, and transformation. On these topics, Mr. [REDACTED] has demonstrated insight, appropriate remorse and a contrite attitude.

The senseless violence associated with his crime is without a doubt very serious, and he recognizes the horrible dimensions of it. I am convinced that every life has value, even the lives of incarcerated persons, particularly those that have changed and reformed their lives..." (Letter attached at Exhibit "E" at 1)

19. In 2016 the Otisville Catholic Chaplain, [REDACTED], also wrote a Commendable Behavior Report, stating:

"...Mr. [REDACTED] has been an active and faithful participant in our celebrations of the Mass and Eucharistic services. Furthermore, he fully supports our Holy Name Society and the various religious events that it sponsors. He has always shared with me the progress he has made during his incarceration and he has given me the opportunity to witness first hand his growth as a father and husband when I made my rounds in the visiting room.

Mr. [REDACTED] is a role model in our Catholic community..." (Exhibit "D" at 4)

20. Petitioner garnered praise years earlier as well, such as this 2010 letter from Co D.

██████████ who stated:

“...I have worked with [Mr ██████████] for the past four and a half years. I have found [him] to be nothing but courteous, dependable and very respectful. ...

I hope you consider this individual for release. He seems to portray exceptional communication skills as well as his ability to show respect for himself as well as others. I believe he is a good candidate for release back into society and will continue to thrive and give back to his community.” (Exhibit “D” at 6)

Leadership and Volunteer Service

21. ██████████ has shown leadership in many arenas, and has long been a positive role model. He served as an elected representative on the Inmate Grievance Resolution Committee (IGRC) at Otisville. Petitioner received two excellent Inmate Progress Reports in March and June of 2017. Both Reports stated that his performance was “Excellent” in all areas, and stated, “...██████████ has earned the trust of his peers and has been able to informally resolve many grievances. ██████████ proved himself to be an asset and a welcomed addition to the program.” (Exhibit “D” at 34-35)

22. As noted above, Mr. ██████████ also took on leadership in facilitating workshops for AVP and Prisoners for AIDS Counseling and Education (P.A.C.E) (as a volunteer for both groups) and also teaching classes in real estate and investment. (Exhibit “D” at 10, 31, 70, 72)

23. He has done a tremendous amount of volunteer work over the years, including raising money for Tomorrow’s Children (which helps children with cancer and blood disorders), the Food Bank of the Hudson Valley, Inwood House (which provides services to pregnant and parenting teens), crocheting baby blankets and chemo caps for the Network program, and raising puppies to be service dogs through the Puppies Behind Bars program. (Exhibit “D” at 8-11, 37-38, 40-43, 50-63)

24. Recently, Petitioner received two letters of appreciation for his volunteer work at Fishkill – one for helping with the 2018 Holiday Gathering at the Fishkill RMU, and the other for helping raise over \$1,000 for St. Jude’s Children’s Research Hospital. (Exhibit “E” at 6-8) The letter, from Coordinating Chaplain, Father [REDACTED], about his work on the Holiday Gathering stated:

“I am writing to express my admiration for your participation with the LTC and UCI – RMU 2018 Holiday Gathering. ...The positive energy felt that day was spiritually wonderful.

Your behavior exhibited remarkable transparency, guidance, and organization in your willingness to help others. I commend you...” (Exhibit “E” at 6)

25. In 2007, 2008 and 2009, Petitioner received Commendable Behavior Reports for his work to support Tomorrow’s Children. (Exhibit “D” at 8, 9, 11) Special Subjects Supervisor [REDACTED] wrote:

“This commendable behavior report is to acknowledge your *consistent and dependable performance* of your duties as the chairman of the Tomorrow’s Children’s Fund committee. Your efforts in conducting our 7 runs (5K- 26.2 miles marathon) and various fundraisers to raise over \$4,000, which was donated to children with cancer and serious blood disorders... evidenced your selfless dedication...

All who understand that many of your daily duties encompass thankless tasks and *frequently making decisions that put the needs and best interests of others before your own* appreciate your efforts.” (Exhibit “D” at 8, emphasis supplied)

26. In October, 2017 and September, 2016 Petitioner received Certificates of Appreciation for creating baby blankets and chemo caps for those in need, and in January, 2017 he received a letter from [REDACTED], Special Events Coordinator of the Food Bank of the Hudson Valley thanking him for his work fundraising for them. (Exhibit “D” at 37, 38, 40)

27. Also in January, 2016, Mr. [REDACTED] received a Certificate from Puppies Behind Bars stating that he had successfully completed an 18 month course in dog training, and had successfully helped to raise a puppy named Christopher, who was now working as a service

dog. (Exhibit “D” at 34)

COMPAS Risk Assessment Instrument

28. A COMPAS Risk Assessment Instrument (RAI) was prepared in order to help determine if Mr. [REDACTED] would be able to live in a law-abiding fashion upon his release. (2018 Risk Assessment page attached as Exhibit “C”) The RAI found a *low risk in every single category*. (Exhibit “C”)

Assurance Letters for Employment and Services

29. [REDACTED] received *several letters offering him employment* upon release. In addition to prior letters from Hour Children (which helps incarcerated women and their families), and the [REDACTED] in Yonkers, NY (which are attached at Exhibit “D” at 12 & 13), he recently received additional employment letters – an offer of full-time employment with a \$68,000 starting salary from the [REDACTED], NY; an offer of full-time employment as chief sales person at [REDACTED] NY. (Exhibit “E” at 9-10) Depending on where Mr. [REDACTED] is approved to live by the Division of Parole, he will have a variety of promising employment options to choose from.

30. Moreover, Petitioner obtained letters of reasonable assurance from the Downtown Brooklyn Neighborhood Alliance (offering him a great deal of re-entry support), and from EXPONENTS, in New York, NY, offering him many services, including training and education in becoming an OASIS-certified substance abuse counselor. (Letters attached as Exhibit “E” at 11-13)

Other Letters of Support

31. In addition to the letters cited above, various other people wrote letters in support of [REDACTED], including family members, his appellate attorney and several elected

officials. (Exhibit “D” at 14-22) There was also a petition in support of his release, which was signed by 200 people. (Exhibit “D” at 23-27)

32. Significantly, Petitioner’s appeal attorney, ██████████ Assistant Attorney-in-Charge at Appellate Advocates, said he very rarely wrote letters in support of parole, but felt Petitioner deserved one, stating:

“...██████ is the exceptional client for whom such a letter is warranted.

...[H]e had *no history of violence of any kind prior to the crime* in the instant case, and he has been *not just a model inmate... he has been an inspirational one*. I have never run across an institutional record that rivals ████████s in both scope of programmatic efforts and level of achievement. *If it cannot be said of ████████ that he has been rehabilitated while in prison, it cannot be said of anyone. ...*

...As ████████ admits, he killed a young woman with whom he was romantically involved. He does not shrink from taking responsibility for that fact – indeed, it has been his ability to accept responsibility and to work diligently to address the personal problems that led to his acts, that has allowed him to be as productive in prison as he has been.

...[H]e immediately called his parents to tell them what he had done. *Although he did not flee in the traditional sense, he attempted to do so psychologically by stabbing himself in the throat and walking into Belt Parkway traffic. His immediate horror and remorse about acts he could not have dreamt he could commit goes a long way toward proving how far from reality ████████ was when he committed them. ████████ has returned to sanity and reality in a measured and very committed way.* He has become a man who will never forget what he has done, but who will do all in his power to give back to the world... to return some part of what he understands he has taken.

██████ has done everything humanly possible to atone for his acts and to make himself into an individual *who not only can be counted on never to repeat them, but one who will be a benefit to society* upon his release. ...” (Exhibit “D” at 17-18, emphasis supplied)

33. Recently, Petitioner received a letter of support from Rev. ██████████, senior Pastor of the Calvary Center Church in Yonkers, who stated:

“...I have corresponded with ██████████ while he has been incarcerated, and have spoken to his wife ██████████ many times over the past four years while she has attended Calvary Center.

I believe that ██████████ has demonstrated sincere, heart-felt sorrow for the offense... He has been an exemplary inmate...

█████████’s wife and lovely young daughter would greatly benefit by the presence of ██████████ in their home and I believe that [he] is ready to adjust and make a meaningful

contribution to society. He will have a strong support base here at the church as well. ...” (Exhibit “E” at 2)

34. Another recent letter came from [REDACTED], the CEO of Thrive for Life Prison Project, who stated that Petitioner was a regular participant at their retreats and programs at Otisville over the past couple years and “is a valuable member of our community and someone we fully support.” (Exhibit “E” at 3)

Hearing Transcript

35. Despite all the evidence presented to them showing that Petitioner had successfully dealt with the problems that led to his offense, and transformed himself into a model and inspiration for other inmates, the Commissioners remained stuck in the past at the hearing, refusing to consider the fact that he was now a completely different person.

Interview

36. The panel spent the first ten pages of the transcript discussing the instant offense, during which Petitioner expressed great remorse. (Exhibit “A” at 1-10) Later, the panel discussed Mr. [REDACTED]’s very extensive parole packet, noting his comprehensive Case Plan, and stating that the packet was “full of support” from correctional staff, several Assemblymen, attorneys, and family members; and that he had several offers for employment upon release. (Exhibit “A” at 13-18, 20)

37. When asked what he was now doing to control his emotions in the difficult environment of prison, Petitioner stated:

“It’s definitely a tense environment. Currently, I’m speaking to OMH professionals, and I’ve always taken anger management and classes to help me deal with my stress and anxiety, my feelings. My responsibility [is] most to [REDACTED] and her family. I can’t hurt anybody ever again. ... I’ve ruined so many people... I stay away from trouble. I’m not involved in gangs, I don’t do drugs. The normal things that cause trouble, especially in prison, I make sure I do not be involved.” (Exhibit “A” at 10-11)

Decision

38. In its Decision the Commissioners denied release, stating, in:

“...The Board of Parole *commends your personal growth, programmatic achievements and productive use of time*. However, a review of your records, a personal interview and deliberation lead the panel to conclude that release at this time is incompatible with the welfare of society...

Your instant offense or Murder 2 represents your ... *only conviction* of record. Your institutional adjustment has been good. Your case plan goals are positive and you have *done very well in programs*, completing those required by DOCCS and participating in volunteer programs like AVP and Puppies Behind Bars as well.

Your *disciplinary record has been clean since 2011*. All of this is to your credit...

The *COMPAS risk assessment indicates low risk in every category*. The panel departs from the COMPAS *due to the tragic, senseless nature of the crime itself* in which you stabbed your girlfriend more than 140 times, causing her death.

The panel commends the work you have done to understand and address the anger issue that led to the extreme violence in this case, but believes there is more to do in that regard. There is also official opposition to your release. Your well-formed release plans, parole packet and significant family and community support have been noted.

However, with all factors weighed and considered, the panel concludes that your release at this time would be inappropriate as it would so deprecate the serious nature of the crime and undermine respect for the law.” (Exhibit “A” at 30-31, emphasis supplied)

39. On August 23, 2019 the Appeal Unit affirmed the denial of release, in a decision which improperly claimed that the Parole Board may deny release based solely on the nature of the offense; misstated the record by claiming that Petitioner “conceded that he needed more programming [before being ready for release],” stated, ironically in a conclusory manner, that the reasons for denial were sufficiently detailed; and improperly claimed that the Board may depart from the COMPAS low risk findings based only on the circumstances of the offense. (Exhibit “F” at 2, 3, 6)

ARGUMENT

POINT I

THE PAROLE BOARD BASED ITS DECISION SOLELY ON THE CIRCUMSTANCES OF THE OFFENSE, AND THUS SAID DECISION WAS ARBITRARY AND CAPRICIOUS, AND SO IRRATIONAL AS TO CONSTITUTE AN ABUSE OF DISCRETION

40. *The Decision shows clearly that the only factor relied upon to deny parole herein was the circumstances of the offense.*

41. In fact, as detailed extensively above, Mr. [REDACTED] has not only successfully dealt with his anger over the years, but is a well-recognized role model for his fellow inmates.

42. The Second Department has consistently held that it is improper to deny parole based solely on the seriousness of the offense. *Rivera v. Stanford*, 2019 App. Div. LEXIS 3595 (2nd Dep't 2019); *Ferrante v. Stanford*, 2019 App. Div. LEXIS 3407 (2nd Dep't 2019); *Coleman v. NYS DOCCS*¹, 2018 NY App. Div. LEXIS 136 (2nd Dep't 2018); *Ramirez v. Evans*², 118 AD3d 707 (2nd Dep't 2014), *Perfetto v. Evans*³, 112 AD3d 640 (2nd Dep't 2013); *Gelsomino v. NYS Bd. of Parole*, 82 AD3d 1097 (2nd Dep't 2011); and *Matter of Huntley v. Evans*, 77 AD3d 945 (2nd Dep't 2010). In *Rossakis v. NYS Bd. of Parole*⁴, 146 AD3d 22, 27 (1st Dep't 2016) and *King v. New York State Division of Parole*⁵, 190 AD2d 423 (1st Dep't 1993), the First Department has said the same thing.

¹ David Coleman was released in March, 2018 and has not been re-imprisoned.

² Santiago Ramirez was released in April, 2017 and has not been re-imprisoned.

³ Gary Perfetto was released in June, 2016 and has not been re-imprisoned.

⁴ Niki Rossakis was released in March, 2017 and has not been re-imprisoned.

⁵ Darryl King was released in 1995 and has not been re-imprisoned.

43. In *Ferrante*, the Second Department very recently *upheld finding the parole board in contempt of court for doing so*, stating simply, at 10, “The Board may not deny an inmate parole based solely on the seriousness of the offense.”

44. The *Ramirez* court stated:

“Although the decision of the New York State Board of Parole (hereinafter the Board) mentioned the petitioner’s institutional record, it is clear that the Board denied release solely on the basis of the seriousness of the offense... The Board’s explanation for doing so was set forth in conclusory terms, which is contrary to law.” *Ramirez*, *supra*, at 707.

45. As in *Ramirez*, *supra*, it can be seen from the decision that the Commissioners based their determination solely on the fact that Petitioner had stabbed his girlfriend so many times – i.e. part of the circumstances of the offense.

46. There have also been several other recent court decisions granting or upholding new parole hearings where the denial was based on the circumstances of the offense. *Matter of Hawkins v. NYS DOCCS*, 2016 NY App. Div. LEXIS 3147 (3rd Dep’t 2016); *Matter of Hawthorne v. Stanford*, 2016 NY App. Div. LEXIS 75 (3rd Dep’t 2016); *Matter of Kellogg v New York State Bd. of Parole*, 2017 N.Y. Misc. LEXIS 968 (NY Co. 2017); *Matter of Ciaprazi v. Evans*⁶, 2016 N.Y. Misc. LEXIS 2741; (Dutchess Co. 2016); *Morales v. NYS Board of Parole*, Index No. 934/2017 (Dutchess Co. 2017); *Kelly v. NYS Board of Parole*, Index No. 580/2017 (Dutchess Co. 2017); *Darshan v. NYS DOCCS*⁷, Index No. 652/2017 (Dutchess Co. 2017); *Phillips v. Stanford*, Index No. 52579/19 (Dutchess Co. 2019); *Almonte v. Stanford*, Index No. 10476/2018 (Orange Co. 2019); *Matter of Diaz v. Stanford*⁸, Index No. 2017/53088

⁶ Roberto Ciaprazi was released in July, 2017 and has not been re-imprisoned.

⁷ Travis Darshan was released in September, 2017 and has not been reincarcerated.

⁸ Jose Diaz was released in June, 2018 and has not been reincarcerated.

(Dutchess Co. 2018); *Lackwood v. NYS Bd. of Parole*⁹, Index No. 2464/2017 (Dutchess Co. 2018); *Hopps v. NYS Bd. of Parole*, Index No. 2553/18 (Orange Co. 2018); *Maddaloni v. NYS Bd. of Parole*¹⁰, Index No. 0623/2018 (Dutchess Co. 2018); *Esquilin v. NYS Bd. of Parole*¹¹, 2018 NY Misc. LEXIS 483 (Orange Co. 2018); *MacKenzie v. Stanford*¹², Index No. 2789/15 (Dutchess Co. 2015); *Matter of Platten v. NYS Bd. Of Parole*, 2015 NY Misc. LEXIS 932 (Sullivan Co. 2015.)

47. In the instant case, the Board managed to ignore all of Petitioner's myriad positive accomplishments, and deny parole based essentially only on the circumstances of the offense. This is why the State passed amendments in 2011 which were intended to look forward at what was accomplished rather than simply backward to the circumstances of the offense.

48. In *Platten*, supra, the court granted a *de novo* hearing in the case of a man who was 28 years old when he murdered his girlfriend in 1988, was convicted after trial, had a recent Tier II ticket, and had been denied parole eight times, noting the effect of the 2011 Amendments and stating:

“...The changes [to Executive Law 259-c in 2011] were intended to shift the focus of parole boards away from focusing on the severity or heinous nature of the instant offense, to a *forward-thinking paradigm* to evaluate whether an inmate is rehabilitated and ready for release.

...There are numerous things a parole board cannot do. First, a parole board *cannot base its decision to deny parole solely on the serious nature of the underlying crime*. ...Second, ...the board *must ...consider the guidelines* [in Executive Law 259-i(2)(a)]... Third, *the reasons for denying parole must be given in detail and not in conclusory terms*....

...Other than a recent Tier II ticket, the now 55 year old Petitioner appears to have

⁹ Mark Lackwood was released on September, 2018 and has not been reincarcerated.

¹⁰ Jack Maddaloni was released in September, 2018 and has not been reincarcerated.

¹¹ Adolfo Esquilin was released in May, 2018 and has not been reincarcerated.

¹² Tragically, John MacKenzie committed suicide in 2016 after having been wrongly denied parole ten times.

complied with all DOCCS requirements, additional programming and training above and beyond DOCCS requirements, and by all accounts *has been rehabilitated*. Therefore, without further explanation in the board's decision, the Court is unable to determine why the board denied parole, other than *its opinion of the heinous nature of the instant offense* and a legally unsupported desire to keep Petitioner incarcerated...

...Petitioner has repeatedly expressed remorse for murdering the victim and takes full responsibility for his actions. He cannot change what he did...

Petitioner's argument that the decision to deny parole was based solely on the board's opinion of the serious and violent nature of the instant offense and nothing else is supported by the record; *the language in the decision is perfunctory and meaningless in the context of this case*.

Certainly, every murder conviction is inherently a matter of the utmost seriousness since it reflects the unjustifiable taking and tragic loss of human life. Since, however, the Legislature has determined that a murder conviction per se should not preclude parole, there must be a showing of some aggravating circumstances beyond the seriousness of the crime itself. ...

...[T]he record strongly supports parole release for this inmate. ...

...[T]he Court holds the decision was arbitrary and capricious and to a large extent, substantively unreviewable. The board simply restated the usual and predictable language with no specificity or other explanation to justify parole denial. ..." *Platten*, supra, at 5-6, 9-11, 13-15, emphasis supplied.

49. Even *prior* to the 2011 amendments which attempted to force the Board to use reality-based assessments, there have been several cases where Board Decisions have been overturned because the Board erroneously based denial of parole solely on the severity of the offense, and was therefore arbitrary and capricious and/or completely irrational. *Friedgood v. NYS Board of Parole*¹³, 22 AD3d 950 (3rd Dep't 2005); *Vaello v. Board of Parole*¹⁴, 48 AD3d 1018 (3rd Dep't 2008); *Gelsomino v. Board of Parole*¹⁵, 82 AD3d 1097 (2nd Dep't 2011); *Malone v. Evans*¹⁶, 83 AD3d 719 (2nd Dep't 2011); *Johnson v. Division of Parole*¹⁷, 65 AD3d 838 (4th

¹³ Charles Friedgood was released in 2007 and has not been re-imprisoned.

¹⁴ Jose Vaello was released in March, 2012 and has not been re-imprisoned.

¹⁵ Louis Gelsomino was released in 2011 and has not been re-imprisoned

¹⁶ Mark Malone was released in 2011 and has not been re-imprisoned.

¹⁷ Daniel Johnson was released in 2009 and has not been re-imprisoned

Dep't 2009); *Prout v. Dennison*¹⁸, 26 AD3d 540 (3rd Dep't 2006); *Mitchell v. Division of Parole*¹⁹, 58 AD3d 742 (2nd Dep't 2009); *Winchell v. Evans*²⁰, 32 Misc.3d 1217(A) (Sullivan Co. 2011); *Wallman v. Travis*²¹, 18 AD3d 304 (1st Dep't 2005); *Oberoi v. Dennison*²², 19 Misc.3d 1106(A) (Franklin Co. 2008); *Rios v. NYS Division of Parole*²³, 15 Misc.3d 1107(A) (Kings Co. 2007); *Weinstein v. Dennison*²⁴, 2005 NY Misc. LEXIS 708 (NY Co. 2005); *Cappiello v. NYS Board of Parole*²⁵, 2004 NY Misc. LEXIS 2920 (NY Co. 2004); *Almonor v. Board of Parole*²⁶, 16 Misc.3d 1126(A) (NY Co. 2007); *Coaxum v. Board of Parole*²⁷, 14 Misc.3d 661 (Bronx Co. 2006); *Schwartz v. Dennison*²⁸, 14 Misc.3d 1220(A) (NY Co. 2006); *King v. New York State Division of Parole*²⁹, 190 AD2d 423 (1st Dep't 1993).

50. As occurred in all of the above cases, the Board's determination herein was unlawful and a de novo hearing must be ordered.

POINT II

THERE WERE NO DETAILED REASONS GIVEN FOR THE DENIAL, NOR WAS THERE ADEQUATE EXPLANATION FOR THE DEVIATION FROM THE COMPAS FINDINGS OF LOW RISK IN EVERY CATEGORY

A. There Were No Detailed Reasons Given for the Denial

51. It is clear that, based on 9 NYCRR 8002.3, the Executive Law, and case law, the reasons given for parole decisions must be detailed, and not simply perfunctory. *Rivera v.*

¹⁸ William Prout was released in 2009 and has not been re-imprisoned.

¹⁹ Roger Mitchell was released in 2009 and has not been re-imprisoned.

²⁰ Craig Winchell was released in 2011 and has not been re-imprisoned.

²¹ Jay Wallman was released in 2005 and has not been re-imprisoned.

²² Gurpreet Oberoi was released in 2009 and has not been re-imprisoned.

²³ Ivan Rios was released in 2007 and has not been re-imprisoned.

²⁴ Herbert Weinstein was released in 2006 and has not been re-imprisoned.

²⁵ John Cappiello was released in 2005 and has not been re-imprisoned.

²⁶ Chester Almonor was released in 2007 and has not been re-imprisoned.

²⁷ Jean Coaxum was released in 2006 and has not been re-imprisoned.

²⁸ Jerrold Schwartz was released in 2008 and has not been re-imprisoned.

²⁹ Darryl King was released in 1995 and has not been re-imprisoned.

Stanford, supra; *Ramirez v. Evans*, supra; *Perfetto v. Evans*, supra; *Winchell v. Evans*, supra; *Kelly v. NYS Board of Parole*, supra; *Morales v. NYS Bd. of Parole*, supra; *Darshan v. NYS DOCCS*, supra; *Ruzas v. Stanford*³⁰, Index No 1456/2016 (Dutchess Co. 2016); *Matter of McBride*³¹ v. *Evans*, 42 Misc.3d 1230(A) (Dutchess Co. 2014); *Matter of West*³² v. *NYS Bd. of Parole*, 41 Misc.3d 1214(A) (Albany Co. 2013); *Matter of Kozlowski*³³ v. *NYS State Bd. of Parole*, 2013 NY Misc. LEXIS 552 (NY Co. 2013).

52. In *Rivera*, supra, the Second Department recently granted a new hearing, stating:

“...[T]he Parole Board’s terse and conclusory decision did not explain the reason for the denial in detail as required by the Executive Law...

...Aside from discussing the petitioner’s disciplinary history, the Parole Board focused only on the petitioner’s conduct during the commission of the subject crimes...”

53. As in *Rivera* (who had a worse criminal history and disciplinary history than Paul DiLeonardo) the instant decision failed to give any detailed reasons for the denial, relying, improperly, only on the nature of the offense itself.

54. In *Matter of Rossakis*, supra, the First Department recently upheld the grant of a new hearing for this reason, stating:

“The Board *summarily listed petitioner's institutional achievements, and then denied parole with no further analysis of them, in violation of the Executive Law's requirement that the reasons for denial not be given in “conclusory terms” (Executive Law § 259-i[2][a]).* Moreover, the Board’s decision began by stating that petitioner’s 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.” *These statements came directly from the language of Executive Law § 259-i(2)(c), further violating the Executive Law's ban on the Board making conclusory assertions (see Executive Law § 259-i[2][a]).*” *Rossakis*, supra, at 10-11, emphasis supplied.

³⁰ John Ruzas was released in December, 2017 and has not been re-imprisoned.

³¹ Moses McBride was released March 10, 2014 and has not been re-imprisoned.

³² Michael G. West was released October 7, 2014 and has not been re-imprisoned.

³³ L. Dennis Kozlowski was released January 17, 2014 and has not been re-imprisoned.

55. As in *Rossakis*, in the instant case the Decision herein stated, "...institutional adjustment has been good. Your case plan goals are positive and you have done very well in programs...Your disciplinary record has been clean since 2011. All of this is to your credit...The COMPAS risk assessment indicates low risk in every category." The Decision then went on to deny release based solely on the offense of conviction. (Exhibit "A" at 30-31) This was clearly not an adequate explanation for the denial.

56. Similarly, in *Ruiz v. NYS Division of Parole*, Index No. 2310/2017 (Dutchess Co. 2018), the court granted a *de novo* hearing because the reasons given for denial were too conclusory, stating:

"In 1988 petitioner was convicted of murder in the second degree...

Subsequently, petitioner was sentenced in 1991 ...for a conviction of assault in the second degree during which petitioner fatally stabbed another inmate... and in 1992 ... for a conviction of attempted promotion of prison contraband.. for possessing a four inch shank. ...

The Board must set forth an explanation for its determination in detail and not just conclusory terms...

The 2011 amendments to the Executive Law represent a shift in focus from offense driven to a more forward thinking consideration of whether an inmate has been rehabilitated and is ready for release...

After a review of the entire record, the Court cannot determine from the cursory nature of the Board's decision how it utilized its risk assessment procedures or applied the statutory factors in concluding that petitioner's release was incompatible with the safety of society **at this time**. ...

...While the Board recited other factors, it failed to give any real explanation for its decision other than in conclusory terms, in violation of Executive Law 259-i(2)(a)...

... the language in the written determination is perfunctory at best as to the consideration given to the relevant statutory factors by the Parole Board. Therefore, the Court finds that the Parole Board has violated its statutory commitment by failing to provide a detailed decision as to the basis for the denial of parole release..." *Ruiz*, supra, at 1, 5-8, 10-11, some emphasis supplied.

57. As in the above cases, it is submitted that the Board did *not* meet its responsibility to explain the denial in a detailed manner, and there must be a *de novo* hearing.

B. There was No Adequate Explanation for the Deviation from the COMPAS Findings of Low Risk in Every Category

58. In this case, the Board departed from the COMPAS Risk and Needs Assessment’s low risk scores, and failed to adequately explain this in the Decision. All the Decision said was “The COMPAS risk assessment indicates low risk in every category. The panel departs from the COMPAS due to the tragic, senseless nature of the crime itself in which you stabbed your girlfriend more than 140 times, causing her death.” (Exhibit “A” at 30-31) This is clearly just further reliance on the offense itself to justify denial. It certainly doesn’t take into effect the positive transformation Mr. [REDACTED] has undergone – *the failure to do that is precisely why the Legislature mandated forward looking assessments in 2011; why the COMPAS is now being used; and why the new Rule was enacted.*

59. There are several cases where new hearings were granted based on a failure to explain departure from the COMPAS findings. *Phillips v. Stanford*, Index No. 52579/19 (Dutchess Co. 2019); *Comfort v. NYS Bd. of Parole*, Index No. 1445/2018 (Dutchess Co. 2018); *Sullivan v. NYS Bd. of Parole*, Index No. 100865/2018 (NY Co. 2019); *Diaz v. Stanford*³⁴, Index No. 2017-53088 (Dutchess Co. 2018.)

60. In *Sullivan*, supra, even though the new regulations regarding COMPAS departures had not yet gone into effect, the court *still* found that the failure to adequately consider the COMPAS scores required a *de novo* hearing, stating:

“...Respondent stated that petitioner’s COMPAS scores were excellent, as she scored a low risk for prison misconduct, propensity for future violence, and subsequent

³⁴ Jose Diaz was released in June, 2018 and has not been re-imprisoned.

criminal problems. Respondent noted that her history of violence score was in the medium range because of the severity of her crime. Petitioner still maintained that she did not commit the murder, but she acknowledged that she was the catalyst for the crime... Petitioner again expressed her apology for the family's loss...

...[A]lthough the COMPAS score is not binding on the parole board... it is an important factor which the parole board much duly consider... *Indeed, the COMPAS score is so critical that the failure to consider it adequately mandates a remand...*" *Sullivan*, supra, at 5, 8, emphasis supplied.

61. In *Sullivan*, unlike the instant case, the petitioner asserted her innocence as to the instant offense, and did not have low COMPAS findings across the board. Still, the court held that the failure to adequately consider the COMPAS required a new hearing *even before* the new regulations went into effect. In this case, where the regulations were clearly in effect at the time of the hearing, and where all the COMPAS scores were low, the Court should grant a *de novo* hearing because the board failed to specify what COMPAS scale it departed from, and failed to provide individualized reasons for said departure.

CONCLUSION

62. Based on the foregoing, Petitioner [REDACTED] respectfully requests that the Court vacate the Decision of the Parole Board and grant an immediate *de novo* hearing before commissioners who did not sit on the February, 2019 Board.


Dated: October 24, 2019.

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