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November 2019

### Decision in CPLR Article 78 proceedings - Hill, Durell (2016-10-07)

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To commence the statutory time for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

-----X  
**In the Matter of**

**DURELL HILL-95A2824**

Petitioner,

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

-against-

**NEW YORK STATE BOARD OF PAROLE,**  
Respondent.

-----X  
**SCIORTINO, J.**

**DECISION AND ORDER  
INDEX NO.: 4794/2016**

**Returnable: 9/7/2016  
Sequence Nos. 1 & 2**

The following papers numbered 1 to 14 were considered in connection with the application of petitioner, by Order to Show Cause, for an order and judgment pursuant to Civil Practice Law & Rules Article 78 and his application to proceed *in forma pauperis*:

PAPERS

NUMBERED

|   |        |
|---|--------|
| Order to Show Cause/Affidavit/Verified Petition     | 1 - 3  |
| Exhibit 1 (Administrative Appeal) with Exhibits A-H | 4 - 12 |
| Affidavit in Support of Poor Person Application     | 13     |
| Respondent's Letter dated August 30, 2016           | 14     |

Petitioner Durell Hill (Petitioner) seeks an order and judgment pursuant to Civil Practice Law & Rules Article 78 directing the following relief: (A) annulment of the Parole Board's October 22, 2015 Decision denying him parole; (B) a *de novo* hearing, within 30 days, in front of a new panel; and (C) the Parole Board's strict adherence to the requirements of Executive Law § 259-i(2)(a).

**Background and Procedural History**

Petitioner is serving an indeterminate sentence of 20 years to life, after pleading guilty to

second degree murder. He was sentenced in 1995, when he was twenty years old.

On October 20, 2015, petitioner appeared for a parole hearing. Parole was denied by decision dated October 22, 2015, with a twenty-four month hold to October 2017, based upon the finding of the Commissioners that there was a reasonable probability that, if released, petitioner would not live and remain at liberty without again violating the law, and that his release was incompatible with the welfare of society, and would so deprecate the serious nature of his crime as to undermine respect for the law.

Petitioner filed an Administrative Appeal on or about March 24, 2016, with a *pro se* Addendum. His denial was upheld by decision dated April 27, 2016. He thereafter timely filed an Article 78 Petition with supporting papers, by Order to Show Cause made returnable September 7, 2016.

By letter dated August 30, 2016, respondent Office of the Attorney General acknowledged that a procedural error was made during the [April] (sic) 2015 decision, and consented to a *de novo* hearing to be held within 60 days, precluding from participation those commissioners who participated in the last hearing.

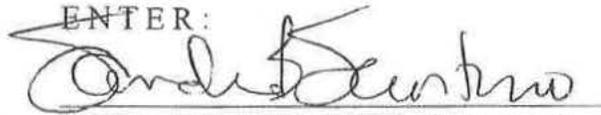
### **Discussion**

On the basis of the consent of the Respondent, the October 22, 2015 decision of the Board of Parole is hereby vacated, and this matter is remanded to the Board of Parole. Within 60 days of the date of the service of a copy of this Order, petitioner shall be entitled to a new parole hearing consistent with this decision and the mandates of Executive Law §§259-c and 259-i. The new hearing shall be held before a different panel of the Parole Board, and those Commissioners who participated in the October 20, 2015 hearing are precluded from participating therein.

Petitioner's application to proceed as a poor person is granted. Petitioner is directed to pay a reduced filing fee of \$15.00 and he shall be liable for no other fees in the action/proceeding before this Court.

This decision shall constitute the order of the Court.

Dated: October 7, 2016  
Goshen, New York

ENTER:  
  
HON. SANDRA B. SCIORTINO, J.S.C.

To: Durell Hill, 95A2824  
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