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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,**

Respondent.

The Petition of [REDACTED] respectfully shows and alleges:

PRELIMINARY STATEMENT

1. The November, 2021 Parole Board Decision denying parole to [REDACTED] [REDACTED] was illegal because it was essentially based solely on the circumstances of the offense; because it provided no detailed justification for denial, only claims not supported by the record; and because it improperly departed from low COMPAS scores based on the nature of the offense. Mr. [REDACTED]'s minimum term is 16 1/3 years, but he has now served nearly 25 years. This is his *sixth* denial of parole, a process which included two prior *de novo* hearings. He has long had an excellent record, and should have been granted release after his first parole hearing in 2013.

STATEMENT OF FACTS

2. [REDACTED] was convicted in Queens County of two counts of Rape in the first degree, Sexual Abuse in the first degree, Assault in the second degree, and Unlawful Imprisonment in the first degree, and received an aggregate sentence of 16 1/3 - 40 years. (Exhibit "A" at 7) This case involved a series of violent rapes which occurred between 1994 and

1997¹, at a time when Mr. ██████████ was out of control and angry, and somehow felt he could rape women when they rebuffed his advances. He is now haunted by what he did, and full of shame, remorse and shock that he behaved this way.

3. Mr. ██████████ has long accepted responsibility for these horrendous attacks, expressed strong remorse, and worked very hard on understanding his underlying issues and dealing with them. All of his COMPAS scores are low except for *history* of violence. He has an excellent institutional record, with no disciplinary violations since 2007, the completion of many therapeutic programs, and a positive release plan.

Institutional Record

4. Mr. ██████████ *never* had any serious disciplinary violations, and his minor ones occurred in the early years of his incarceration. He has had a *completely clean record since 2007, nearly fifteen years* (Exhibit “C” at 25-26). He has also completed all his mandatory programs, as well as many others, and has learned a lot about himself, what led him to commit these heinous rapes, and how to avoid violating the law in the future.

Programs Completed

5. ██████████ has successfully completed all his required programs, and many others on a voluntary basis. These include the Sex Offender Counseling and Treatment

¹ There were a total of four incidents, three of which are considered the “instant offense,” though they should all be looked at together. Mr. ██████████ had pled guilty to sexual abuse in the third degree in connection with the first incident (the details of which are sparse), which occurred on 7/27/94. He was out on bail for that offense when he committed the three rapes which constitute the “instant offense.” The first occurred on August 12, 1994, very soon after the prior offense, but he was not charged with that crime until 2002, when DNA from the offense was linked to him. He committed two more rapes in 1996 and 1997, and was arrested and charged with them in May, 1997. He pled guilty to Rape in the first degree in satisfaction of those incidents. He went to trial in 2005 on the August, 1994 offense, following his attorney’s advice to advance an unsuccessful statute of limitations defense. As noted, he received an aggregate sentence of 16 1/3 to 40 years. (See Exhibit A at 7) Upon information and belief, while there may possibly be one prior low-level felony, his other criminal history is limited to several misdemeanors, occurring in the early 1990’s.

Program, which he completed in 2017 after an intensive 20 month program; the ASAT substance abuse program; Aggression Replacement Training (ART), Transitional Services I & II, the Alternatives to Violence (AVP) Program, and many more. (Exhibit “A” at 15, 21; Exhibit “C” at 4, 22)

6. As recognized by the COMPAS instrument, Mr. [REDACTED] has a low risk of substance abuse on reentry. (Exhibit “B” at 1) He successfully completed the ASAT substance abuse program, and has attended AA. (Exhibit “C” at 4, 13, 30-31) His religious beliefs, to which he has recommitted himself since being incarcerated, also provide support for abstinence, as he noted in the interview. (Exhibit “A” at 16)

7. The Muslim Chaplain at Sullivan Correctional Facility wrote a 2018 letter in support of [REDACTED], stating:

“...[Mr. [REDACTED]] is known to me since 2009... Mr. [REDACTED] has always maintained a positive demeanor and as far as I know was never involved in any altercation or disruptive behavior. As for his stay in Woodbourne Correctional Facility he’s had a positive interaction within the Muslim community and has completed all of the programs he’s required to complete. *I have never heard or had any cross words or complaints about Mr. [REDACTED]’s behavior or attitude.*” (Exhibit “C” at 1, emphasis supplied)

8. In addition, Mr. [REDACTED] received completely excellent scores on his Inmate Progress Report for the Transitional Services Phase II program, which also stated:

“[REDACTED] has acquired pivotal skills in Active Listening, controlling thinking that leads to trouble, responding to Anger, Stressful Conversations and Problem Solving Skills.

[REDACTED]’s enthusiasm to learn is evident in his preparation as well as eager participation in class. He has acquired [an] excellent grasp of the material presented and is always ready for class participation.

Thinking for a Change provides necessary skills critical to assimilation into society. *Has been an asset.*” (Exhibit “C” at 10, emphasis supplied.)

9. In addition to the required programs and the AVP program and AA, [REDACTED] successfully completed several other significant therapeutic programs which gave him insight and helped him to transform himself. These included the Life Without Violence Program; a Parole Preparation class dealing with transformation; the Violent Behavior Awareness Program; a course in anger management; and a course in Free Life Dynamics. (Exhibit "C" at 9, 14, 23, 24, 26, 28)

10. Mr. [REDACTED] also completed quite a bit of vocational training classes and other programs, including in Masonry; Horticulture; Food Handling and Sanitation; Basic Cleaning Procedures; General Business; Macro Decision Making; IPA training; HIV/AIDS Education and Peer Counseling; and Latin American Studies. (Exhibit "C" at 11, 12, 15, 17, 18, 21, 25, 27)

11. Finally, he received a Certificate for his participation in a marathon to raise funds for the group Tomorrow's Children, which supports children with cancer and sickle cell anemia. (Exhibit "C" at 19-20)

His Statement

12. Mr. [REDACTED] wrote a letter to the Parole Board which described the offenses and his subsequent journey of transformation, along with expressing deep remorse, stating:

"...For over two decades of imprisonment, I have been trying my best to express my deepest apologies to my victims, to rehabilitate myself, and to change my old, distorted way of thinking. ...

...[I]n my late teens and early twenties I spent a great deal of time hanging out in clubs drinking and partying... I have a criminal history dating back to the early 1990's, including seven convictions for disorderly conduct, petit larceny, sexual abuse, theft and criminal mischief. I served a total of 68 days in various county jails... and yet regrettably, I never learned my lesson...

I am truly sorry for raping and sexually abusing these innocent young women who did not deserve what I did to them. I cannot imagine the fear and terror they must have felt as I attacked them...

...I have spent many years of my incarceration trying to figure out how I could

have violated these ... women without ever actually thinking about how my crimes would permanently impact them... .. I resolved to use the time productively to fix the parts of me that were broken.

I have worked very hard to address the anger and violence [I] expressed in my youth... I now realize that ... I was nothing but selfish, spoiled, ungrateful and cruel. I refused to accept 'no' for an answer. I fully believed that, as a male, I was entitled to anything I wanted – including having forcible sex with these women who had clearly told me no. Today, it sickens me to know that I actually assaulted these innocent women for refusing to have consensual sex with me.

...I decided to seek out and only associate with people who are thoughtful, considerate and kind to others. At first I only modeled their behaviors but over time those behaviors actually became part of the person I am today. ...

Every day, I still think about the terrible crimes I committed... I am truly disgusted and ashamed of myself. There are dozens of women and young girls in my own family, and when it occurred to me that they, too, might some day face a sexual assailant, I finally came to realize how disgusting my crimes really are. I am so very sorry..." (Exhibit "C" at 3-5)

13. In 2019, [REDACTED] received a letter from Citizens Against Recidivism, which stated that the group was ready and willing to support him upon release. The letter stated:

"...We are aware of the length of time Mr [REDACTED] has been incarcerated and the nature of the offenses related to his incarceration. It is our intention to provide him with counseling services that will assist him [in] his transition from prison..."

...We are looking forward to supporting him in this new phase of his life..." (Exhibit "C" at 2)

Family Letters of Support and Offer of Employment

14. Mr. [REDACTED] received several letters of support from family members, who noted the extensive positive change they have seen in him over the years. Many of them indicated the ways in which they would support him upon release. His brother, [REDACTED], an NYPD officer for over 25 years, recently wrote a letter on behalf of himself and many other family members, stating:

"...I'm an active Police Sergeant in the NYPD for over 25 years. I write this letter once again representing my entire family... Till this day we are all still praying for

healing for [REDACTED]'s victims and their families.

... [REDACTED] ... is beyond remorseful and regretful for committing such a horrific act against the victims. ... [He] has continuously emphasized how his actions have haunted his conscience throughout his prison ordeal... ... [H]e has developed an incredibly kind, compassionate and balanced ... approach... he has become a wise, patient and levelheaded human being.

... [REDACTED] has multiple homes available to him including my home... I will also personally see to it that he attends any and all parole meetings as well as any classes or any recommendations that the board may wish to provide... He still has a ... full time job available the moment he is released. ... He has the full support of our 5 other siblings and 20 nieces and nephews...

Over the years I have seen a vast change for [the] better in my brother. He... advises my children... to become educated and humble law abiding citizens. He... realizes he was completely in the wrong, and is confident it will never happen again. ... He is openly vocal about how it haunts him knowing the severity of his actions, the pain and anguish it caused his entire family, but most importantly, the level of devastation the victims and their families have experienced all these years. ..." (Exhibit "D" at 1-2)

15. Another branch of [REDACTED]'s family, who live in the UK, wrote a joint letter on his behalf, stating:

"... We deeply condemn [REDACTED]'s actions that led to this situation... [REDACTED] [came from] a broken family surrounded with the death of his brother and father whilst only an infant, and ... [had] ill guidance from misguided friends...

However, after two decades of ... imprisonment, he has become a very supportive figure head for the next generation...

Since ... 2004 we have always met [him] in the correctional facility, this is where we got to know him even more. The positive, bright uplifting individual he is despite living in [a] difficult place is absolutely phenomenal. ... [REDACTED]'s... positive attitude and advice has always touched our hearts and encourages us to do well and be better people..." (Exhibit "D" at 3)

16. [REDACTED]'s cousin, [REDACTED], also wrote in support of him, and *offered him a full-time job* in his jewelry store, stating:

"... I have always considered [REDACTED] as my own brother. When I first came to this country over 25 years ago I was on my own. ... From day one [REDACTED] was the first helping hand. ... It is because of him I am where I am today, a business owner.

I understand that [REDACTED] has committed serious crimes. He has shown remorse... and it is very clear to me that all these years in prison has changed him for the better and it is truly inspiring. ... He has expressed how hard he has been working on turning his life around. I believe he ... is ready for his freedom to come back to his loving

family who are all dreaming of this day.

Today and always my offer stands, I will... help and support [REDACTED] in any way shape or form. ... I will ...[be] giving him a full-time job at my store [REDACTED] [REDACTED] ... I long to see the day he is released..." (Exhibit "D" at 6)

17. [REDACTED] [REDACTED]'s niece, likewise wrote in support of his

release, stating:

"Some of my fondest memories growing up were with my uncle. ... He would regularly take my younger cousins and me to the local market for our favorite treats after taking us to the playground. ... I can remember him helping with homework and coming to my awards ceremony when my father was unable to come...

I hope one day soon he can help my children create beautiful childhood memories. The reason for this hope is that I can see he is a changed man. ...The effect of his decisions on his victims and their families will haunt him for the rest of his life. ... As a family we were all distraught... but we know that the time he has spent in prison has rehabilitated him into a better version of himself. He has completed the SOP program and attended Psychological and Alcohol treatment.

...Now it is our turn to give back to him. ...I kindly request that [REDACTED] ...[be] given the chance to thrive and become a productive member of society. My family and I will help to do so in any manner that we can. ..." (Exhibit "D" at 7)

18. Finally, [REDACTED]'s nephew, [REDACTED], wrote in support of

him, stating:

"[REDACTED] was always my favorite uncle. ... he was a senior and I was a freshman. I had always looked up to him...

At some point [REDACTED] started hanging out and started drinking, our relationship started to deteriorate. ... He started getting in personal and legal trouble...

I understand that [REDACTED] had committed a serious crime. He has ... worked very hard to turn his life round... His unacceptable behavior and action has haunted him for two decades...

While in prison, [REDACTED] ... capitalized on the opportunity to educate himself full [with] ... programs, learned many vocational skills, and achieved many certificates..." (Exhibit "D" at 8)

COMPAS Risk Assessment Instrument

19. 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.

(2021 Risk Assessment Instrument attached as Exhibit "B").

20. The RAI found a low risk in almost all categories – he was rated low risk for Risk of Felony Violence, Arrest Risk, Abscond Risk, Criminal Involvement, Reentry Substance Abuse and Prison Misconduct. (Exhibit “B” at 1) The RAI went on to document that Mr. [REDACTED] has a high school diploma or GED, a skill or trade, family support, and the ability to find a job. (Exhibit “B” at 3, 6) While there was a finding of medium risk for “History of Violence,” this is about the past, and doesn’t actually say anything about his future risk, as shown by the low risk scores for Risk of Felony Violence, Arrest Risk, Abscond Risk, and Criminal Involvement.

Interview

21. The commissioners spent quite awhile discussing [REDACTED]’s instant offenses, noting the three forcible rapes which led to his incarceration, as well as the fact that he was on probation at the time of some of the offenses. (Exhibit “A” at 3-9) When asked how he could have done this, Mr. [REDACTED] stated:

“That was my stupid thinking. I ... thought I could do whatever I wanted at that time, I didn’t care about nobody.” (Exhibit “A” at 6)

22. When asked how he had changed, he said:

“I have grown, I ...don’t know how to put into words what I feel. I have a lot of women in my family, I got nieces... and I think if somebody did that to them to my sister or my niece and them, it would really – I got tremendous shame and guilt in myself.” (Exhibit “A” at 7)

23. When asked if he thought he deserved to be released, Mr. [REDACTED] stated:

“I worked very hard to better myself all these years. ... I took the classes, I changed my life... and I am ready and I am safe today. I can assure you of that. I am not that same person I was 24 years ago, I don’t feel like that. I walk around with shame and guilt every day for what I did and I am not that person.” (Exhibit “A” at 9-10)

24. The commissioners asked him how the various programs he had taken had helped

him, and [REDACTED] responded:

“...*I was hungry for change*, I wanted to change and better myself, so every program I took I got everything out of it. I was hungry for help. I took ASAT, I did very well, I took NA, I went to ART, every program that was available to me, mandatory, not mandatory, religious services.... Programs are there but *it’s what you want out of them and I learned a lot and I grew all those years....* I just need one chance to prove to my family, to myself, especially to my victims... I pray for their healing, my family prays for their healing, I am so sorry.” (Exhibit “A” at 11-12, emphasis supplied)

25. When asked what he would say to the victims if he had the chance, he became very emotional, and the following occurred:

“What could I say to them? How could a human being forgive for what I did? I would be ashamed to look at them for what I did to them. I would beg them for forgiveness, I will go to my grave –

Q. Are you okay, sir?

A. Yes, I am.

Q. Go ahead, continue.

A. I will go to my grave thinking about what I did to them and I pray that they can forgive me and I pray for their healing. I am so sorry...” (Exhibit “A” at 12)

26. The commissioners noted that [REDACTED] had completed all his required programs, including ASAT, ART, SOP, and Transitional Services I and II, as well as vocational training. (Exhibit “A” at 15) Commissioner Samuels also said, “...you have been discipline free since August 2007 so *we’ll certainly consider that to your credit.*” (Exhibit “A” at 15)

27. The panel also pointed out that all of [REDACTED]’s COMPAS scores were low except for the one for a *history* of violence, which was found to be medium. (Exhibit “A” at 15)

Decision

28. The Decision stated:

“...A review of the record and interview lead the panel to conclude that if released at this time there is reasonable probability that you would not live and remain at liberty without again violating the law and that your release would be incompatible with the welfare of society.

The Panel considered the instant offense of three counts of Rape First, Assault Second, Sexual Abuse First, and Unlawful Imprisonment... The record further reflects that you were on probation at the time you committed some of these offenses. ... You explained *you have come to understand your actions were wrong and expressed your remorse*. However, your actions were violent and demonstrated poor judgment.

Your current term reflects your first New York State term of incarceration. ... Your rehabilitative efforts were also considered and include *completion of SOP, ASAT, ART, Phase I and II* and vocational programming. ...[Y]our disciplinary history ... reflects you have been *discipline free since 2007*. We weighed and considered your COMPAS Risk and Needs Assessment and the *low risk scores indicated therein, with the exception of you being medium for history of violence*. ...[T]he Panel departs from your low risk scores for risk of felony violence and arrest for the following reasons:

First, the instant offense involved multiple acts of violence and sexually deviant behavior against multiple victims.

Second, you committed some of the offenses while in community supervision. Additionally, while on bail for one of the sex related offenses, you committed another rape. ...[W]e have little reason to believe you will be law abiding in the community...

...[Y]our Sentencing Minutes and Presentence Report ... reveal the immense pain and suffering you caused... and we remain concerned about the lasting impact of your actions...

Further, your repeated actions demonstrate your willingness to put your own needs above that of society. Your release would trivialize the severity of your offense and would so deprecate the seriousness of the crime so as to undermine respect for the law.

Lastly, we also considered official opposition from the Queens County District Attorney's Office...." (Exhibit "A" at 20-22)

Administrative Appeal

29. On March 14, 2022, the Appeal Unit affirmed the denial of release, stating, erroneously, that it was permissible for the Board to deny release based on the violent nature of the instant offense, and that the Board adequately explained its departure from the low risk COMPAS scores for felony violence, arrest and absconding based on the circumstances of the instant offense (Exhibit "E" at 3, 5)

ARGUMENT**POINT I****THE PAROLE BOARD BASED ITS DECISION ALMOST 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**

30. A parole board may not deny release solely on the basis of the seriousness of a defendant's offense. *Rivera v. Stanford*², 2019 NY App. Div. LEXIS 3595 (2nd Dep't 2019); *Ferrante v. Stanford*³, 2019 NY App. Div. LEXIS 3407 (2nd Dep't 2019).

31. There have also been court decisions in numerous other cases over the past few years granting or upholding new parole hearings for this same reason. *Matter of Kellogg v New York State Bd. of Parole*⁴, 2018 N.Y. App. Div. LEXIS 1469 (1st Dep't 2018); *Esquilin v. NYS Bd. of Parole*⁵, 2018 NY Misc. 483 (Orange Co. 2018); *Matter of Villa v. Stanford*⁶, Index No. 53877/21 (Dutchess Co. 2021); *Matter of O'Connor v. Stanford*⁷, Index No. 54/2021 (Dutchess Co. 2021); *Matter of Jennings v. Stanford*⁸, Index No. 2020-51294 (Dutchess Co. 2020); *Hill v. NYS Bd of Parole*⁹, Index No. 100121/2020 (NY County 2020); *Matter of Voii v. Stanford*¹⁰, Index No. 2020-50485 (Dutchess Co. 2020); *Almonte v. Stanford*¹¹, Index No. 10476/2018 (Orange Co. 2019); *Phillips v. Stanford*¹², Index No. 52579/19 (Dutchess Co. 2019)

² Richard Rivera was granted an open date for release in June, 2019.

³ Danielle Ferrante is John MacKenzie's daughter and the representative of his estate – John tragically committed suicide in prison in 201 after his tenth denial of parole.

⁴ Laurie Kellogg was released in April, 2019 and has not been re-imprisoned.

⁵ Adolfo Esquilin was released in May, 2018 and has not be re-imprisoned.

⁶ Ricardo Villa was released in February, 2022, and has not been reincarcerated.

⁷ Raymond O'Connor was granted release in December, 2021 and has not been re-imprisoned.

⁸ William Jennings was released in February, 2021 and has not been re-imprisoned.

⁹ George Hill was released in January, 2021 and has not been re-imprisoned.

¹⁰ Sergei Voii was released in August, 2020 and has not been re-imprisoned.

¹¹ Juan Almonte was released in June, 2020 and has not been re-imprisoned.

¹² George Phillips was released in December, 2021 and has not been re-imprisoned.

Slade v. Stanford, Index No. 203/19 (Dutchess Co. 2019); *Butler v. NYS Board of Parole*, Index No. 2703/17 (Dutchess Co. 2018); *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*¹³, Index No. 652/2017 (Dutchess Co. 2017); *Matter of Ciaprazi v. Evans*, Index No. 0910/2016 (Dutchess Co. 2016.)

32. In this case, all of the reasons given for denial were really based on the instant offenses, and an attempt to say otherwise is a smokescreen. *Diaz v. Stanford*¹⁴, Index No. 2017-53088 (Dutchess Co. 2018); *Slade v. Stanford*, Index No. 203/19 (Dutchess Co. 2019.) The only reasons the Board pointed to for denial: “your actions were violent and demonstrated poor judgment;” “the instant offense involved multiple acts of violence and sexually deviant behavior against multiple victims;” “you committed some of the offenses while in community supervision [and bail];” “your Sentencing Minutes and Presentence Report ... reveal the immense pain and suffering you caused... and we remain concerned about the lasting impact of your actions”; and “your repeated actions demonstrate your willingness to put your own needs above that of society” are all based on the offenses committed back in the 1990’s and say essentially nothing about his risk of re-offense today. This is especially true given Mr. [REDACTED]’s low COMPAS scores; very strong remorse; completion of a plethora of therapeutic programs; clean disciplinary record since 2007, and all the other facts and circumstances discussed above.

33. In *Slade supra*, where the defendant had killed a three month old baby to exact revenge on his estranged wife, the court recently granted a *de novo* hearing where the board had

¹³ Travis Darshan was released in September, 2017 and has not been reincarcerated.

¹⁴ Jose Diaz was released in June, 2018 and has not been re-imprisoned.

based its decision almost solely on the seriousness of the offense and had engaged in an improper resentencing, stating:

“...Here, the facts set forth in the Board’s written decision... are a recitation of [the petitioner’s] crime of conviction, a statement about his ‘past *history of violence* towards women’ and a statement that ‘you haven’t integrated how your behavior towards women manifested itself in violence.’

...Here, the record before the Parole Board shows no factual support for its ultimate basis for denying parole; a finding that Petitioner either will commit or does not understand his violent behavior toward women. ... While the Parole Board is clearly permitted to place a greater emphasis on the gravity of the offense committed (and this offense was clearly of the gravest type)... it may not rely solely upon that offense as a basis to deny parole...” *Slade*, supra, at 3.

34. Similarly, in *Villa*, supra, Dutchess County Supreme Court recently granted a *de novo* hearing for the same reason, stating:

“Here, the only facts set forth in the Board’s written decision... are contained in a recitation of and extensive comments about his crimes of conviction, that he was probable for reentry substance abuse, and a reference to an official opposition letter. ... These factors did not support the grounds cited for denying parole.

...Petitioner’s COMPAS Assessment gave him the lowest possible score in all categories pertaining to risk of violence, re-arrest and absconding. Other than a high score for a potential for continued substance abuse that the Board acknowledged was based primarily on the circumstances underlying his crimes of conviction, nothing in the record gave any indication of a likelihood of continued criminal conduct. ...*In short, the only factual basis underlying the Parole Board’s determination to deny parole release was its view of Petitioner’s crimes of conviction.* ...

It appears to this court that the Board’s determination is based on its independent opinion as to the length of time Petitioner should remain incarcerated... instead of evaluating whether Petitioner’s release is warranted based on the balance of the statutory factors... While the severity of the crime lends understanding to the Board’s determination, neither the Board nor this court may usurp the authority of the sentencing court which imposed 25 years to life...” *Villa*, supra, at 4-5, emphasis supplied.

35. As in *Villa* and *Slade*, the Parole Board herein denied release based on the circumstances of the offense. As in *Slade*, the Board was concerned about the *history* of violence toward women, which was itself clearly based on the offenses of conviction back in the 1990s. As in *Villa*, Mr. [REDACTED] has an excellent prison record, and all his future-oriented COMPAS

scores are low. As in both of those cases, it is clear that the real reason for denial was the seriousness of the offense. As the *Villa* court pointed out, this amounts to an improper resentencing.

36. Therefore, because the Parole Board improperly based its decision only on the severity of the offense, a *de novo* hearing must be granted before different commissioners.

POINT II

THERE WAS NO JUSTIFICATION FOR DEPARTING FROM THE LOW COMPAS SCORES

37. Section 8002.2(a) of the New York Codes, Rules and Regulations mandates Parole Boards to be guided by COMPAS scores. If a board chooses to depart from the COMPAS scores, it must specify which scale of the assessment it is departing from and provide individualized reasons for such departure. The Rule states:

“8002.2

(a) Risk and Needs Principles: In making a release determination, the Board shall be guided by risk and needs principles, including the inmate’s risk and needs scores as generated by a periodically-validated risk assessment instrument, if prepared by the Department of Corrections and Community Supervision... If a Board determination, denying release, departs from the Department Risk and Needs Assessment’s scores, the Board shall specify any scale within the Department Risk and Needs Assessment from which it departed and provide an individualized reason for such departure. ...”
[9 NYCRR S8002.2(a), emphasis supplied.]

38. New hearings were granted based on improper COMPAS departures in *Phillips v. Stanford*, *supra*; *Voii v. Stanford*, *supra*; *Jennings v. Stanford*, *supra*; *Comfort v. NYS Bd. of Parole*, Index No. 1445/2018 (Dutchess Co. 2018); *Sullivan v. NYS Bd. of Parole*¹⁵, Index No. 100865/2018 (NY Co. 2019); *Diaz v. Stanford*, *supra*; and *Robinson v. Stanford*¹⁶, Index No.

¹⁵ Veronica Sullivan was released in September, 2019 and has not been re-imprisoned.

¹⁶ Dexter Robinson was released in March, 2021 and has not been re-imprisoned.

2392/18 (Dutchess Co. 2018).

39. In this case, the Board said it departed from the COMPAS scale based on the circumstances of the offenses of conviction, stating:

...[T]he Panel departs from your low risk scores for risk of felony violence and arrest for the following reasons:

First, the instant offense involved multiple acts of violence and sexually deviant behavior against multiple victims.

Second, you committed some of the offenses while in community supervision. Additionally, while on bail for one of the sex related offenses, you committed another rape. ...[W]e have little reason to believe you will be law abiding in the community...

...[Y]our Sentencing Minutes and Presentence Report ... reveal the immense pain and suffering you caused... and we remain concerned about the lasting impact of your actions..." (Exhibit "A" at 21-22)

40. As discussed above with regard to the Board's reliance on the instant offenses for its denial, this explanation of the departure is itself all based on the nature of the offenses of conviction, and does not actually provide any support for the claim that [REDACTED] poses a risk of re-offense *today*.

POINT III

THE REASONS GIVEN FOR THE DENIAL WERE NOT SUPPORTED BY THE RECORD AND WERE NOT SUFFICIENTLY DETAILED

41. It is clear that the reasons given for parole decisions must be detailed, and not simply perfunctory, and they must be supported by the record. *Rivera v. Stanford*, 2019 NY App. Div. LEXIS 3595 (2nd Dep't 2019); *Sullivan v. NYS Bd. of Parole*, Index No. 100865/2018 (NY Co. 2019); *Matter of Coleman v. DOCCS*, 2018 NY App. Div. LEXIS 136 (2nd Dep't 2018); *Almonte v. Stanford*, Index No. 10476/2018 (Orange Co. 2019); *Winchell v. Evans*, 32 Misc.3d 1217(A) (Sullivan Co. 2011); *Matter of Rossakis v. NYS Bd. of Parole*, 146 AD3d 22 (1st Dep't 2016); *Ramirez v. Evans*, 118 AD3d 707 (2nd Dep't 2014), *Perfetto v. Evans*, 112 AD3d 640 (2nd Dep't 2013); *Ruiz v. NYS Division of Parole*, Index No. 2310/2017 (Dutchess Co. 2018);

*Maddaloni v. NYS Bd. of Parole*¹⁷, Index No. 0623/2018 (Dutchess Co. 2018); *Morales v. NYS Board of Parole*, Index No. 934/2017 (Dutchess Co. 2017.)

42. In the instant case the Decision noted the almost entirely low COMPAS scores, clean disciplinary history for the past 14 years, many therapeutic programs completed, release plan and letters of support, yet inexplicably denied release based on the nature of the offense, and on related concerns which were in no way supported by the record.

There is Nothing in the Record Indicating that Petitioner's Release Would be Incompatible with the Welfare of Society or Would Deprecate the Seriousness of the Offenses

43. The record contained no indication that Petitioner's release was somehow incompatible with the welfare of society, or would deprecate the seriousness of the offenses. His institutional record has been excellent, and there are simply no facts to back up these spurious claims. In *Rivera v. Stanford*, supra, the Second Department reversed the denial of a *de novo* hearing in a murder case, stating, at 4, "...The Parole Board's finding that the petitioner's release was not compatible with the welfare of society... is without support in the record."

44. Likewise, in *Almonte*, supra, another murder case, the court granted a *de novo* hearing for the same reason, stating, at 7, emphasis supplied, "...[t]he Board's failure to explain, *other than the facts of the crime*, why the inmate's release was incompatible with the welfare of society, could not be supported."

45. In *Matter of Sullivan v. NYS Bd of Parole*, supra, the court granted a *de novo* hearing, stating:

"Respondent's written conclusions that 1) petitioner's release was incompatible with the welfare of society and 2) her release would deprecate the seriousness of her offense and undermine respect for the law merely track the statutory language, without

¹⁷ Jack Maddaloni was released on September 10, 2018 and has not been reincarcerated.

explanation or context. Thus, the Court cannot evaluate their rationality (*see Rossakis*, 146 AD3d at 28). *Inmates are released on parole following murder convictions without doing this sort of damage, and respondent provides no information showing why it concludes that such a risk exists here. ...*” *Sullivan*, at 9-10, emphasis supplied.

46. Similarly, in *Matter of Diaz v. Stanford*, supra, the court likewise granted a new hearing, stating, at 8:

“The Board does not explain in its decision how releasing Mr. Diaz after 27 years of incarceration... would ‘so deprecate the serious nature of the crime as to undermine respect for the law.’”

47. As in the above cases, the Board’s conclusory claims in this regard were meaningless boilerplate with no support in the record, and cannot be relied upon to justify denial.

Nothing in the Record Supports the Claim that Petitioner is Likely to Violate the Law Again if Released

48. Likewise, the conclusory claim that there is a reasonable probability that Petitioner is likely to violate the law again, without actual supporting facts in the record, cannot be a proper reason for denial. As discussed above, the panel relies for this solely on the instant offenses.

49. Therefore, because the reasons given for the denial of release were conclusory and not supported by the record herein, there must be a *de novo* hearing.

CONCLUSION

50. 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 November, 2021 Board.

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