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### Art. 78 Petition - FUSL000147 (2021-12-13)

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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:**

Respondent.

The Petition of [REDACTED] respectfully shows and alleges:

**PRELIMINARY STATEMENT**

1. The April, 2021 Parole Board Decision denying parole to Mr. [REDACTED] was illegal because it was essentially based solely on the circumstances of the offense; because it provided no detailed justification for denial, only spurious claims not supported by the record; and because it improperly departed from low COMPAS scores based on the nature of the offense.

**STATEMENT OF FACTS**

2. [REDACTED] was convicted in Kings County of Murder in the second degree, and was sentenced to 25 years to life. (Exhibit “A” at 6) While the 1993 murder was horrendous and inexplicable, Mr. [REDACTED] has absolutely no criminal history. He has long accepted responsibility for the murder, 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 re-entry substance abuse. He has an excellent institutional record, with no disciplinary violations in over ten years, the completion of many therapeutic programs, and a strong support network of people who will help him transition to a law abiding and productive life upon release. (Exhibit “B” at 4)

**Institutional Record**

3. While he had several violations, mainly relating to gambling, the first several years he was in prison, Mr. [REDACTED] has not had any disciplinary violations since September 25, 2011, so he has had a *completely clean record for ten years* (Exhibit “C” at 25-26). He has also completed all his mandatory programs, as well as many others, and has done quite a bit of volunteer work with AVP.

**Programs Completed**

4. [REDACTED] has successfully completed several programs, including Aggression Replacement Training (ART) (2016), Alternatives to Violence (AVP) (2017-2018), and the ASAT substance abuse program (2013). (Exhibit “A” at 4, 21; Exhibit “C” at 5-23)

**AVP – Courses and Volunteer Work**

5. [REDACTED] really got a lot of benefit from the Alternatives to Violence Programs, and he became a facilitator of the programs himself. He completed the AVP Basic course in November, 2017, the Advanced AVP course in December, 2017, an Anger Workshop in 2018, and the AVP Facilitator Training in 2018. (Exhibit “C” at 6, 17, 19)

6. In addition, he completed a Workshop in Special Topics in Anger Management in 2018; another Facilitator Training (for conducting AVP Workshops) in 2019; an AVP Support Group Program in 2019; a course in Advanced Workshop Facilitation (Special Topics) in 2020; and a workshop in Conflict Resolution During Challenging Times in 2020. (Exhibit “C” at 7, 11, 16, 19, 21-22)

7. Mr. [REDACTED] has volunteered many hours facilitating workshops for AVP since 2019. He received Certificates of Recognition for his work (spending 26-28 hours each time) volunteering for AVP in February, 2019; April, 2019; June, 2019; July, 2019; October, 2019;

and January 16, 2020. (Exhibit “C” at 8-10, 12-15, 20) (The programs were then likely suspended or greatly curtailed due to the pandemic.)

**Substance Abuse Recovery**

8. [REDACTED] has been sober since his arrest in 1993. He completed the ASAT substance abuse program in 2013. (Exhibit “C” at 6) Mr. [REDACTED] has been regularly attending AA/NA meetings in prison for years now. He received a memorandum in 2019 indicating that he had attended more than 26 consecutive weeks of 12 step meetings at Woodbourne. (Exhibit “C” at 23)

9. In addition, Mr. [REDACTED] has a Reentry Plan which includes contacting the Center for Recovery and Wellness in New York City for counseling and recovery maintenance, and contacting the AA/NA Clubhouse in Brooklyn to learn of meeting schedules and seek a sponsor. (Exhibit “C” at 3-4) As shown in his letter cited below, his friend, [REDACTED] will also make sure that he gets the support he needs. (Exhibit “D” at 19)

**His Statement**

10. Mr. [REDACTED] wrote a letter to the Parole Board which stated:

“I humbly write this letter taking full and absolute responsibility for taking the life of [REDACTED] On August 22, 1993, I committed a most unimaginable and cowardly act. [REDACTED] family, and friends did not deserve the pain and suffering I inflicted upon them. ... [T]he thought of the continuous pain and sorrow I have caused everyone shakes me with fear. ...

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As I reflect, I believe my trouble began in high school. ... It was hard for me to fit in. Eventually, I started to self-medicate with ... alcohol. In a very short time, I learned to rely on alcohol for all of my socializing.

I attempted college but left after one year... I decided to take civil service exams... with the hope of working for the fire or police department. The police department called first and I entered the academy.

...I actually thought my life was heading in the right direction. But, my drinking continued and I soon started using cocaine. ... I became a very dishonest and manipulative person. I no longer took accountability for my actions. ... I would become

very defensive and angry...

On that night, after hours of partying, I left the [REDACTED] with [REDACTED] and returned to my house, where we continued to drink and use cocaine. ... I [went] to use the bathroom, and upon returning, I walked past my bedroom and saw [REDACTED] handling my gun. I immediately became enraged, and in the heat of that moment, I snatched the gun away from her and fired the gun repeatedly.

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In the beginning of my sentence I had the same destructive behaviors and attitudes. ... However, after some volunteer programs in prison, I had an epiphany. I realized that I had primary issues from my past that angered me in the present. ...

...I [saw] [REDACTED] holding my gun and I felt weak, violated, and enraged. And, those emotions caused me to react horribly. In short, on that day, [REDACTED] [REDACTED] paid for all my unresolved hurt and pain.

Once I identified my shortcomings, I began to understand the extent of what I did and how much I hurt all the people involved. ... I have spent an endless amount of time wondering how the [REDACTED] family went on without her. ...[H]ow I am responsible for destroying their lives.

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I am horrified by this realization and eternally apologetic and hopeful that the [REDACTED] family and everyone affected by my actions can one day find solace from me accepting total responsibility for having been the cause of their immense pain and suffering.”

(Exhibit “C” at 1-2, emphasis supplied)

### Letters of Support and Offers of Employment

11. Mr. [REDACTED] received many letters of support from family members and friends, who noted his remorse and insight, as well as his commitment to being a positive force in society. Many of them indicated the ways in which they would support him upon release.

12. [REDACTED] [REDACTED] (Petitioner’s parents) wrote (in 2019):

“...[O]ver the course of the past 25 years we have witnessed our son [REDACTED] accept, understand and process the magnitude of his actions. He openly expresses remorse and pain...

[REDACTED] has ... explained to us the shame and embarrassment he felt about his drug use and how that prevented him from reaching out and asking for help.

...He has a strong family support system that will be by his side and he will seek counseling and attend substance abuse programs such as AA and NA. ... At this stage in our lives we also need him home. My husband is eighty-two and suffering from severe heart disease... I am going to be eighty years old and as much as I would not like to admit it, I need help. ... Due to our health issues we are no longer able to visit [REDACTED]

[on] weekends as we have over the past twenty-five years. We need him in our lives....”  
(Exhibit “D” at 5-7)

13. [REDACTED] [REDACTED] aunt, wrote:

“...I am very close to my nephew and visit him often. I have listened to him recount the gravity of his sin. He deeply understands the severity of his crime that put him in prison and the devastation he has caused...

[REDACTED] has been a good inmate for over 2.5 decades. He has taken a required substance abuse course, attended AA, NA and alternative to violence classes, and has done re-entry prep work. ...

I am very close with [REDACTED] mother Carmen, who is my only sibling. She is 82... In March, 2020 she was diagnosed with Non-Hodgins Lymphoma and is being treated with chemotherapy... [REDACTED] father [REDACTED] is 84 and had double bypass surgery and a pacemaker implant in 2019. They are both in need of helping getting to and from medical appointments and [REDACTED] would be able to live with them and assist them should he be released. ...” (Exhibit “D” at 8)

14. [REDACTED], Esq., [REDACTED] friend, wrote two letters, one in 2021 and one in 2019 – his 2019 letter stated:

“ ...[T]he most difficult and heart wrenching letter I have ever written is this letter...

I have known [REDACTED] since the 1980’s, when we both met while working as waiters... ...[W]e became lifelong friends. ...

While working as a new attorney, I received a call from [REDACTED] mother... with terrible news. To this day, I remember... the horrible feeling that came over me. After all these years, it is difficult to make sense of these tragic events, nor is it even possible to rationalize or justify [REDACTED] actions. Nonetheless, I am writing this letter... to speak of the person I know and the person he has become. ... [REDACTED] was a kind, considerate, loving son, brother, nephew and friend, and that is why, to this day, it is difficult to comprehend the course his life would take and the actions that he undertook.

Over the years my wife and brother [REDACTED], who also became [REDACTED] steadfast friend, visited [REDACTED] over these long years. We have had profound and intense discussions about his actions and the tragedy he brought upon the victim’s family... He is remorseful and ... understands that there can be no apology or explanation which forgives his conduct. Nevertheless ... it is my honest belief that he will take every opportunity to live a responsible life and contribute to society in a positive way.

...My office has offered [REDACTED] the opportunity... to attend paralegal school and work for my office...” (Exhibit “D” at 10-11)

15. [REDACTED], [REDACTED] cousin, wrote:

“...I don’t have a lot of family and [REDACTED] and I were always close. ... [REDACTED] has demonstrated his ability to rehabilitate himself through AA/NA treatment... I have told [REDACTED] he can be employed at my public relations and marketing firm, [REDACTED] Group... I can train him to do research, which he says he found a love for while serving in prison. ...” (Exhibit “D” at 13)

16. [REDACTED] Petitioner’s friend, wrote:

“...I have known [REDACTED] for 35 years and clearly remember the absolute shock I felt when I first heard what he had done. ...

...I remain grateful my husband and I maintained our friendship with him these past 27 years. ...I have witnessed the [REDACTED] I knew mature into a person who possesses substance, depth, compassion and empathy. ...

I have listened to him grow as a person, we have talked about the pain he carries knowing what he did and how it affected the lives of so many, and he has expressed true remorse for his actions. We have also talked about his dream and desire to try to make a difference in some small way... He would like to try to do that by caring for his aging parents and committing to volunteer work at an animal shelter. ...

...I ... believe, unequivocally, that give the opportunity, [REDACTED] will use this possible second chance to be an outstanding member of his community...” (Exhibit “D” at 14)

17. [REDACTED], [REDACTED] friend, wrote:

“...[REDACTED] and I have remained friends for the entirety of his sentence, we still speak or email on a regular basis and I stand by everything I wrote in my last letter to the Board. [REDACTED] is caring and thoughtful, kind and considerate, helpful and selfless, hardworking, intelligent and funny. ...

...[REDACTED] has taken courses to better himself, stayed out of trouble (which can’t be easy in there), made friendships and proven he is not the same person that entered so many years ago. ... Given a second chance, and *we all deserve second chances*, I know [REDACTED] will flourish...” (Exhibit “D” at 15, emphasis in original)

18. [REDACTED], [REDACTED] friend, wrote:

“Last March 2019, I sent you a letter on behalf of [REDACTED] That letter still stands true today and even more so.

[REDACTED] and I speak frequently on the phone and he feels horrible for his wrong doing...and he lives with remorse daily. Now that a quarter of a century has passed, he is ready for life outside of prison and with the support of me, family and friends he will succeed. ...” (Exhibit “D” at 17)

19. [REDACTED] a cousin and friend of [REDACTED] who is a substance abuse counselor, wrote:

“... [REDACTED] and I were very close growing up, he was my best friend...

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As adults we drifted apart. I started hanging around other crowds, [REDACTED] stuck to his core group of friend. As a result [REDACTED] built strong and lasting relationships that continue to this day. ...

I am a Certified Alcohol and Substance Abuse Counselor... for seven years and have extensive knowledge of treatment programs and recovery support throughout New York City. I am committed to helping [REDACTED] reintegrate back into the community... I am standing by to help in any way I can to make sure [REDACTED] gets what he needs when back home. ...” (Exhibit “D” at 19-20)

20. [REDACTED] friend, wrote:

“...I have known [REDACTED] for over 37 years... [REDACTED] became a trusted friend as we shared many of the same interests... After his incarceration we would exchange letters, speak on the phone, and I would visit him...

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... He made a horrible mistake that has impacted many lives. He does not feel sorry for himself and he accepts full responsibility for his actions that night. This is something that will haunt him for the rest of his life... [REDACTED] is not simply looking to get out of prison- he wants to care for his elderly parents and become a productive member of our society...

I have always been convinced that [REDACTED] is an honorable man with a good heart... He has learned a lot about himself during his time in prison which ... will help him as he successfully transitions to life outside of prison...” (Exhibit “D” at 23-24)

21. Finally, [REDACTED], [REDACTED] cousin (joined by several other family members who signed the letter) wrote:

“... I want the Board of Parole to know that [REDACTED] is a good man. He has accepted his guilt and has worked hard to open up and confront his past...

There is no hiding from what he has done and as a family we have had to re-evaluate quite a bit over the past twenty-five years. His guilt was a blow to all of us. This has been hard especially for his parents, my Uncle [REDACTED] and Aunt [REDACTED].

...Due to medical reasons my Aunt and Uncle are no longer able to visit [REDACTED] With each passing year the reality [likelihood] of their reunion lessens. ... I am genuinely concerned that because of my Uncle’s heart condition [and my Aunt’s recent cancer diagnosis] we no longer have the luxury of time.

... [REDACTED] will have a support system committed to helping him re-acclimate into



society and help him ...seek professional counseling for his past substance abuse issues as well as any court mandated therapy. [REDACTED] has a sound plan of action and we will be by his side every step of the way....” (Exhibit “D” at 25)

### Job Offers

22. [REDACTED] has not one but *four* different job offers- one in a medical office for [REDACTED]; one doing research at [REDACTED]’s public relations/marketing firm; one doing construction for [REDACTED]; and one doing construction for [REDACTED].

23. [REDACTED], [REDACTED] friend, wrote in support of him and also offered him a job in his office, stating:

“...I have known [REDACTED] for over thirty years and have kept in contact with him over the course of his imprisonment. ...He is remorseful and accepts responsibility for his actions. ...

...I am fortunate to be able to offer [REDACTED] an employment opportunity. He would be responsible for clerical, scheduling duties in my medical office. [REDACTED] has a strong support system... I whole heartedly believe that this support system will help [REDACTED] transition into a successful life outside of prison where he can work, be productive and care for his elderly parents. ...” (Exhibit “D” at 26)

24. As noted above, [REDACTED] said he would give [REDACTED] a job doing research for his firm, something he said [REDACTED] had learned to love while in prison. (Exhibit “D” at 13)

25. [REDACTED] also offered Mr. [REDACTED] a job, stating “...I am so confident that he is a good person that I am willing to employ him in my family owned business [JPS Construction]...” (Exhibit “D” at 18)

26. Finally, [REDACTED] wrote letters in 2019 and 2021 and both times she also offered him a job [with [REDACTED]]. (Exhibit “D” at 27-28)

### COMPAS Risk Assessment Instrument

27. 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. (2020 Risk Assessment Instrument attached as Exhibit “B”).

28. 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, History of Violence, 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 4-5)

29. While there was a finding of “highly probable” reentry substance abuse, it is submitted that this was not supported by the record. He has been sober for *over 28 years*. Moreover, as discussed above, he successfully completed the ASAT drug program, and many other therapeutic programs, and has regularly attended AA/NA meetings for many years. He has plans to continue with treatment and meetings upon release, and one of his friends is a substance abuse counselor who is committed to making sure he gets all the support he needs. (Exhibit “C” at 3-4; Exhibit “D” at 19-20)

### Interview

30. In the beginning of the interview, [REDACTED] (who was understandably extremely nervous during the interview) was asked what he was told to do by the prior panel when his release was denied in 2019. (Exhibit “A” at 3) He responded that he was told to continue to be discipline free, which he had done [since 2011] and to focus on his insight. (Exhibit “A” at 3) He then said:

“I continue to focus on my AVP and AA, which actually gives me ideas about

insight. ... It makes me realize how to do it better or how to dig deeper into myself to realize what brought me to that point in my life and I must say that it's a work in progress. You use it every day and it helps each and every day.

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...What I found in myself was that my behaviors actually started more prior to the evening of the occurrence, the death. My manipulative behaviors probably [arose] somewhere around my late teens... When I had done something wrong I was always able to cover it up with a lie... I never took responsibility for it.

...As I got older the behavior got worse. ... I never had the courage to look into myself and that's what progressively led me to that evening." (Exhibit "A" at 4-5)

31. The panel then spent a lot of time discussing the instant offense in 1993, where Mr. [REDACTED] who was addicted to drugs and alcohol, had, after a night of partying, become enraged and shot his friend when he found her holding his police service gun.

32. When asked about his drug and alcohol abuse, Petitioner said he had first become dependent on alcohol, and then later cocaine – he was heavily using both substances by around 1992, the year before the offense. (Exhibit "A" at 9-10) When asked again about the instant offense, why he had reacted the way he did and shot his friend several times, he said:

"..Why would I do that? That's the problem. I repeatedly pulled the trigger of the gun. Through the screaming, through the yelling, I just – pure insanity ran through my mind." (Exhibit "A" at 13)

33. When asked if it could have been related to misdirected anger toward his ex-girlfriend, he said:

"...I had anger with me, my ex-girlfriend, my friends, my job because I was becoming distant from everybody and blaming everybody else but myself. I had many opportunities to ask for help, but to ask for help it means you'll lose your job. People would be ashamed, you'd be ashamed... and you don't want your family to know you use drugs... So all those things that were building inside of me, and yes maybe including my ex-girlfriend..." (Exhibit "A" at 13)

34. When asked about the victim and her family, Mr. [REDACTED] said:

"...She had one daughter... I have a mom, I have a sister, so I can't imagine how I would feel with that loss. ...My sister raised a daughter, my niece Alexia, so I always think, though I try not to bring it to my sister's attention too much, but I say 'this could

be Diane's daughter' ... The thing that haunts me – one of the things I think about mostly is the courtroom. ...I could see my mom ... and I could see Ms. [REDACTED] and I always tell people... She was the same as my mom. ... She raised children... ...[N]o parties, no weddings, no Christenings. ... I robbed the [REDACTED] family, I robbed [REDACTED] obviously, I took her parent's child, there's nothing that can replace that. (Exhibit "A" at 15-16)

35. The panel then turned to a discussion of [REDACTED] [REDACTED] disciplinary record, which had been completely clean for 10 years, since 2011. When asked if he had used any drugs or alcohol during his incarceration, he said no (and the disciplinary history confirms that there were no reports of this.) (Exhibit "A" at 18-19; Exhibit "C" at 25-26)

36. Mr. [REDACTED] said that many of his disciplinary violations related to gambling. (Exhibit "A" at 19) When asked if he had traded one addiction for another, he said yes, adding that it made him feel a part of the prison culture. (Exhibit "A" at 20)

37. When asked about the programs he had participated in, [REDACTED] stated that the two most important ones for him had been AA and AVP, and that he was continuing to be involved in both of those programs. (Exhibit "A" at 20-21)

38. He was then asked about his employment goals, and he noted that he had been offered jobs doing roofing and other construction work. (Exhibit "A" at 21) Commissioner Segarra said that this could be difficult at age 54, and Mr. [REDACTED] said that he was in good health. (Exhibit "A" at 21) [It is also noted that he had job offers to work in a medical office and a marketing firm as well. (Exhibit "D" at 13, 26)]

39. When [REDACTED] said he planned to live with his elderly parents upon release, Commissioner Segarra suggested that they were "pretty old for parole to be knocking on their door." (Exhibit "A" at 22) He responded by saying that when he had raised that with them, his parents insisted because they badly wanted him there to be with them and help care for them. (Exhibit "A" at 22) (It is also noted that, in addition to the letter from the parents, several of the

letters of support from [REDACTED] family members expressed that it would be wonderful if he could be released so that he could live with and support his aging parents before it was too late.

[Exhibit “D” at 5-8, 14, 23-25])

40. The panel then discussed [REDACTED] release plan, and his continuing involvement with AVP, which has included becoming a certified AVP facilitator and having facilitated many AVP workshops and programs, which they said was a good thing. (Exhibit “A” at 24)

41. Commissioner Corley then discussed [REDACTED] substance abuse while he was a police officer, and pointed out that he could have asked for help. (Exhibit “A” at 27) He responded, “I just didn’t want to believe that my life was out of control. ... I was a coward.” (Exhibit “A” at 27)

42. Near the end of the interview Commissioner Segarra repeatedly asked [REDACTED] whether he believed that police officers should be higher standard or be sentenced more harshly when they commit crimes. (Exhibit “A” at 28-30) [It is noted that, as to harsher sentencing at least, this is an expression of penal philosophy, and not an appropriate factor for consideration by the panel.]

### **Decision**

43. The Decision stated:

“...This panel determined 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. ...

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...When asked by this panel if you brutally murdering your victim was misguided anger, you answered with uncertainty. You stated that you have gained insight into your criminal behaviors and explained that your deceptive and manipulative ways were developed from an early age. You minimally discussed how drugs or alcohol or if anger could have impacted you in killing your friend.

The instant offense represents your first contact with the criminal justice system...

...[W]e also reviewed the COMPAS... which presents you as low risk to offend. Of concern to this panel is your continued criminal thinking which is reflected by the misbehavior tickets you have received. ...[Y]ou have received numerous misbehavior reports to include for weapon, contraband, fighting and gambling.

...It is because of this behavior that the panel agreed to depart from the COMPAS risk and needs assessment presenting you as a low risk of arrest and find that your risk of arrest should be scored as high due to your unwillingness to be law abiding. COMPAS also indicates that your need for re-entry substance abuse treatment upon release is highly probable.

...To your credit, you have not received a misbehavior report since 2011 [and] ... have been active in participating in AA.

You have participated in all mandated programs and prepared a Parole Packet that included letters of support and assurance from re-entry programs... This panel suggests that you start to develop a relapse prevention program that will include documented support from individual in the community that could guide you with your addictions and addictive tendencies. Services for treatment for gambling addiction in the community should also be sought.

The panel notes that during the interview you minimized your reckless behavior and expressed limited remorse for your victim. This panel found that your insight is still limited and that your rehabilitation is not complete.

We have considered the gravity of your vicious actions and the serious and senseless loss of life that you caused. ... To grant you release would so deprecate the serious nature of your crime as to undermine respect for the law.” (Exhibit “A” at 31-34)

### **Administrative Appeal**

44. On December 3, 2021, the Appeal Unit affirmed the denial of release, stating that the decision was not based solely on the instant offense, and that the panel properly departed from the COMPAS findings of low risk. (Exhibit “E” at 6)

## **ARGUMENT**

### **POINT I**

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

45. 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 (2<sup>nd</sup> 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 (2<sup>nd</sup> Dep't 2018); *Villa v. Stanford*, Index No. 53877/21 (Dutchess Co. 2021); *O'Connor v. Stanford*,<sup>1</sup> Index No. 54/2021 (Dutchess Co. 2021); *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 (1<sup>st</sup> Dep't 2016); *Ramirez v. Evans*, 118 AD3d 707 (2<sup>nd</sup> Dep't 2014), *Perfetto v. Evans*, 112 AD3d 640 (2<sup>nd</sup> Dep't 2013); *Ruiz v. NYS Division of Parole*, Index No. 2310/2017 (Dutchess Co. 2018); *Maddaloni v. NYS Bd. of Parole*,<sup>2</sup> Index No. 0623/2018 (Dutchess Co. 2018); *Morales v. NYS Board of Parole*, Index No. 934/2017 (Dutchess Co. 2017.)

46. In the instant case the Decision noted the low COMPAS scores, lack of any criminal history, clean disciplinary history for the past ten years, therapeutic programs completed, release plan and letters of support, yet inexplicably denied release based on the nature of the offense, and on concerns which were in no way supported by the record.

#### **The Claim of Limited Remorse and Insight is Contradicted by the Record**

47. Despite [REDACTED] extreme nervousness during the interview, he managed to express his revulsion for what he did, the insight he had gained, and his deep remorse for the killing and its impact on the victim's family.

48. He was also able to explain how he had developed a great deal of insight over the years, while realizing that this was an ongoing process. As discussed above, Mr. [REDACTED] noted that he had learned a lot from his involvement with AVP and AA, and that his introspection and

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<sup>1</sup> Raymond O'Connor was released on December 7, 2021 and has not been reincarcerated.

<sup>2</sup> Jack Maddaloni was released on September 10, 2018 and has not been reincarcerated.

insight was on ongoing process which he worked on every day. Was he supposed to say that he was *done* with this process and no longer looking inside himself?

49. As set forth above, [REDACTED] told the panel how he had learned a lot about how his deceitful and manipulative behavior had begun in his teens and then, coupled with his substance abuse, repressed anger, and shame, had led to his life spiraling out of control until the night of the murder. He said that “pure insanity ran through my mind” that night.

As to the impact of his crime on the victim’s family, he stated:

“...She had one daughter... I have a mom, I had a sister, so I can’t imagine how I would feel with that loss. ...My sister raised a daughter, my niece Alexia, so I always think, though I try not to bring it to my sister’s attention too much, but I say ‘this could be [REDACTED] daughter’... The thing that haunts me – one of the things I think about mostly is the courtroom. ...I could see my mom ... and I could see Ms. [REDACTED] and I always tell people... She was the same as my mom. ... She raised children... ...[N]o parties, no weddings, no Christenings. ... I robbed the [REDACTED] family, I robbed [REDACTED] obviously, I took her parent’s child, there’s nothing that can replace that. (Exhibit “A” at 15-16)

50. Yet the decision inexplicably stated, “you...minimized your reckless behavior and expressed limited remorse for your victim.” (Exhibit “A” at 34) (It is noted that in the 2019 Decision, where he similarly expressed his remorse, the panel did not then claim it was “limited,” stating only that “your positive presentation and expression of remorse are noted”.) (Exhibit “A” at 36-37)

51. As shown by [REDACTED] statements in the interview, as well as his letter to the board, this 2021 claim flies in the face of the record. *What more could he possibly have said which could have satisfied the panel?* This claim was really just a smokescreen for denial based on the seriousness of the offense.

52. In *Coleman*, 2018 NY App. Div. LEXIS 136 (2<sup>nd</sup> Dep’t 2018), the Second Department stated:



“...[P]etitioner was convicted of two counts of murder in the second degree arising from his killing of a 14 year old acquaintance who refused his sexual advances. The then-17-year old petitioner strangled and beat the victim, then attempted to rape her....

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...The Board’s findings that there was a reasonable probability that, if released, the petitioner would not remain at liberty without violating the law, and that his release would be incompatible with the welfare of society... *are without support in the record.*

Contrary to the Parole Board’s determination that petitioner ‘distance[d] himself from the crime, *the record demonstrates that petitioner took full responsibility for his actions, stating, ‘I don’t blame it on the drugs. I blame it on me... The petitioner also acknowledged that ... he was aware of the damage he had done to the victim, her family and his own family...*

Thus, a review of the record demonstrates that in light of all the factors, not withstanding the seriousness of the offense, the Parole Board’s ‘determination to deny the petitioner release on parole evinced irrationality bordering on impropriety.’ (*Matter of Goldberg v. NYS Bd. of Parole*, 103 AD3d 634...” *Coleman*, supra, at 1-4, emphasis supplied.

53. As in *Coleman*, supra, the panel’s claims that Mr. [REDACTED] expressed limited remorse and insight were not supported by the record, and cannot be considered a valid reason for the denial.

### **Disciplinary History**

54. The panel stated, “[Y]ou have received numerous misbehavior reports to include for weapon, contraband, fighting and gambling.” (Exhibit “A” at 32-33) As with the claims regarding a lack of remorse and insight, the panel’s reliance on disciplinary violations to justify denial is not supported by the record. First, the only time a weapon was ever involved was in 1997, nearly 25 years ago near the beginning of his incarceration. (Exhibit “C” at 26.) Moreover, he has maintained a completely clean record for the past ten years. Ten years is a long time. How can this possibly imply he is now likely to break the law upon release?

55. In *Rivera*, supra, where the petitioner had a history of disciplinary violations, the court stated:

“...[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...

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...[T]he Parole Board [said]... it was ‘concerned that [his] poor behavior shows limited maturity and self-control,’ referring back to the petitioner’s disciplinary history.

...[T]he record demonstrates that the petitioner, in fact, does not lack maturity and self-control...

Thus, the record demonstrates that in light of all the relevant factors, including, but not limited to, the petitioner’s understanding of and remorse for his crimes, his significant accomplishments, his leadership, and demonstrated maturity, notwithstanding the seriousness of the underlying offenses, the Parole Board’s determination to deny the petitioner release on parole ‘evinced irrationality bordering on impropriety’ (*Matter of Goldberg v. New York States Bd. of Parole*, 103 AD3d 634, 634...)...” *Rivera*, supra, at 4, 8, 10.

56. In *Ruiz v. NYS Division of Parole*, supra, the Court granted a *de novo* hearing because the reasons given for denial were too conclusory, despite the old disciplinary history, 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. ...

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... 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)...

...Here, the petitioner is left with no guidance as to what issues he must address between now and his next parole hearing in order to alleviate any concerns by the Board as to his release. Rather, 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, 10-11.

57. As in *Rivera* and *Ruiz*, the reliance on the ten year old disciplinary violations as a reason to deny release does not suffice.

**The Finding that Reentry Substance Abuse was Likely Lacks Support in the Record**

58. In *Matter of Lackwood v. NYS Bd of Parole*, Index No. 2464/2017 (Dutchess Co. 2018), where, as in instant case, the COMPAS found that reentry substance abuse was likely, and the parole board claimed this concern was a reason to justify denial, the court granted a new hearing because this was not supported by the record, stating, at 7, "...Respondent Board's 'concern' about re-entry substance abuse is not supported by the unredacted records available to the Commissioners."

59. As in *Lackwood*, supra, the Board's alleged concern about re-entry substance abuse is not supported by the record herein, which shows that [REDACTED] has been sober since the 1993 offense, and that even though he did not always obey prison rules until 2011, and could easily have engaged in substance abuse behind bars, *he did not do so*.

60. Moreover, as discussed above, Mr. [REDACTED] has completed the ASAT substance abuse program, and has been very involved with AA/NA for many years. He also has a release plan which includes contacting the Center for Recovery and Wellness in New York City for counseling and recovery maintenance, and contacting the AA/NA Clubhouse in Brooklyn to learn of meeting schedules and seek a sponsor. (Exhibit "C" at 3-4) As shown in his letter cited below, his friend, Alex Elejalde, will also make sure that he gets the support he needs. (Exhibit "D" at 19)

**There is Nothing in the Record Indicating that Petitioner's Release Would be Incompatible with the Welfare of Society**

61. In addition, the record contained no indication that Petitioner's release was somehow incompatible with the welfare of society. His institutional record has been excellent,

and there are simply no facts to back up this spurious claim. In *Rivera v. Stanford*<sup>3</sup>, 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.”

62. Likewise, in *Almonte*, supra, another murder case, the court recently granted a *de novo* hearing for the same reason, stating, at 7, “...[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.”

63. As in *Rivera* and *Almonte*, , there was no support in the record for the board’s claims that release was incompatible with the welfare of society.

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

64. 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. The panel relies for this on the old disciplinary history. However, it is submitted that, to the contrary, his ten years of a completely clean record (in addition to all the other positive evidence in the record) shows that he is *not* likely to violate the law upon release. It is also noted that in the 2019 Decision denying release, there was no claim that he was likely to violate the law upon release. (Exhibit “A” at 36-37)

65. 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.

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<sup>3</sup> Richard Rivera was granted an open date for parole release by December, 2019.

## POINT II

THERE WAS NO JUSTIFICATION FOR DEPARTING  
FROM THE LOW COMPAS SCORES

66. 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

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(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.]

67. New hearings were granted based on improper COMPAS departures in *Phillips v. Stanford*, Index No. 52579/19 (Dutchess Co. 2019); *Voii v. Stanford*<sup>4</sup>, Index No. 2020-50485 (Dutchess Co. 2020); *Jennings v. Stanford*<sup>5</sup>, Index No.2020-51294 (Dutchess Co. 2020); *Comfort v. NYS Bd. of Parole*, Index No. 1445/2018 (Dutchess Co. 2018); *Sullivan v. NYS Bd. of Parole*<sup>6</sup>, Index No. 100865/2018 (NY Co. 2019); *Diaz v. Stanford*<sup>7</sup>, Index No. 2017-53088 (Dutchess Co. 2018.); and *Robinson v. Stanford*, Index No. 2392/18 (Dutchess Co. 2018).

68. In this case, the Board said it departed from the COMPAS scale for risk of arrest based on the very old disciplinary violations, stating:

<sup>4</sup> Sergio Voii was released in June, 2020 and has not been re-imprisoned.

<sup>5</sup> William Jennings was released in February, 2021 and has not been re-imprisoned.

<sup>6</sup> Veronica Sullivan was released in September, 2019 and has not been re-imprisoned.

<sup>7</sup> Jose Diaz was released in June, 2018 and has not been re-imprisoned.

“...[W]e also reviewed the COMPAS... which presents you as low risk to offend. Of concern to this panel is your continued criminal thinking which is reflected by the misbehavior tickets you have received. ...[Y]ou have received numerous misbehavior reports to include for weapon contraband, fighting and gambling.

...It is because of this behavior that the panel agreed to depart from the COMPAS risk and needs assessment presenting you as a low risk of arrest and find that your risk of arrest should be scored as high due to your unwillingness to be law abiding. COMPAS also indicates that your need for re-entry substance abuse treatment upon release is highly probable.

...To your credit, you have not received a misbehavior report since 2011 [and] ... have been active in participating in AA.” (Exhibit “A” at 32-33)

69. As discussed above, this claim flies in the face of the record – ten years of a completely clean disciplinary history in no way shows a “high risk” of arrest. To the contrary, it shows that for a lengthy period of time, [REDACTED] *has demonstrated his ability to follow rules and be law-abiding.*

70. In *Voii*, supra, the court stated:

“In reviewing the March 2019 decision...the Court finds that Petitioner has demonstrated that the Board’s determination to deny him release evinces irrationality bordering on impropriety. This is most clearly demonstrated by the Board’s admitted departure from Petitioner’s COMPAS. The record establishes that Petitioner only had six disciplinary tickets...with the *last one occurring in 2009*. Petitioner had no criminal record prior to the crimes for which he was convicted, although he was convicted of misdemeanor assault against another prisoner in 1989.

...Petitioner’s COMPAS ...indicates a low risk in every category...

...9 NYCRR 800.2 requires that [the Board] ...provide an individualized reason for such departure. Respondent Board failed to do so.” *Voii*, supra, at 4-5, emphasis supplied.

71. As is the case with Mr. *Voii*, it has been ten years since [REDACTED] had a disciplinary violation, and those old violations do not in any way suffice to explain or justify the departure from the low risk COMPAS findings.

## POINT III

**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**

72. A parole board may not deny release solely on the basis of the seriousness of a defendant's offense. *Rivera v. Stanford*, 2019 NY App. Div. LEXIS 3595 (2<sup>nd</sup> Dep't 2019); *Ferrante v. Stanford*<sup>8</sup>, 2019 NY App. Div. LEXIS 3407 (2<sup>nd</sup> Dep't 2019).

73. 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*, 2018 N.Y. App. Div. LEXIS 1469 (1<sup>st</sup> Dep't 2018); *Esquilin v. NYS Bd. of Parole*, 2018 NY Misc. 483 (Orange Co. 2018); *Villa v. Stanford*, supra; *O'Connor v. Stanford*, supra; *Matter of Jennings v. Stanford*, Index No.2020-51294 (Dutchess Co. 2020); *Hill v. NYS Bd of Parole*<sup>10</sup>, Index No. 100121/2020 (NY County 2020); *Matter of Voii v. Stanford*<sup>11</sup>, Index No. 2020-50485 (Dutchess Co. 2020); *Almonte v. Stanford*, Index No. 10476/2018 (Orange Co. 2019); *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*<sup>12</sup>, Index No. 652/2017 (Dutchess Co. 2017); *Matter of Ciaprazi v. Evans*, Index No. 0910/2016 (Dutchess Co. 2016.)

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<sup>8</sup> 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.

<sup>9</sup> Richard Rivera was granted an open date for release in June, 2019.

<sup>10</sup> George Hill was released in January, 2021 and has not been re-imprisoned.

<sup>11</sup> Sergei Voii was released in August, 2020 and has not been re-imprisoned.

<sup>12</sup> Travis Darshan was released in September, 2017 and has not been reincarcerated.

74. Moreover, the parole board may not, as in the instant case, rely on unsupported claims regarding other purported reasons for denial when in fact it is clear that the *real* reason for the denial is the offense itself. *Diaz v. Stanford*<sup>13</sup>, Index No. 2017-53088 (Dutchess Co. 2018); *Slade v. Stanford*, Index No. 203/19 (Dutchess Co. 2019.)

75. In *Diaz*, supra, the court granted a *de novo* interview in the case of a man who, in 1990 at the age of 21, shot at a rival drug dealer and killed a bystander, who was an assistant district attorney. He had a prior assault, and a later prison contraband charge in 1991. The court held that the board acted improperly, stating:

“...The role of the Board is to determine whether, at the time of the hearing, petitioner should be released, based upon consideration of the statutory factors. ...

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No particular length of sentence can bring back the victim or ease his family’s pain and suffering. The only variable that can change is whether the petitioner has been rehabilitated and can safely be released to parole supervision. ...

Here, the sentencing judge ... imposed a sentence of 15 years to life. 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.’

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*The record before the Court raises the inference that the Board’s stated reasons for denying petitioner parole release are merely pretextual and that its decision was predicated solely on the nature of the offense.* Based on all the facts and circumstances of this case, notwithstanding the seriousness of the underlying offense, the Board’s decision to deny Mr. Diaz parole is unsupported by the record and is therefore, irrational bordering on improper.” *Diaz*, supra, at 6, 8-9, some emphasis supplied.

76. Likewise, 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 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

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<sup>13</sup> Jose Diaz was released in June, 2018 and has not been re-imprisoned.



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...

*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 15 years (to life)...” *Slade*, supra, at 3-4, emphasis supplied

77. As in *Diaz* and *Slade*, the Parole Board herein denied release based chiefly on the circumstances of the offense as well as making unsupported claims (as discussed above) regarding the old disciplinary history, alleged limited remorse and insight, and alleged probable re-entry substance abuse. As in those cases, it is clear that the real reason for denial was the seriousness of the offense. As the *Slade* court (and, more recently, the court in *Villa*, supra, at 5) pointed out, this amounts to an improper resentencing.

78. 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.

### CONCLUSION

79. Based on the foregoing, Petitioner [REDACTED] respectfully requests that the Court 1) vacate the Decision of the Parole Board; 2) grant an immediate *de novo* hearing before commissioners who did not sit on the April, 2021 Board; and 3) refund the \$305 filing fee, as recently occurred in *O'Connor*, supra.

Dated: December 13, 2021

*Kathy Manley*

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Kathy Manley  
*Attorney for* [REDACTED]  
26 Dinmore Road  
Selkirk, New York 12158  
518-635-4005

TO: Clerk, Dutchess County Supreme Court  
10 Market Street  
Poughkeepsie, NY 12601  
(e-filed)

NYS Attorney General's Office  
One Civic Center Plaza, Suite 401  
Poughkeepsie, New York 12601

Tina Stanford, Chair, NYS Parole Board  
Harriman State Campus - Building 4  
1220 Washington Avenue  
Albany, New York 12226

[REDACTED]  
(Address on file)