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STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

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In the Matter of the Application of
DANIEL F. KENEFICK, #81-C-0819

Petitioner,

v.

Index No. 2014-00059

THOMAS STICHT, Superintendent,
Gowanda Correctional Facility, et al.

Respondents.

DECISION & ORDER

Michalski, J.

Petitioner brings this Civil Practice Law and Rules Article 78 special proceeding seeking an Order: 1) setting aside Respondents' determination to deny his release to parole, and 2) directing Respondents to conduct a *de novo* hearing before a different panel. Specifically, Petitioner contends that Respondents acted unlawfully, arbitrarily, and capriciously in relying exclusively on the severity of his underlying conviction in reaching their determination. We agree.

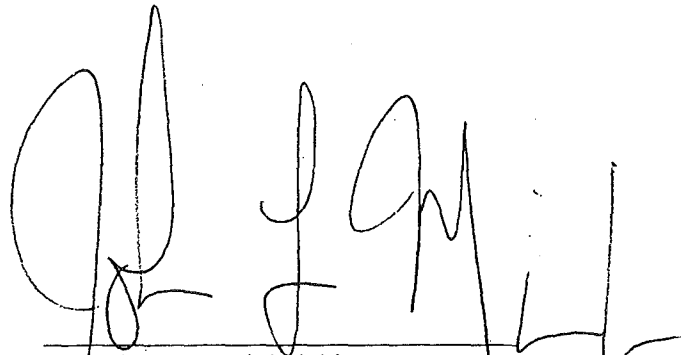
The record demonstrates "that the denial of Petitioner's application was the result of the Board's failure to weigh all of the relevant considerations and there is a strong indication that the

denial . . . was a foregone conclusion”, Matter of King v. N.Y. State Division of Parole (190 A.D.2d 42).

Accordingly, Petitioner is to be given a *de novo* hearing, before a different panel, within thirty days of the Order’s entry.

This decision constitutes the Court’s Order.

Dated: Buffalo, New York
June 2, 2015



Hon. John L. Michalski

GRANTED

JUN 02 2015

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