

Fordham Law School

## FLASH: The Fordham Law Archive of Scholarship and History

---

NYS Supreme Court Decisions in Article 78  
Proceedings

Court Litigation Documents

---

### Decision in CPLR Article 78 proceedings - Perez, Jerry

Follow this and additional works at: <https://ir.lawnet.fordham.edu/pdd>

---

At a term of the IAS Part of the Supreme Court of the State of New York,  
held in and for the County of Orange, at the 1841 Court House,  
101 Main Street, Goshen, New York 10924 on the 29<sup>th</sup> day of December, 2016.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

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, on all parties.

In the matter of the application of  
JERRY PEREZ 91 A 0372,  
PETITIONER,  
-AGAINST-

**DECISION, ORDER  
AND JUDGMENT**

NEW YORK STATE DEPARTMENT  
OF CORRECTIONS AND COMMUNITY  
SUPERVISION,  
RESPONDENT.

INDEX NO. 2483/2016

Motion dates: 4/14/16  
Motion Seq. #1 & #2

VAZQUEZ-DOLES, J.S.C.

The following papers numbered 1 to 6 were considered in connection with the application by petitioner for an Order and Judgment pursuant to CPLR Article 78 granting him a new parole hearing(Seq #1); and an Order granting poor person relief (Seq. #2);

|                                      |   |
|--------------------------------------|---|
| Order to Show                        | 1 |
| Affidavit in Support                 | 2 |
| Verified Petition                    | 3 |
| Petition with Exhibits A-K           | 4 |
| Answer and Return with Exhibits 1-11 | 5 |
| Verified Reply with Exhibit A        | 6 |

**BACKGROUND/PROCEDURAL HISTORY**

Petitioner is incarcerated after having been convicted of, among other things, two counts of murder. The convictions arose from two separate robberies that Petitioner committed in 1989. On January 4, 1989 petitioner shot and killed a 56 year old man, by shooting him in the face

during an armed robbery. For this murder, petitioner was sentenced to prison for 17 years to life. On January 17, 1989 petitioner shot and killed a 26 year old male in the parking lot of a Burger King restaurant. Petitioner shot him in the back of the head, thereby killing him instantly. Petitioner subsequently went into Burger King and had something to eat. For this murder, petitioner was sentenced to prison for 25 years to life.

On October 20, 2015, petitioner appeared before the Parole Board for a parole hearing. At that time, parole was denied. After an administrative appeal, petitioner brought this Article 78 proceeding challenging the determination and requesting a new hearing. Petitioner seeks a new parole hearing on the grounds that the denial of parole after the October 20, 2015 interview hearing was arbitrary and capricious in that Respondent failed to consider statutory factors and based its decision solely on the seriousness of the underlying offenses in making its determination.

### ANALYSIS

Respondent is required to consider a number of factors in determining whether to grant parole. Executive Law §259-I requires consideration of factors including, but not limited to, the institutional record (including program goals and accomplishments, vocational education, academic achievements, etc); release plans, including community resources, employment, education and training and available support services; any deportation order issued; the seriousness of the offense, with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court, the attorney and the pre-sentence probation report, and the prior criminal record. *Matter of Malone v. Evans*, 83 AD3d 719 (2<sup>nd</sup> Dept 2011). Where the Board's determination includes consideration of all relevant statutory factors, including the

criminal history, further judicial review is precluded. *Matter of Borcsok v. NYS Div. of Parole*, 34 AD3d 961 (3<sup>rd</sup> Dept 2006). In the absence of a violation of a positive statutory requirement, the Board's discretion is absolute and beyond review by the courts. *Briguglio v NYS Bd. of Parole*, 24 NY2d 21(1969). In all cases, it is presumed that the Board acted in accord with statutory requirements and judicial intervention is warranted only when there is a "convincing demonstration to the contrary" and it is the heavy burden of the petitioner to show that the Board acted with "irrationality bordering on impropriety". *Matter of Hanson v NYS Bd. of Parole*, 57 A.D.3d 994 (2nd Dept. 2008).

Whether the Board considered the proper factors and followed the proper guidelines are issues to be decided based on the "written determination . . . evaluated in the context of the parole hearing transcript " *Matter of Jackson v. Evans* 118 A.D. 3d 701, 702 (2nd Dept 2014). The record of the parole interview in this case demonstrates that there was a review and discussion with the petitioner of the documents provided by the petitioner, his release plan, family support, his work history, his participation in rehabilitative and vocational programs, his criminal history, the crimes that led to his imprisonment, the COMPAS Risk and Needs Assessment, sentencing minutes, and disciplinary history. Many of these were discussed with petitioner during the interview.

The record in this proceeding demonstrates that the respondent considered the requisite statutory factors in deciding to deny parole. While the decision was short on specific discussion of factors, the record as a whole reflects that the statutory factors were considered. That is all that is required. *Matter of Jackson v. Evans*, 118 A.D.3d 701 (2nd Dept 2014), *Esquilin v NYS Bd of Parole*, 144 AD3d 797 (2<sup>nd</sup> Dept 2016), *Cassidy v NYS Bd of Parole*, 140 AD3d 953 (2<sup>nd</sup>

Dept 2016) , *LeGeros v NYS Bd of Parole*, 139 AD3d 1068 (2<sup>nd</sup> Dept 2016), *Huntley v Stanford*, 134 AD3d 937 (2<sup>nd</sup> Dept 2015), *Marszalek v Stanford*, 124 AD3d 665 (2<sup>nd</sup> Dept 2015). The board is not required to give equal weight to all the factors and is not required to discuss each factor in its decision. *Matter of Mata v Travis* 8 A.D.3d 570 (2nd Dept 2004). It is expected that a parole board will consider the seriousness of the criminal offense. Parole is not to be granted as a reward for good conduct or performance of duties while serving a sentence. *Silmon v Travis*, 95 N.Y.2d 470, 476 (2000).

As the petitioner fails to establish that the determination was irrational, the petition must be denied and the proceeding dismissed.

Petitioner's request for poor person relief is granted. All costs and filing fees incurred in the filing of this application shall be waived.

This constitutes the Decision, Order, and Judgment of this Court.

Dated: Goshen, New York  
December 29, 2016

ENTER:

  
HON. MARIA VAZQUEZ DOLES, J.S.C.

Appearances:  
Jerry Perez, DIN 91-A-0372  
Otisville Correctional Facility  
PO Box 8  
Otisville, New York 10963

Elizabeth Gavin, Esq.  
Office of the New York State Attorney General  
One Civic Center Plaza, Suite 401  
Poughkeepsie, New York 12601