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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

-----X
TRAVIS DARSHAN,

Petitioner,

DECISION, ORDER &
JUDGMENT

-against-

Index No. 652/2017

NEW YORK STATE DEPARTMENT OF
CORRECTIONS AND COMMUNITY SUPERVISION,
ANTHONY ANNUCCI, Acting Commissioner,
NEW YORK STATE BOARD OF PAROLE, TINA
STANFORD, Chairperson,

Respondents.

-----X
PAGONES, J.D., A.J.S.C.

In this Article 78 proceeding, the Petitioner Travis Darshan requests a judgment declaring the Respondent's New York State Board of Parole's ("the Board") de novo rehearing determination, dated November 29, 2016 (hereinafter the "November rehearing"), unlawful. Respondents move for an order, pursuant to CPLR 7804(f) and CPLR 3211, dismissing the petition. Petitioner also moves for an order excluding the respondents' reply papers and expediting consideration of the respondents' motion to dismiss.

The following papers were read:

Notice of Petition-Petition-Verification	1-3
Notice of Motion-Affirmation-Exhibits 1-3-Affidavit of Service	4-9
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Affirmation and Memorandum in Opposition-Exhibits 1-16	13-29
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By way of background, the Board's decision denied Mr. Darshan's request for parole release and directed a twenty-four (24) month hold. In addition to declaring the November rehearing unlawful, the petitioner requests that this Court require a *de novo* parole hearing to be conducted in compliance with N.Y. Exec. Law § 259-c(4).

Petitioner, Travis Darshan, is currently incarcerated at Otisville Correctional Facility in Orange County, New York. The record indicates that he has been incarcerated since September 1999 for his involvement in a felony-murder. In what began as a plan to rob a cabdriver, one of the petitioner's co-defendants shot and caused the death of the cabdriver. Mr. Darshan pled guilty to felony-murder and was sentenced to fifteen (15) years to life. Since March 28, 2014, Mr. Darshan has been eligible for parole. Since then, he has appeared before the Board of Parole four times.

The Parole Board conducted a *de novo* rehearing on November 29, 2016, which is the subject of Mr. Darshan's petition. The Appeals Unit Commissioners determined that petitioner's May 2016 hearing did not comply with *Hawkins v. New York State Dep't of Corr. & Cmty. Supervision*, 140 AD3d 34 [3rd Dept 2016] in that the panel failed to consider "the diminished culpability of youth" and "growth and maturity sense [sic] the time of the offense." As a result, the Appeals Unit Commissioners ordered the November rehearing with the express purpose of addressing these previous failures.

The petitioner alleges that during the November rehearing, the Commissioners largely ignored the directive put forth in *Hawkins* to consider the "significance of petitioner's youth and its attendant circumstances" on his commission of the crime. (See *Hawkins v. New York State Dep't of Corr. & Cmty. Supervision*, 140 AD3d 34 [3rd Dept 2016].). Additionally, the petitioner claims that the Commissioners in the November hearing generally failed to provide him, as a juvenile offender serving an indeterminate life sentence, with a "meaningful opportunity for release," also provided for in *Hawkins* (*id.*). Furthermore, the petitioner alleges that the Board disregarded its own risk assessment instrument, the Correctional Offender Management Profiling for Alternative Sentences (COMPAS), which supported Mr. Darshan's parole release. As mentioned earlier, the petitioner requests that this Court provide relief by declaring the decision at the November *de novo* rehearing unlawful and ordering a new *de novo* rehearing to be conducted in compliance with N.Y. Exec. Law §259-c(4).

On April 12, 2017, the Board of Parole issued an Administrative Appeal Decision Notice reversing the Board's prior determination and granting a *de novo* interview. The respondents maintain that a *de novo* rehearing is the full extent of relief that the petitioner could aspire to receive, and therefore, this petition is academic and should be dismissed. In response, the petitioner argues that this petition is still a live controversy.

The petitioner's concern is that since the Board of Parole did not explicitly declare its November *de novo* rehearing decision unlawful, the Board will continue to employ the same procedures that are the subject of this petition; thus, giving rise to a ceaseless cycle of hearings, appeals, and rehearings.

It is well established that the Board of Parole has broad discretion in making parole release determinations. The petitioner bears the heavy burden of proving that this Court must intervene. Judicial intervention is only appropriate in rare instances when the Board of Parole has acted in a manner that demonstrates a "'showing of irrationality bordering on impropriety'" (see *Silmon v. Travis*, 95 NY2d 470 [2000] quoting *Matter of Russo v. New York State Bd. of Parole*, 50 NY2d 69 [1980]). Accordingly, a court may only review a parole board's denial of parole when such a denial is arbitrary and capricious.

The issues that must be decided are: whether the petitioner's claim is now academic since the Board of Parole has annulled its decision and has scheduled a second *de novo* rehearing to properly address Mr. Darshan's request for parole release; and if it is not academic, whether the Board of Parole conducted the November *de novo* hearing in an arbitrary and capricious manner.

On April 12, 2017, the Appeals Unit of the Board of Parole issued its Statement of Appeals Unit Findings & Recommendation. The Appeals Unit's findings concede that during Mr. Darshan's interview, a Commissioner's "comments demonstrate reliance on

improper matters." The petitioner argues that the statement of findings is incomplete and merely "confirms its legal position that there was nothing unlawful about Mr. Darshan's November 2016 rehearing."

Although vague and ambiguous, the wording of the Appeals Unit's findings is revealing. The petitioner contends that the Appeals Unit never admits that there was anything unlawful about Mr. Darshan's November 2016 rehearing; however, if a parole board admits that its decision relies "...on improper matters," it is implicit that the decision is irrational bordering on improper, and thus, arbitrary and capricious and worthy of judicial review. What remains to be determined is precisely why the decision was improper.

In the instant case, the Board has recognized that it acted improperly, must annul its decision, and must provide Mr. Darshan with a second *de novo* interview. The respondents argue that having already made the above reparations, there is no further relief that could be granted. Yet, without articulating exactly which improper matters the Board relied on to deny Mr. Darshan's request for parole, it is nearly impossible for that same Board to make any meaningful changes in its procedures that precipitated the last two interviews as well as this petition. Towards that end, it is necessary to review the November decision to ensure no substantial issues have evaded review in Mr. Darshan's parole interviews and *de novo* interviews.

In the Matter of Standley v. New York State Div. of Parole,

a case analogous Mr. Darshan's, the petitioner was denied parole, challenged the denial, was granted a *de novo* rehearing, was denied again, and then had a second *de novo* rehearing in which the his parole request was yet again denied (see *Matter of Standley v. New York State Div. of Parole*, 34 AD3d 1169 [3rd Dept 2006])). The petitioner in *Standley* brought his case alleging that the Board had consistently failed to consider the sentencing minutes and recommendations of the sentencing court while reviewing his application for parole (*id.*). While the case was pending, the Board granted the petitioner a second *de novo* rehearing to re-examine his case (*id.*). Typically, this would render the appeal academic; however, since there was a substantial issue involved in his case--the Board's failure to consider the sentencing minutes--that continued to evade review, the court decided that this served as an exception to the "mootness doctrine" (*id.*). The court remitted the matter to the Board so that it could conduct a *de novo* hearing in compliance with Executive Law §259-i (*id.*).

In much the same way, the petitioner claims that there is a substantial issue in his case that continues to evade review. He argues that during the various parole interviews and *de novo* interviews, the Board has continuously failed to consider the significance of his youth on his commission of the crime. If the Board has failed to do this, the issue is an exception to the "mootness doctrine" and must be redressed.

In order to clarify whether the Board has effectively considered the petitioner's "youth and its attendant circumstances," providing him with a meaningful opportunity for release, it is necessary to review the November de novo transcript as well as the pertinent portions of NYS CLS Exec §259-i. NYS CLS Exec §259-i makes clear that:

"Discretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society and will not so deprecate the seriousness of his crime as to undermine respect for the law."

To achieve the above purposes, the Board must consider, among other things:

"...the institutional record including program goals and accomplishments, academic achievements, vocational education, training or work assignments, therapy and interactions with staff and inmates; performance, if any, as a participant in a temporary release program; release plans including community resources, employment, education and training and support services available to the inmate; the seriousness of the offense with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court, the district attorney, the attorney for the inmate, the pre-sentence probation report as well as consideration of any mitigating and aggravating factors, and activities following arrest prior to confinement; and prior criminal record, including the nature and pattern of offenses, adjustment to any previous probation or parole supervision and institutional confinement."

During the November de novo hearing, the Board mentioned it would consider the sentencing minutes, after which, Mr. Darshan expressed shame and regret over his involvement in the robbery-turned-murder. He also attempted to provide context for the

crime, explaining that after being bullied in school, he "fell in" with a group of delinquent teenagers who offered him protection and acceptance. Looking back on the day of the murder and robbery, he stated that he feared for his life when his co-defendant--who has successfully attained parole release--shot and caused the death of a cabdriver.

The Board also recognized that the petitioner had presented many letters in support of his release on parole. These letters of support are from a Corrections Officer, a Pastor, family members, close friends, and various teachers and professors who taught Mr. Darshan in different phases of his education. He first earned an Associates Degree, followed by a Bachelors Degree, which his mother has assisted in financing, and is currently working on a Masters in Business Administration,.

During his interview, Mr. Darshan also confirmed that he has a viable life plan pending his release on parole. He plans to live with his mother and has received four job offers. One such offer is for a career as a dog trainer, which he gained by leveraging his experience in the program, "Puppies Behind Bars", which he completed while incarcerated.

Additionally, the Commissioner mentioned Mr. Darshan's Correctional Offender Management Profiling for Alternative Sentences (COMPAS) score. COMPAS is a risk assessment tool the Board uses in making parole release decisions. The Commissioner stated that "we recognize that your risk assessment forecasts a low risk for felony violence, arrest and absconding, and low for

all the other categories." Soon after, Mr. Darshan asked the Commissioner what, if anything, he could aspire to do better if parole were to be denied. The Commissioner replied, "...personally, I don't know....You have a done a lot, and I can't take that away from you." An honest assessment of the facts reveals that there is nothing more that the petitioner reasonably could do in order to gain release on parole. He has used his time prudently and has made significant progress during his seventeen (17) years of incarceration.

In the November *de novo* rehearing, instead of considering the "significance of petitioner's youth and its attendant circumstances" on his involvement in the crime, the Commissioner spent a large portion of the interview discussing his own youth during which he admitted to engaging in "fights with people..." since "...that's what happens when you're hanging out in the streets." He began to confuse the issue with a conflicting remark that, "yes, we're young, but we do recognize the difference between good and bad, so it's no justification...." He went on to opine that "...we [the Board of Parole] recognize the difference between being seventeen and twenty-seven, that's two different things, possibly," expressing doubt that the Board does indeed see youth as an attendant circumstance in the commission of crimes.

The Board of Parole's official reasoning for denying release to Mr. Darshan is that his "...release would be incompatible with the welfare and safety of society, and would so deprecate the

serious nature of the crime as to undermine respect for the law." This is an example of the Board's standard, boilerplate language in regard to parole denials. While it is not disputed that the Board is entitled to broad discretion in making parole determinations, the rationale for denying parole must be given in detail and not in conclusory terms (see Executive Law § 259-1[2][a][i]; *Matter of Wallman v. Travis*, 18 AD3d 304 [1st Dept 2005].).

The Board has correctly annulled its November *de novo* rehearing; however, given the fact that this will be the third interview that attempts to address the same recurring issue, it is clear that the subject of Mr. Darshan's petition continues to evade review.

Based upon the foregoing, Travis Darshan's petition seeking to: (1) nullify the respondents' denial of his application for parole release, and (2) order a second *de novo* rehearing to be conducted in compliance with N.Y. Exec. Law § 259, is granted to the extent that the New York State Board of Parole shall provide the petitioner herein a *de novo* parole hearing within 45 days of the date of entry of this order, and a decision thereon not more than 15 days after. The petitioner's motion seeking to exclude the respondents' reply papers and expedited consideration of the motion is denied as academic. Respondents' motion to dismiss is likewise denied as academic.

The foregoing constitutes the decision, order and judgment

of the Court.

Dated: July 18, 2017
Poughkeepsie, New York

ENTER



HON. JAMES D. PAGONES, A.J.S.C.

TO: AVERY GILBERT, ESQ. and
ISSA KOHLER-HAUSMANN, ESQ.
Attorneys for Petitioners
P.O. Box 232
Rhinecliff, New York 12574

HEATHER R. RUBINSTEIN, ESQ.
Assistant Attorney General
Office of the New York State Attorney General
Attorneys for Respondents
One Civic Center Plaza, Suite 401
Poughkeepsie, New York 12601

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