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### Decision in Art. 78 proceeding - Rodgers, Leslie (1997-09-10)

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
In the Matter of the Application of  
LESLIE RODGERS,

Petitioner,

For a Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules

DECISION & ORDER

Index #96-12556

-against-

BRION D. TRAVIS, Chairman of the  
New York State Board of Parole,

Respondent.

-----X  
LANGE, J.

This is a petition brought pursuant to Article 78 of the Civil Practice Law and Rules, seeking a review of a determination of the respondent New York State Board of Parole which denied release to the petitioner following a hearing conducted on May 14, 1996. The petitioner brought an administrative appeal of the hearing's adverse decision. The decision was affirmed on April 7, 1997.

The petitioner is an inmate at the Sing Sing Correctional Facility, who is serving an indeterminate term of imprisonment of ten to twenty years upon his conviction by his plea of guilty to the crime of kidnapping in the second degree.

The petitioner was first considered for parole release

in May of 1994. At that time, he was denied parole based on the seriousness of his conviction and his prior criminal record. At that time, it was ordered that he would next be considered for parole release in May 1996.

On May 14, 1996, the petitioner met very briefly with members of the New York State Board of Parole. The entire proceeding takes up very little more than six pages of transcript. Of those six pages, two and a half pages are taken up with a discussion of the incident which led to the petitioner's conviction, and two pages are concerned with the petitioner's criminal record and drug abuse prior to that incident. The petitioner was given an opportunity to speak for a period of time that takes up approximately two pages of the transcript. During that time, the petitioner revealed insight into his previous drug abuse problem and a maturity and change in attitude concerning his rehabilitation. The petitioner also exhibited remorse on acceptance of responsibility for the acts that led to his conviction. The response from the member of the Board of Parole was, "And quite frankly, I don't know if we are going to be able to overcome this [criminal] record and justify anything other than conditional release." The record shows that during this current term of incarceration, the petitioner has received a Bachelor of Science degree from Canisius College with a 3.79 grade point average, a Master of Arts degree from State University of New York at New Paltz with a 3.98 grade point average, an MPS degree from New York Theological Seminary with

a 3.94 grade point average. The petitioner's lowest grade in any course was an A-.

The petitioner has been active in teaching, counseling and writing and has authored a manuscript on prison theology which has been accepted for publication. The petitioner has worked with terminally ill AIDS patients, has been active in prison charitable work, has served as a volunteer, peer counselor and program director of the Attica Pre Release Program. He has addressed the problems which led him to his criminal behavior by becoming actively involved in Alcoholics and Narcotics Anonymous programs, and completing numerous courses relating to nonviolent conflict resolution. He has also pursued other vocational training, including 800 hours of training in the field of welding.

Numerous letters of recommendation were written on the petitioner's behalf by his counselors, teachers, and members of the Department of Correctional Services staff. These all give insight into how he has changed and matured as an individual during the current term of incarceration.

Executive Law §259-i(2)(c) requires the parole board to consider, inter alia,

the institutional record including the program goals and accomplishments, academic achievements, vocational educational, training or work assignments, therapy and inter-personal relationships with staff and inmates; ... release plans including community resources, employment, education and training and support services available to the inmate; ...

While the absence of examination on a particular fact in the hearing record is not conclusive evidence that a factor was not considered (Matter of Mackall v. Board of Parole, 91 AD2d 1023, lv den 58 NY2d 609), the hearing record in this case suggests that some of the requisite factors may have been overlooked.

The parole board is charged with determining whether 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 law.

Matter of King v. New York State Division of Parole, 83 NY2d 788, 790, citing Executive Law §259-i(2)(c).

While this discretion must of necessity include some consideration of the nature of the inmate's crime as well as his prior contacts with the criminal justice system, to limit review to these factors alone frustrates the goal of rehabilitation and in cases such as this, where there has been at least one previous denial of parole, renders subsequent parole hearings meaningless through disregard of an inmate's development during his incarceration.

Matter of Lopez v. Russi, Sup Ct West Co, Index #95-13669, Smith, J., 1996. See, also, Bouknight v. Keane, Sup Ct West Co, Index #1271-92, Scarpino, J., 1992.


Accordingly, based on the facts and circumstances, the petition is granted to the extent that the respondents are ordered to consider de novo the petitioner's eligibility for

parole release.

The Court considered the following papers in connection with this decision: (1) order to show cause dated April 17, 1997, together with petition and affirmation dated April 4, 1997; (2) petitioner's brief on administrative appeal of denial of parole release; (3) appendix to administrative appeal of denial of parole release; (4) respondent's answer verified August 6, 1997, together with exhibits A-C.

The foregoing constitutes the decision and order of this Court.

Dated: White Plains, New York  
September 10, 1997

  
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Acting J.S.C.

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