December 2019

Decision in Art. 78 proceeding - Ruzas, John E. (2017-01-30)

To commence the 30 day 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

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In the Matter of the Application of
JOHN E. RUZAS,

DECISION & ORDER

Petitioner,

Index No. 1456/2016

-against-

Sequence No. 2
Motion Date: 1/3/17

TINA M. STANFORD,

Respondent.

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

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GROSSMAN, J.S.C.

The following papers, numbered 1 to 18, were considered in connection with Petitioner's Order to Show Cause and Verified Petition, dated June 10, 2016, seeking an Order, annulling the parole board's denial of his parole application, and ordering a de novo hearing.

PAPERS[1]	NUMBERED
Verified Petition/Exh. A	1-2
Affidavit in Support of Order to Show Cause	3
Respondent's Verified Answer & Return/Exhs. 1-12	4-16
Reply Affidavit/Exh. A	17-18

On July 14, 1975, Petitioner John E. Ruzas was convicted of 2 counts of Murder in the Second Degree (depraved indifference and felony murder), 1 count of Robbery in the First

[1]The Court also reviewed, *in camera*, confidential documents submitted by Respondent.

Degree, and 2 counts of Criminal Possession of a Weapon in the Second Degree, for the October 24, 1974 fatal shooting of a New York State Trooper after fleeing from an armed robbery he committed with 3 accomplices.[2] This incident occurred while Petitioner was on parole for a 1969 third-degree robbery conviction.

The court sentenced Petitioner, as a second felony offender, to an indeterminate term of imprisonment of twenty-five years to life for each murder conviction; twelve and one-half to twenty-five years' imprisonment for the robbery conviction; and seven and one-half to fifteen years' imprisonment for each of the criminal possession of a weapon convictions. The court ordered the two murder and one weapons possession convictions to run concurrently. The court ordered the robbery and remaining weapons possession convictions to run concurrently. The court then ordered each set of concurrent sentences to run consecutively to each other.[3]. At the time, Petitioner was 32 years old.

Today, having served over 41 years in prison, Petitioner is 74 years old. He suffered a stroke in 2014, and walks with a cane.

On November 10, 2015, Petitioner appeared before the parole board for the 11th time (Answer, Exh. 4 at 2, 22), but was denied parole (Answer, Exh. 4 at 31-32):

> Denied 24 months, November 2017.
>
> After a review of the record, interview, consideration of all statutorily required

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[2]According to the papers, Petitioner's sentence also encompassed a second-degree conspiracy plea from April 21, 1976, for which he was sentenced an indeterminate term of two to four years imprisonment to run concurrently with the other sentences (Answer, Exh. 3).

[3]The Parole Board minutes read that although the sentencing court ordered the two concurrent terms to run consecutively, Petitioner's "aggregated term by law is 25 to life," in accordance with the statute that addresses the merging of sentences (Answer, Exh. 3 at 5).

factors and deliberation, this panel has determined that if released at this time there is a reasonable probability that you would not live and remain at liberty without again violating the law and your release would be incompatible with the welfare of society and would so deprecate the serious nature of the crime as to undermine respect for the law.

This decision is based on the following factors:

Your instant offenses are Murder 2nd degree two counts, Robbery 1st degree, Criminal Possession of a Weapon 2nd degree three counts, and Conspiracy 2nd degree in which you acted in concert with others and robbed a jewelry store in Syracuse. During your return to New York City, you were stopped by a New York State Trooper. You shot him causing his death. You stole the car and fled and you committed these offenses while under parole supervision.

Your record dates back to a 1957 JD, includes several felonies, a juvenile history, prior violence, prior prison, and failure at prior community supervision.

Due consideration was given your sentencing minutes, COMPAS Risk Assessment, rehabilitative efforts, case plan, risks, needs, parole plan, letters of support, age, medical status, disciplinary record, significant opposition to your release, remorse, insight, as well as all other factors required by law.

Your violence and senseless actions were a horrific escalation of your criminal lifestyle, needlessly causing the death of a brave New York State Trooper, Emerson Dillon, and forever harming his family. Your version of events indicate you initiating the gun battle.

The instant offense is an escalation of your violent criminal history.
You clearly failed to benefit from prior efforts at leniency and rehabilitation.

Parole is denied.

Petitioner appealed this determination on the grounds that: (a) the Board focused exclusively on the instant offense and a juvenile delinquent adjudication rendered 58 years ago; (b) relied upon erroneous information; (c) relied on significant opposition; (d) failed to consider the most recent case plan; and (e) rendered a detailed decision in conclusory terms (Answer, Exh. 6). However, the Appeals Unit affirmed the Board's decision (Answer, Exh. 8).

Petitioner now challenges his denial of parole, asserting that the decision was arbitrary and capricious, bordering on impropriety, and it failed to comply with the Amended 2011 legislation in Executive Law §259-c(4), rendering the hearing unlawful.

"Parole release determinations are discretionary and will not be disturbed as long as they meet the statutory requirements of Executive Law §259-I." Friedgood v. New York State Bd. of Parole, 22 A.D.3d 950 (3d Dept. 2005). "While all relevant statutory factors must be considered, respondent is not required to give them equal weight or to articulate each and every factor that was considered in making its decision." Friedgood, supra. However, "decisions of the Board require flexibility and discretion, and the guidelines used to arrive at these decisions are not meant to establish a rigid, numerical policy invariably applied across-the-board to all [inmates] without regard to individualized circumstances or mitigating factors." Montane v. Evans, 116 A.D.3d 197, 202 (3d Dept. 2014)(internal quotations omitted).

Upon review, this Court's finds that Respondent's decision to deny parole to Petitioner was arbitrary and capricious. Despite the existence of, inter alia, Petitioner's low risk of recidivism, low history of violence, low risk of substance abuse, his family support, his remorse, his planned employment upon release, his age and his recent stroke, the Board summarily denied his application without any explanation other than by reiterating the laundry list of statutory factors. The minimal attention, barely lip service, given to these factors and to the COMPAS Assessment cannot be justified given the amount of time already served. The "Parole Board denied petitioner's request to be released on parole solely on the basis of the seriousness of the offense," and its "explanation for doing so was set forth in conclusory terms, which is contrary to law." Matter of Perfetto v. Evans, 112 A.D.3d 640, 641 (2d Dept. 2013), citing Matter of

Gelsomino v. New York State Bd. of Parole, 82 A.D.3d 1097, 1098 (2d Dept. 2011); see also Thwaites v. New York State Bd. of Parole, 34 Misc.3d 694, 701 (Sup.Ct. Orange Co. 2011)(Ecker, J.); see generally Matter of Silmon v. Travis, 95 N.Y.2d 470, 476 (2000).

The Court acknowledges, and does not minimize, that this case involved the murder of a New York State Trooper. "Certainly, every murder conviction is inherently a matter of the utmost seriousness since it reflects the unjustifiable taking and tragic loss of human life. Since, however, the Legislature has determined that a murder conviction per se should not preclude parole, there must be a showing of some aggravating circumstances beyond the seriousness of the crime itself." Matter of Platten v. NYS Bd. of Parole, 47 Misc.3d 1059, 1065 (Sup. Ct. Sullivan Co. 2015). Therefore, this Court finds that a denial of parole is not a foregone conclusion – even if the victim is a law enforcement officer. And, on the record before it, the Court finds that the record is devoid of aggravating circumstances beyond the crime itself to justify a denial of parole.

Moreover, Respondent relied on statements by individuals that had no part in this matter. An objection to parole by another state's law enforcement organization is not to permitted by the statute. See Executive Law §259-i(c)(A).[4] Furthermore, despite Petitioner's assertion at the hearing to the contrary, the statute also does not provide for "community opposition" – only "any current or prior statement made to the board by the crime victim or the victim's representative, where the crime victim is deceased * * * [and] the seriousness of the offense with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court, [and] the district attorney." See Executive Law §§259-i(c)(A)(v) & (vii). Furthermore, a

[4]The Court notes that apparently 2 letters opposing Petitioner's release, were apparently inadvertently mailed directly to Petitioner in prison, and Petitioner disclosed them to Respondent at the start of his hearing (Answer, Exh. 4 at 2, 21-22).

"crime victim's representative shall mean the crime victim's closest surviving relative, the committee or guardian of such person, or the legal representative of any such person." See Executive Law §§259-i(c)(A). Therefore, it was error for Respondent to consider letters opposing parole from any person or any organization that did not fall under this definition (Answer, Exh. 4 at 2; Reply Affidavit, Exh. A).

In light of the above, the Court need not address any of Petitioner's other assertions.

As such, it is hereby

ORDERED that the petition is granted and the determination is annulled; and it is hereby

ORDERED that the matter is remitted to Respondent for a de novo hearing on the matter of Petitioner's release to parole supervision, focusing on Petitioner's rehabilitative efforts, rather than solely on the events of 41 years ago; and it is further

ORDERED that said hearing is to be conducted within sixty (60) days of the date of this Court's Decision and Order, and a decision is to be issued within thirty (30) days of the date of such hearing.

The foregoing constitutes the Decision and Order of the Court.

Dated: Poughkeepsie, New York
January 30, 2017

HON. VICTOR G. GROSSMAN, J.S.C.

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