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December 2019

### Decision in Art. 78 proceeding - Inguaggiato, Luigi (2018-01-02)

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SUPREME COURT - STATE OF NEW YORK  
DUTCHESS COUNTY

Present:

Hon. JAMES V. BRANDS

Justice.

SUPREME COURT: DUTCHESS COUNTY

\_\_\_\_\_  
In the Matter of the Application of  
LUIGI INGUAGGIATO, 96-A-4245,

Petitioner,

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

-against-

NEW YORK STATE BOARD OF PAROLE,  
Respondent.

DECISION AND ORDER

Index No.: 2315/2017

DIN# 96-A-4245

ORI#NY013015J

\_\_\_\_\_  
The following papers were read and considered on the Article 78 petition filed by the  
petitioner.

PETITION

EXHIBITS A-F, 1-6

AFFIDAVIT IN SUPPORT OF ORDER TO SHOW CAUSE

ANSWER AND RETURN

EXHIBITS 1-14

EXHIBITS 1, 3, 11, 13 [IN CAMERA REVIEW]

REPLY

Background Facts:

Petitioner was convicted of Murder in the Second Degree upon jury verdict rendered on in Supreme Court, Kings County. He was consequently sentenced to a term of 20 years to life imprisonment. At issue is the most recent Parole Board Release Interview held on April 26, 2017, which concluded with a denial of parole release and order to hold petitioner for another 12 months (see Respondent's Exhibits 1, 2). Said determination was affirmed on appeal on September 11, 2017.

Petitioner filed the instant Article 78 petition challenging the foregoing determinations. He contends that the review board failed to consider the requisite factors set forth in Executive Law 259-i. Specifically, petitioner contends that the parole board excessively weighed the factor of the severity of the crime and petitioner's intent to commit the crime without adequately considering other factors. He further contends that the parole board failed to provide an interpreter, and the parole board's decision to deny parole release lacks sufficient detail to apprise petitioner of the factors considered.

Respondents filed an Answer and Return challenging each allegation proffered by petitioner. Also included in their submission is the Sentence and Order of Commitment, a Waiver of the interpreter for the parole board hearing, the hearing transcript, and the record on appeal.

#### Decision:

The proper standard of review for parole board interviews is whether the decision is irrational so as to border impropriety (*see Russo v NYS Board of Parole*, 427 NYS2d 982 [1980]; *Cruz v Travis*, 273 AD2d 648 [3<sup>rd</sup> Dept. 2000]).

Executive Law §259-i(2)(c) requires the consideration of statutory factors, which include the inmate's institution record or criminal behavior and seriousness of the offense. (*Id.*). The parole board may exercise its discretion in determining that the severity of the crimes outweighs the inmate's achievements while confined, and doing so does not render the denial of parole irrational or improper. (*Matter of Kirkpatrick v. Travis*, 5 AD3d 385 [2<sup>nd</sup> Dept. 2004], *People ex rel. Yates v Walters*, 111 AD2d 839 [2<sup>nd</sup> Dept. 1985]). Indeed, the Board has the discretion to "place a greater emphasis on the gravity of [the] crime" when weighing the statutory factors (*Matter of Perea v Stanford*, 149 AD3d 1392 [3d Dept. 2017]; *see also Matter of Kirkpatrick v. Travis*, *supra.*).

The record reflects that the Board sufficiently detailed its consideration of the statutory factors in rendering its determination to deny petitioner's request for parole release. The Board noted its consideration of the petitioner's age, health, and petitioner's release plans to support himself with his retirement and savings. Also considered was his lack of any prior criminal record and COMPAS Risk and Needs Assessment noting low likelihood of recidivism. The Board weighed such factors and balanced same against other statutory considerations including the nature of the crime, lack of remorse, and need to develop a more "seamless release plan, parole packet and program participation". (Respondents' Exhibit 6). Accordingly, the record is devoid of evidence to support petitioner's contention that the parole board's determination was so irrationally based that it borders on impropriety so as to warrant a de novo hearing.

Further, petitioner's contention that he was deprived of an interpreter at the hearing is belied by record. Petitioner executed a waiver on April 1, 2017 indicating "I do not need an interpreter". (*Id.* at Exhibit 4). Notably, the parole board hearing transcript reflects that petitioner represented that he was ready and able to proceed without the presence of an interpreter, and

there is no indication of a lack of understanding and/or need for an interpreter which petitioner previously declined.

Absent any showing that the Board's determination was so irrationally based that it borders on impropriety, it is hereby

ORDERED that the petitioner's application is denied and this matter is dismissed.

The foregoing constitutes the decision and order of this court.

Dated: *January 2, 2018*  
Poughkeepsie, New York

ENTER:

  
HON. JAMES V. BRANDS, J.S.C.

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Pursuant to 22 NYCRR 671.5, please be advised that you have the right to appeal, or to apply for permission to appeal, this order to the Appellate Division, Second Department, 45 Monroe Place, Brooklyn, New York, 11201. Upon proof of your financial inability to retain counsel and pay the cost and expenses of the appeal, you have the right to apply to the appellate court for assignment of counsel and leave to prosecute the appeal as a poor person. CPLR Section 5513 provides that an appeal may be taken, or motion for permission to appeal may be made, within thirty (30) days after the entry and service of any order or judgment from which the appeal is taken, or sought to be taken, and written notice of its entry.

**When submitting motion papers to Judge Brands' Chambers, please do not submit any copies. Submit only the original papers.**