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December 2019

### Decision in Art. 78 proceeding - Dukes, Myron (2016-08-01)

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STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ALBANY

In the Matter of the Application of  
MYRON DUKES, #93-A-5735,

Petitioner,

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

Index No. 210-16  
RJI No. 01-15-ST7713

-against-

TINA M. STANFORD,

Respondent.

Supreme Court, Albany County Article 78 Term

Appearances:

Myron Dukes, #93-A-5735  
Self-Represented Petitioner  
Franklin Correctional Facility  
P.O. Box 10, 62 Bare Hill Road  
Malone, NY 12953

Eric T. Schneiderman  
Attorney General  
State of New York  
Attorney for Respondent  
The Capitol  
Albany, NY 12224-0341  
(William A. Scott, Esq., Assistant  
Attorney General)

### DECISION/ORDER/JUDGMENT

**Roger D. McDonough, Justice:**

Petitioner challenges a parole determination denying his release. Respondent opposes the petition.

#### Background

Petitioner is serving the following concurrent sentences – 20 years to Life for Murder in the Second Degree and 5-15 years for two counts of Attempted Robbery in the First Degree. Said sentences were imposed in July of 1993. In July of 1996, the petitioner was sentenced to 1½ -3 years for Attempted Promoting Prison Contraband in the First Degree. This sentence was imposed to run consecutively to the 1993 sentences. His most recent parole release interview was held on March 31, 2015. In denying parole, the Board stated:

After a review of the record and interview, the 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. The panel has considered your institutional adjustment including discipline and program, participation. Required statutory factors have been considered, including your risk to society, rehabilitation efforts, and your needs for successful re-entry into the community. Your release plans have also been considered as well as your COMPAS risk and needs assessment and sentencing minutes which are in the file. You are serving time for the serious offense of Murder 2<sup>nd</sup>, Att. Robbery 1<sup>st</sup> (2 cts) and Att. Promoting Prison Contraband 1<sup>st</sup> in which you acting in concert during the success of a planned robbery of drug dealers, two people were shot and killed; subsequently while confined to a correctional facility, you attempted to cause injury to another inmate by cutting the victim on the neck with a razor. Your disciplinary history is extensive and reflects non compliance with DOCCS rules. You incurred a Tier 2 Ticket in 2014, reflecting a continuation of your disciplinary infractions. You have a juvenile record involving violent conduct. Your positive programming is noted as is your parole plan submitted by your attorney. This panel remains concerned with the violent nature of the IO, resulting in the loss of tow(sic.) lives, which was initially a planned robbery, and your continued failure to comply with DOCCS rules. Accordingly, discretionary release at this time is not warranted. Parole denied.

One board member dissented as to the length of the eighteen month hold imposed. Petitioner's administrative appeal was unsuccessful.

The petition raises several arguments. Of particular note, he seeks a new hearing based on the Board's failure to consider his age at the time of the instant offense as well as the new science on adolescent brain development and the Governor's legislative push for juvenile justice reform.

#### **DISCUSSION**

Petitioner adequately established hat the Board failed to consider petitioner's "youth, and its attendant circumstances", as mandated by a recent decision by the Appellate Division, Third Department (Matter of Hawkins v New York State Dept. Of Corrections and Community Supervision, 140 AD3d 34, 38-40 [3<sup>rd</sup> Dept. 2016]). Accordingly, the Court is constrained to

grant petitioner's request for a de novo parole release hearing (*see, Id.* at 40).<sup>1</sup> In light of this determination, the Court need not reach petitioner's alternative arguments in support of his request for a new hearing.


Based on the foregoing, the petition is granted to the extent that the matter is remanded to respondent for a new hearing. Additionally, petitioner's discovery requests are hereby denied in their entirety.

SO ORDERED AND ADJUDGED.

This shall constitute the Decision, Order and Judgment of the Court. The original Decision, Order and Judgment is being returned to the counsel for respondent who is directed to enter this Decision, Order and Judgment without notice and to serve petitioner with a copy of this Decision, Order and Judgment with notice of entry. The Court will transmit a copy of the Decision, Order and Judgment and the papers considered to the County Clerk. The signing of the Decision, Order and Judgment and delivery of a copy of the Decision, Order and Judgment shall not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry and notice of entry.

**ENTER**

Dated: Albany, New York  
August 1, 2016



Roger D. McDonough  
Acting Supreme Court Justice

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<sup>1</sup> The record reflects that petitioner's next parole release interview is scheduled for September of 2016.

Papers Considered:

Verified Petition, dated January 6, 2016, with annexed exhibits;  
Respondent's Answer, dated March 24, 2016, with annexed record/exhibits;  
Petitioner's Reply, sworn to April 8, 2016, with annexed exhibits;  
Correspondence from A.A.G., dated April 14, 2016;  
Correspondence from Petitioner, received on May 5, 2016, with annexed exhibits;  
Correspondence from Petitioner, dated May 5, 2016, with annexed exhibits;  
Petitioner's Sworn Admission of Facts, sworn to June 2, 2016 and received by the Court on June 27, 2016.