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<p>FILED AND ENTERED</p> <p>ON <u>7-21-1998</u></p> <p>WESTCHESTER COUNTY CLERK</p>

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----x
In the Matter of the Application of
HERBERT D. EDNEY,

Petitioner,

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

DECISION & ORDER

Index #97-8777

-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 13, 1997. The petitioner brought an administrative appeal of the hearing's adverse decision. The decision was affirmed on March 6, 1998.

The petitioner is a 69 year old inmate at the Sing Sing Correctional Facility who is serving an indeterminate term of imprisonment of 25 years to life upon his conviction after trial of kidnapping in the first degree, kidnapping in the

second degree, and manslaughter in the first degree.

The petitioner was first considered for parole release in May of 1993. At that time he was denied parole based on the nature of his underlying conviction. At that time it was ordered that he would next be considered for parole release in May of 1995. In May 1995, the petitioner met again with the Parole Board and was again denied parole release.

On May 13, 1997, the petitioner met with members of the New York State Board of Parole. The entire proceeding takes up very little more than 11 pages of transcript. Of these 11 pages, approximately 10 are taken up with a discussion of the incident which led to the petitioner's conviction as well as his prior appearances before the Parole Board. On only one page is there a discussion concerning the petitioner's release plans. There was minimal reference to the psychiatric treatment which the petitioner had received since his incarceration and no reference to his participation in alcohol and substance treatment programs and the alternatives to violence program as well as any other vocational or educational programs in which the petitioner participated during the course of his incarceration.

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

the institutional record including program goals and accomplishments, academic achievements, vocational education, training or work assignments, therapy and interpersonal 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 of the fact or 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., 1196. See, also, Bouknight v. Keane, Sup Ct, West Co, Index #92-1271, Scarpino, J., 1992.

As previously noted, consideration of the nature of

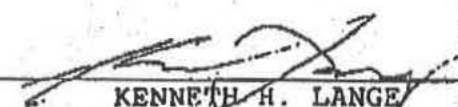
the inmate's crime should play a part in the decision as to whether or not an inmate should be released on parole. To base a decision as to whether or not a 69 year old man will live and remain at liberty without violating the law based solely on his actions of 30 years ago is irrational bordering on impropriety. See, Matter of Russo v. New York State Board of Parole, 50 NY2d 69, 77.

Accordingly, based on the facts and circumstances, the petition is granted to the extent that the respondent is ordered to consider de novo the petitioner's eligibility for parole release.

The Court considered the following papers in connection with this application: (1) order to show cause dated March 25, 1998, together with petition and affirmation dated March 18, 1998, and attached exhibits; (2) petitioner's brief on administrative appeal of denial of parole release, together with addendum to brief; (3) respondent's answer verified May 8, 1998, together with attached exhibits; and (4) confidential documents submitted by the respondent for in camera inspection.

The foregoing constitutes the decision and order of this Court.

Dated: White Plains, New York
July 20, 1998


KENNETH H. LANGE
Acting J.S.C.