January 2020

Decision in Art. 78 proceeding - Morris, Henry (Hank) (2013-04-15)

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF COLUMBIA

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In the Matter of HENRY "HANK" MORRIS
DIN: 11-R-0731,

Petitioner,

AMENDED
DECISION/ORDER

Index No. 5696-13
R.J.I. No. 10-13-0112
Richard Mott, J.S.C.

-against-

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, BRIAN FISCHER, Commissioner of New York State Department of Corrections and Community Supervision, Department of Corrections and Community Supervision, NEW YORK BOARD OF PAROLE, ANDREA W. EVANS, Chairwoman of the New York Board of Parole,

Respondents.

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

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Proceeding Return Date: March 29, 2013

APPEARANCES:

Petitioner:

Orlee Goldfeld, Esq.
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New York, NY 10165

Respondents:

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Attorney General of the State of New York
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Albany, NY 12224-0341
Brian J. O'Donnell, Esq., Assistant Attorney General, of Counsel
Kelly L. Munkwitz, Esq., Assistant Attorney General, of Counsel

Mott, J.

In this Article 78 proceeding commenced to challenge the Board's denial of parole to Petitioner, the Court hereby amends its Decision and Order of April 12, 2013, which is adopted in full and incorporated herein by reference. The Decision and Order is amended because it was rendered before the Court received Exhibits B and D to Respondents' Answer, which it deems relevant and extremely supportive of its Decision and Order.

On April 11, 2013, Respondents timely served answering papers upon the Court by email and by regular mail. However, Exhibits B and D of the email stated that confidential portions of the Inmate Status Report had been submitted for *in camera* review, when in fact they had not been. These exhibits were submitted only by regular mail, which the Court received after it had rendered its Decision and Order.

The Court is deeply disturbed by what is revealed in Exhibit D (the last paragraph of the Evaluation portion of Part II of the Inmate Status Report, dated February 2, 2012 and approved on February 7, 2012). In particular, the last sentence thereof[1] verifies that prior to Petitioner's first parole board appearance, Respondents were aware that Exhibit D had concluded that Petitioner's release on parole would not be "incompatible with the public safety and welfare" and that there was no "reasonable probability [he] would not live and remain at liberty without violating the law." And in addition to all of the other items

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[1]Executive Law §259-k(2) permits the Parole Board to make rules for maintaining the confidentiality of records. Those rules, found in 9 NYCRR §8000.5(2), provide, *inter alia*, that the Board may keep information confidential from inmates that "would jeopardize legitimate correctional interests of security, custody, supervision or rehabilitation" and/or "might result in harm, physical or otherwise, to any person." The Court finds that the information imparted under the Evaluation section of Exhibit D does not warrant such confidentiality.

enumerated in this Court's Decision and Order of April 12, 2013, Exhibit D further establishes that the Board did not even consider its own internal evaluation[2]. In light of Exhibit D, this Court now is persuaded beyond peradventure that the Board indeed failed to weigh the required statutory factors in making its decision, thereby laying bare its intentions (see, e.g., *Sandstrom v. Montana*, 442 U.S. 510, 517 (1979)(inferring intent from actions)) arbitrarily and unjustifiably to imprison Petitioner for as long as possible and then to immunize its actions from judicial scrutiny by relying upon the mootness doctrine.

Although Exhibit D was written in February, 2012, prior to Petitioner's first parole hearing, and doubtless has been submitted to three different panels of the Parole Board, Respondents have successfully shielded it from judicial scrutiny for more than a year[3]. As recounted in this Court's Decision and Order of April 4, 2013[4], Respondents' machinations repeatedly have subverted review of the merits of Petitioner's claims, thereby shielding Exhibit D from release and judicial scrutiny until now, which confirms that the mootness exception indeed is applicable in this case.

Exhibit D further corroborates that the Board's decision is arbitrary and capricious

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[2]In light of the content of Exhibit D, the Board's assertion that it conducted a "record review" patently rings hollow.

[3]After he initially was denied parole in February, 2012, Petitioner commenced an Article 78 proceeding. In August, 2012 that Petition was dismissed and the merits not reached because of a failure to exhaust administrative remedies. On July 30, 2012, Petitioner filed a second Article 78 proceeding, after exhausting his administrative remedies. When its Answer was due, Respondents conceded error and granted the instant parole hearing, which was held in August, 2012. Once again, the merits were not reached. Petitioner next filed an administrative appeal from the August, 2012 denial of parole, and Respondents scheduled a new parole hearing for November, 2012, and then claimed this proceeding was moot.

[4]The Court rejected Respondents' argument that this case is moot.

bordering on impropriety.

Dated: Claverack, New York
April 15 , 2013

ENTER

RICHARD MOTT, J.S.C.

Documents Considered:

1. All documents set forth in Decision and Order of April 12, 2013;
2. Exhibits B and D of Respondents' Answer