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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS**

In the Matter of **EUGENE MULLINS,**

Petitioner,

**DECISION AND ORDER
Index No. 52682-2017**

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

-against-

NEW YORK STATE BOARD OF PAROLE,

Respondent.

WATSON, D., ACTING SUPREME COURT JUSTICE

THE FOLLOWING PAPERS WERE READ AND CONSIDERED ON THIS
APPLICATION by petitioner pursuant to Article 78 of the CPLR seeking reversal of a Parole
Board decision rendered on November 16, 2016 which denied him discretionary release to parole
supervision.

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On December 5, 1984, the Petitioner was convicted of one count of Murder in the 2nd
Degree in Rensselaer County and was sentenced to a term of 25 years to life.

Petitioner is an inmate currently incarcerated at Fishkill Correctional Facility. The

Petitioner had a Parole Board Release Interview on November 15, 2016, was denied release, and ordered held for an additional twenty-four months.

In the present proceeding, the petitioner argues that: 1) the Parole Board's decision is conclusory and irrational bordering on impropriety; 2) the Parole Board did not comply with Executive Law §259-c(4); 3) the Parole Board's denial of release is a violation of Petitioner's due process rights; 4) the Parole Board's decision is an unlawful re-sentencing; 5) the Parole Board failed to comply with Executive Law §259-i(2)(c)(A); and 6) the Petitioner's Case Plan was inadequate and requires a de novo hearing.

Respondent has filed an answer and return and asks that the petition be denied on the grounds that the Parole Board acted in compliance with the law and that the determination was neither arbitrary nor capricious. The Respondent reports that the Board acted appropriately in issuing its decision. The Respondent argues that the Board's reasons to deny Petitioner's parole are not all related to the nature of the instant offense and that the Board considered all the statutory factors. Additionally, the Respondent claims the Board's decision is not conclusory, and that the petition should be dismissed.

The Parole Board's decision specified that its decision to deny Petitioner parole was based on the Petitioner's conviction for Murder in the 2nd Degree, the brutal nature of the crime, and Petitioner's efforts to conceal the crime. In addition, the Parole Board noted "[m]oreover, there is significant community opposition to your release."

Petitioner specifically argues, among several other issues, that the Respondent cannot rely on "community opposition" as it is not a factor to be considered by the Parole Board, pursuant to Executive Law §259-i(2)(c)(A). Additionally, Petitioner objects to the fact that Parole Board did not share the "community opposition" statements with him and denied Petitioner the ability to

refute, rebut or correct any information contained in them.

Respondent argues that it was proper for the Parole Board to consider the “community opposition” and that it does not have to disclose those documents to Petitioner as they are confidential, pursuant to Executive Law §259-i(2)(c)(B). Respondent stated it would provide the documents to the Court for an in camera review, pursuant to a court order. Respondent did file, simultaneous with its return and answer, several other confidential documents for in camera review, including the Pre-Sentence Investigation Report, and the confidential portions of the Parole Board Report and COMPAS.

On March 29, 2018, the Court issued a Decision and Order that directed the Respondent:

within 30 days of the date of this Order, file with the Court, for in camera review, the confidential portions of the Parole Board file, that were not previously submitted, including any “community opposition” letters, correspondence or other documents, that were withheld pursuant to Executive Law §259-i(2)(c)(B).

The Court has not received these confidential records. Without the ability to conduct an in camera review of these records, it is not possible to determine if the use of these records was proper.

Accordingly the petition is granted, the Parole Board’s decision to deny Petitioner release to parole, dated November 16, 2016, is vacated and the Respondent is directed to conduct a de novo hearing within 30 days of the date of this decision.

The foregoing constitutes the decision and order of the Court.

Dated: June 19, 2018
Poughkeepsie, New York



HON. DENISE M. WATSON
Acting Supreme Court Justice

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