January 2020

Decision in CPLR Article 78 proceedings - Mullins, Eugene (2019-04-22)

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,

Motions # 1 & 2

-against-

NEW YORK STATE BOARD OF PAROLE,

Respondent.

WATSON, D., ACTING SUPREME COURT JUSTICE

THE FOLLOWING PAPERS WERE READ AND CONSIDERED ON THESE MOTIONS:

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On December 5, 1984, the Petitioner was convicted of one count of Murder in the 2nd Degree in Rennselaer 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. Petitioner commenced this Article 78 proceeding by Notice of Petition on October 20, 2017, by use of the New York State Courts

Electronic Filing System (NYSCEF). Respondent filed an Answer and Return on December 5, 2017. Both parties elected to participate in the use of NYSCEF.

On March 29, 2018, the Court issued a Decision and Order, which was e-filed on April 4, 2018, (hereinafter "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).

On June 25, 2018, the Court entered a Decision and Order, dated June 19, 2018, (hereinafter "Decision"), granting the petition, vacating Respondent's decision to deny Petitioner release to parole and directing Respondent to conduct a de novo hearing. Respondent moved on June 26, 2018, to reargue the Court's Decision and for a stay of all related proceedings. Petitioner cross-moved on June 27, 2018, to preclude the Respondent from considering "community opposition" at the de novo hearing and to oppose both the motion to reargue and the request for a stay.

Respondent filed a Notice of Appeal on July 26, 2018. As a result of the Notice of Appeal, and its automatic stay, pursuant CPLR §5519(a)(1), this Court took no further action on the motions. Respondent and Petitioner advised the Court, on or about March 26, 2019, that they did not believe that the appellate stay applied to the motions pending before the Court and that the Respondent had requested an extension of time to perfect its appeal from the Appellate Division, Second Department, due to the pending motions. Based on the representations of counsel, the Court will decide the motions.

After review of the submissions, the court makes the following determinations.

REARGUMENT

A motion to reargue requires the moving party to establish that the Court overlooked or misapprehended matters of fact or law in deciding the prior motion [CPLR §2221(d)(2)].

The Court notes that Respondent did electronically file other confidential information, such as the COMPAS documents, with its Answer and Return, on December 5, 2017, which the Court received. Those documents were filed, with redactions and a notation that an unredacted copy was being filed for in camera review by the Court.

Respondent states that, on April 19, 2018, it submitted a cover letter, to both Petitioner's counsel and the Court, and 240 pages of documents, to the Court only, in response to the Order, entered April 4, 2018. In support of its motion to reargue, Respondent, on June 26, 2018, electronically filed the April 19, 2018, cover letter and Exhibit B, which is marked as "SUBMITTED FOR IN CAMERA REVIEW ONLY. HAND DELIVERED". The Court did receive the hand delivered documents on June 26, 2018. However, Respondent has not submitted proof of mailing of the April 19, 2018, submission and there is no record of either the April 19, 2018, letter or the 240 pages of documents being electronically filed until June 26, 2018, a day after the Decision was entered. The Court did not overlook or misapprehend matters of fact or law because the Court was not timely provided with the necessary documentation.

Accordingly, Respondent's motion to reargue is denied.

PRECLUSION

Petitioner moves to preclude Respondent from considering "community opposition" in the de novo hearing.

Pursuant to Executive Law §259-I(2)(c)(A), the procedures for making a parole release decision **shall require** the consideration of eight specific factors. Similarly, 9 NYCRR 8002.2

(d) states "The Board shall consider the following factors in making a release determination:" In addition, Executive Law §259-I(2)(c)(B) requires that "Where a crime victim or victim's representative as defined in subparagraph (A) of this paragraph, or other person submits to the parole board a written statement concerning the release of an inmate, the parole board shall keep that individual's name and address confidential."

As the Court of Appeals stated, in **People v. Finnegan**, 85 N.Y.2d 53 (1995):

> The governing rule of statutory construction is that courts are obliged to interpret a statute to effectuate the intent of the Legislature, and when the statutory "language is clear and unambiguous, it should be construed so as to give effect to the plain meaning of [the] words" used (**People ex rel. Harris v Sullivan**, 74 NY2d 305, 309, citing **Doctors Council v New York City Employees' Retirement Sys.**, 71 NY2d 669, 675; **Patrolmen's Benevolent Assn. v City of New York**, 41 NY2d 205, 208). Equally settled is the principle that courts are not to legislate under the guise of interpretation (see, **People v Heine**, 9 NY2d 925, 929; see also, **Bright Homes v Wright**, 8 NY2d 157, 162).

One of the factors, under both the statute and regulations, that the Board must consider is a statement by a crime victim, or the victim's representative. "Community opposition" is not listed as a required factor. Petitioner takes the position that it is improper for Respondent to consider "community opposition" since it is not listed as one of the factors that shall be considered. If the Court were to adopt Petitioner's position, then the clear and unambiguous statutory language regarding "other persons" in §259-I(2)(c)(B) would be meaningless and given no effect. Additionally, there is nothing in the statutory language or regulatory framework that limits the Respondent to consideration of the enumerated factors. The statute and regulation simply mandate what facts the Respondent must consider. Accordingly, the Court finds that Respondent is not precluded from considering "community opposition."

Finally, if Respondent elects to consider the "community opposition" in making its parole release decision, then it must provide copies of that documentation to Petitioner, subject to authorized statutory restrictions redactions, such as the name and address of any other person who has submitted a written statement concerning Petitioner's release.

Petitioner's request to preclude the consideration of "community opposition" by Respondent is denied.

The foregoing constitutes the decision and order of the Court.

Dated: April 22, 2019
Poughkeepsie, New York

HON. DENISE M. WATSON
Acting Supreme Court Justice

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