

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

NYS Supreme Court Decisions in Article 78
Proceedings

Court Litigation Documents

January 2020

Decision in CPLR Article 78 proceedings - Solomon, Matthew (2016-12-15)

Follow this and additional works at: <https://ir.lawnet.fordham.edu/pdd>

Recommended Citation

"Decision in CPLR Article 78 proceedings - Solomon, Matthew (2016-12-15) 2016-12-15" (2020). Parole Information Project
<https://ir.lawnet.fordham.edu/pdd/126>

This Parole Document is brought to you for free and open access by the Court Litigation Documents at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in NYS Supreme Court Decisions in Article 78 Proceedings by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

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

MATTHEW SOLOMON, 89-A-1381,

PETITIONER,

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

-against-

NEW YORK STATE BOARD OF PAROLE,

RESPONDENT.

X

NOTICE OF ENTRY

INDEX NO. 3901/16

PLEASE TAKE NOTICE that the within is a true and complete copy of a Decision,
Order and Judgment together with notice of entry in this proceeding duly entered in the Office of
the County Clerk of Orange County on December 21st 2016.

Dated: Poughkeepsie, New York
January 3, 2017

ERIC T. SCHNEIDERMAN

Attorney General of the State of New York
Attorney for Respondent
1 Civic Center Plaza, Suite 401
Poughkeepsie, NY 12601
Telephone: (845) 485-3900

TO: Matthew Solomon, 89-A-1381
Petitioner Pro-se
Otisville Correctional Facility
57 Sanatorium Avenue
PO Box 8
Otisville, NY 10963

At a term of the IAS Part of the Supreme Court of the State of New York held in and for the County of Orange, at the 1841 Court House, 101 Main Street, Goshen, New York 10924 on the 15th day of December, 2016

DEC 23 2016
CLERK'S & LITIGATION
POUCH/KEEPERS OFFICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

MATTHEW SOLOMON - 89A1381,

PETITIONER,

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

-AGAINST-

NEW YORK STATE BOARD OF PAROLE,
RESPONDENTS.

VAZQUEZ-DOLES, J.S.C.

To commence the statutory time for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, on all parties.

DECISION, ORDER & JUDGMENT

INDEX #2016-3901
Motion date: 6/15/2016
Motion Seq.# 1

The following papers numbered 1 - 31 were considered in connection with the application by Petitioner for an Order and Judgment pursuant to CPLR Article 78 granting him a new parole hearing:

Order to Show Cause/Affidavit in Support of Matthew Solomon dated 6/8/16/

| | |
|--|---------|
| Exhibits 1(A-M)- 3 | 1- 18 |
| Answer and Return of James Ryan, Esq., dated 7/28/16/Exhibits 1-12 | 19 - 31 |

Procedural History

Petitioner is serving an indeterminate sentence of 18 years to life after having been convicted of murder in the second degree. The conviction arose from a domestic violence incident which occurred on December 25, 1987 wherein Petitioner killed his wife after arguing over whether his wife could visit her mother on Christmas Eve. After killing his 23 year old wife, Petitioner wrapped her body in garbage bags and dumped it in a field before calling the police to say that she

was missing. The victims body was found frozen and nearly naked by family members during a community search. Petitioner later confessed to the police and on November 18, 1988 he was convicted after trial. Petitioner was sentenced on February 3, 1989 and is eligible for parole. Petitioner has been denied parole on five prior occasions. In this proceeding he challenges the Board of Parole's September 23, 2015 determination denying the discretionary release, with supervision, to the community. Petitioner filed an administrative Appeal on or about January 19, 2016 which upheld the Board of Parole's denial of release.

Analysis

Petitioner seeks a new parole hearing on the grounds that Respondent's denial of parole after the September 23, 2015 hearing was arbitrary and capricious in that Respondent failed to consider statutory factors, failed to consider a Transitional Accountability Plan ("TAP") required by Correction Law 71-a , and based its decision solely on the seriousness of the offenses in making its determination.

As to the claims that the Respondent failed to consider the sentencing Judge's recommendation letter dated 3/28/1998, failed to consider the Parole Block Petition, inappropriately focused on the seriousness of the offenses in making its determination, infused their personal opinion, failed to consider the low risk finding of Solomon's COMPAS Risk Assessment/the interplay with the case plan, and that they inappropriately assessed the Community Risk and the Executive Law, the record before the court indicates otherwise.

The record from the hearing on September 23, 2015, reflects that the Board discussed the facts of the crime (Pg 3-10), Petitioner's plan if released (Pg 11-17), his plan for employment (pg 12), his mental health evaluation which shows that he is at level 6 (pg 13), his sentencing minutes

(pg 13), his low COMPAS risk and needs assessment, including the probability that petitioner would abuse substances (pg 11), Petitioner's plan to address his substance abuse (pg 12), the entire Parole Package that Petitioner put together (pg14), and finally gave Petitioner an opportunity to discuss anything he chose (pg 15). Upon a consideration of the entire record, the Board of Parole determined that discretionary release is not presently warranted.

Respondent is required to consider a number of factors in determining whether to grant parole. Executive Law §259-I requires consideration of factors including, but not limited to, the institutional record (including program goals and accomplishments, vocational education, academic achievements, etc); release plans, including community resources, employment, education and training and available support services; any deportation order issued; the seriousness of the offense, with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court, the attorney and the pre-sentence probation report, and the prior criminal record. *Matter of Malone v. Evans*, 83 AD3d 719 (2nd Dept 2011). Where the Board's determination includes consideration of all relevant statutory factors, including the criminal history, further judicial review is precluded. *Matter of Borcsok v. NYS Div. of Parole*, 34 AD3d 961 (3rd Dept 2006). In the absence of a violation of a positive statutory requirement, the Board's discretion is absolute and beyond review by the courts. *Briguglio v NYS Bd. of Parole*, 24 NY2d 21(1969). In all cases, it is presumed that the Board acted in accord with statutory requirements and judicial intervention is warranted only when there is a "convincing demonstration to the contrary" and it is the heavy burden of the petitioner to show that the Board acted with "irrationality bordering on impropriety". *Matter of Hanson v NYS Bd. of Parole*, 57 A.D.3d 994 (2nd Dept. 2008).

Whether the Board considered the proper factors and followed the proper guidelines are

questions that should be assessed based on the “written determination . . . evaluated in the context of the parole hearing transcript ” *Matter of Jackson v. Evans* 118 A.D. 3d 701, 702 (2nd Dept 2014). In the instant case, the record of the hearing demonstrates that the Board reviewed, discussed and considered with petitioner his criminal history, the crimes that led to his imprisonment, his overall record, the statutory factors, including the sentencing minutes, COMPAS Risk Assessment, rehabilitative efforts, letters of support, disciplinary record, significant opposition to his release, release and case plan, and his Parole Packet which included Judge Sherman’s letter. The Board discussed these things with petitioner and asked him if he had anything to add.

Thus, contrary to the petitioner's contention, the record in this proceeding demonstrates that the Board considered the requisite statutory factors in reaching its determination. While the Respondent’s decision was short on specific discussion of factors, the record as a whole reflects that the Respondent considered the statutory factors. That is all that is required. *Matter of Jackson v. Evans*, 118 A.D.3d 701 (2nd Dept 2014), *Esquilin v NYS Bd of Parole*, ___ AD3d ___, 49 NYS3d 279 (2nd Dept 2016), *Cassidy v NYS Bd of Parole*, 140 AD3d 953 (2nd Dept 2016) , *LeGeros v NYS Bd of Parole*, 139 AD3d 1068 (2nd Dept 2016), *Huntley v Stanford*, 134 AD3d 937 (2nd Dept 2015), *Marszalek v Stanford*, 124 AD3d 665 (2nd Dept 2015). The board is not required to give equal weight to all the factors and is not required to discuss each factor in its decision. *Matter of Mata v Travis* 8 A.D.3d 570 (2nd Dept 2004). Indeed, the Board is expected to consider the seriousness of the criminal offense because parole is not to be granted as a reward for good conduct or performance of duties while serving a sentence. *Silmon v Travis*, 95 N.Y.2d 470, 476 (2000).

As the petitioner fails to establish that the determination was irrational, arbitrary or capricious, the petition must be denied and the proceeding dismissed.

This constitutes the Decision, Order, and Judgment of this Court.

Dated: December 15, 2016
Goshen, New York

ENTER:



HON. MARIA S. VAZQUEZ DOLES, J.S.C.

Appearances:

MATTHEW SOLOMON - 89A1381, pro-se
Otisville Correctional Facility
57 Sanatorium Avenue
PO Box 8
Otisville, New York 10963

J. Gardner Ryan, Esq.
Office of the New York State Attorney General
One Civic Center Plaza, Suite 401
Poughkeepsie, New York 12601