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October 2020

### Decision in CPLR Article 78 proceedings - Jennings, William (2020-09-17)

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To commence the 30-day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

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

-----X  
In the Matter of the Application of

**DECISION & ORDER**

WILLIAM JENNINGS,

Index No. 2020-51294

Petitioner,

-against-

TINA STANFORD, Chair of the New York State Parole Board,

Respondent.

-----X  
**ACKER, J.S.C.**

The following papers, numbered 1 to 20, were considered on Petitioner's application pursuant to CPLR Article 78 seeking to challenge the Parole Board's denial of release to parole supervision:

Notice of Petition-Petition-Exhibits A-E .....	1-7
Answer and Return-Exhibits 1-11 <sup>1</sup> .....	8-19
Reply Affirmation of Kathy Manley, Esq. ....	20

Petitioner commenced the instant proceeding seeking an Order vacating the Decision of the Parole Board which denied his release and thereafter granting him immediate release, or, in the alternative, an immediate *de novo* interview before a Board comprised of Commissioners who did not participate in the previous hearing or in the administrative appeal.

<sup>1</sup> The Court also reviewed, *in camera*, the confidential documents submitted by Respondents as Exhibit 1 (entire exhibit) and portions of Exhibits 3 and 10.

Petitioner is currently incarcerated at Woodbourne Correctional Facility, serving an indeterminate sentence of 25 years to life as a result of being found guilty on one count of Murder in the 2<sup>nd</sup> Degree. On October 7, 1992, Petitioner, who was then 31 years old, stabbed his 17-year-old former girlfriend to death. When Petitioner appeared at his June 12, 2019 parole board interview, he had served approximately 27 years in prison. This was his second appearance before the Parole Board.

The instant application was brought as a result of the parole board's June 12, 2019 parole release denial. Petitioner timely filed an administrative appeal thereafter, and the denial was affirmed on March 3, 2020. Petitioner argues, *inter alia*, that the Parole Board failed to justify its departure from COMPAS, that its decision was based solely on the seriousness of the crime and is not supported by the record.

It is well settled that judicial review of a determination of the Parole Board is narrowly circumscribed. *Campbell v. Stanford*, 173 AD3d 1012, 1015 [2d Dept. 2019], *leave to appeal dismissed*, 35 NY3d 963 [2020]. A Parole Board determination to deny early release may only be set aside where it evinces "irrationality bordering on impropriety." *Id.* Although the Parole Board is required to consider the relevant statutory factors as identified in Executive Law §259-i(2)(c)(A), it is not required to address each factor in its decision or accord all the factors equal weight. *Id.* "Whether the Parole Board considered the proper factors and followed the proper guidelines should be assessed based on the written determination evaluated in the context of the parole interview transcript." *Id.*

New York Executive Law §259-i(2)(c)(A) provides that:

[d]iscretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties while confined but after considering if 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.

Further, pursuant to New York Executive Law §259-i(2)(c)(A)(i)-(viii), and as relevant to the Petitioner herein, the Parole Board is required to consider the following in making a parole decision: his institutional record including program goals and accomplishments, academic achievements, release plans including community resources, employment, education and training and support services available to the inmate, the seriousness of the offense with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court and the pre-sentence probation report.

“If parole is not granted upon such review, the inmate shall be informed in writing within two weeks of such appearance of the factors and reasons for such denial of parole. Such reasons shall be given in detail and not in conclusory terms.” Executive Law §259-i(2)(a).

#### **Petitioner’s June 12, 2019 Interview and Respondent’s Decision**

The transcript of Petitioner’s parole interview is annexed to the Petition as Exhibit A and to the Answer and Return as Exhibit 4 (hereinafter referred to as “Interview Transcript”). Respondent’s Decision denying parole is contained at pages 18-19 of the Interview Transcript (hereinafter referred to as “Decision”).<sup>2</sup>

In reviewing the Respondent’s Decision in the context of the parole interview transcript, the Court finds that Petitioner has demonstrated that the Board’s determination to deny him release evinces irrationality bordering on impropriety. This is most clearly demonstrated with respect to the Board’s stated intention to depart from Petitioner’s COMPAS. In its Decision, the Board noted Petitioner’s “low risk COMPAS,”<sup>3</sup> however the Decision then states that

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<sup>2</sup> Respondent also provides a separate “Parole Board Release Decision Notice” as Exhibit 5 that contains virtually the same content as the transcript but is dated June 24, 2019.

<sup>3</sup> A review of the COMPAS Risk Assessment annexed to the Petition as Exhibit 10 confirms that Petitioner scored

the Panel concurs to depart from the COMPAS because given your apology mentioned, your remorse is shallow and sparked by the personal loss of your mother.

According to 9 N.Y.C.R.R. §8002.2(a), “[i]f a Board determination, denying release, departs from the Department Risk and Needs Assessment’s scores, the Board shall specify any scale within the Department Risk and Needs Assessment from which it departed and provide an individualized reason for such departure.”

Petitioner argues that the departure from COMPAS was not supported by the record and cites to the Board’s failure to comply with the above referenced regulation. Verified Petition, ¶¶33-35. Respondent fails to directly address this argument in its Answer and Return, focusing instead on generic and lengthy arguments related to the “2011 amendments.”<sup>4</sup> It appears that the only attempt to address the requirements of 9 N.Y.C.R.R. §8002.2(a) is at ¶38, wherein Respondent states “[a]s for departing from a specific scale, the Board has not adopted this interpretation of the regulation. Courts must defer to the Parole Board’s interpretation of its own regulations so long as it is rational and not arbitrary and capricious.” Yet, Respondent does not identify how the Parole Board actually interprets “the regulation” and the cases cited do not address 9 N.Y.C.R.R. §8002.2(a). As such, Petitioner’s argument that the Board failed to articulate why its decision deviated from COMPAS as required by 9 N.Y.C.R.R. §8002.2(a) is unaddressed, and therefore, unopposed, by Respondent.

Therefore, after reviewing the Decision within the context of the Interview Transcript, the Court finds that although the Board indicates that it chose to depart from COMPAS, it does

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“low” or “unlikely” in all categories. Nothing in the unredacted Risk Assessment, submitted to the Court *in camera*, changes this conclusion.

<sup>4</sup> In essence, Respondent argues that COMPAS is an additional consideration that the Parole Board must weigh along with statutory factors, but that it cannot mandate a particular result. Nevertheless, these arguments fail to address Petitioner’s specific argument that the Board did not comply with 9 N.Y.C.R.R. §8002.2(a).

not identify the scale from which it departed, nor does it articulate an individualized reason for such departure, in contravention of 9 N.Y.C.R.R. §8002.2(a). Instead, the Board indicates, generically, that it is departing from COMPAS and identifies that reason for the departure is the shallowness of his remorse. Notably, the COMPAS Risk Assessment contains twelve categories,<sup>5</sup> none of which involve an offender's lack of remorse. Thus, the purported "individualized" reason provided by the Board for the departure is unrelated to any scale contained in the COMPAS Assessment. Established case law makes clear that absent a convincing demonstration to the contrary, the Parole Board is presumed to have acted properly in accordance with statutory requirements. *Jackson v. Evans*, 118 AD3d 701, 702 [2d Dept. 2014]. As the evidence before this Court demonstrates that the Parole Board herein did not comply with the requirements of 9 N.Y.C.R.R. §8002.2(a), judicial intervention is warranted because this departure from the regulation evinces irrationality bordering on impropriety. *See Coleman v. New York State Dep't of Corr. & Cmty. Supervision*, 157 AD3d 672, 673 [2d Dept. 2018].

Although this is basis alone to vacate Respondent's Decision, the Court finds said Decision should also be vacated because the Board focused almost exclusively on the serious nature of Petitioner's crime and its perception that his remorse was "shallow." Although the Board is entitled to place more emphasis on the serious nature of Petitioner's crime, "where the Parole Board denies release to parole solely on the basis of the seriousness of the offense, in the absence of any aggravating circumstance, it acts irrationally." *Huntley v. Evans*, 77 AD3d 945, 947 [2d Dept. 2010]; *see also Ferrante v. Stanford*, 172 AD3d 31, 37 [2d Dept. 2019] ("the Board may not deny an inmate parole based solely on the seriousness of the offense."). In the

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<sup>5</sup> The twelve categories are: risk of felony violence, arrest risk, abscond risk, criminal involvement, history of violence, prison misconduct, re-entry substance abuse, negative social cognitions, low self-efficacy/optimism, low family support, re-entry financial and re-entry expectations. Petitioner scored "1" (the lowest score) in 11 categories and a "2" in criminal involvement.

instant matter, although the Board makes passing reference to Plaintiff's clean discipline and low COMPAS, it is clear that the Board denied release solely on the basis of the seriousness of the offense. *Ramirez v. Evans*, 118 AD3d 707 [2d Dept. 2014]. The Board's Decision details the manner in which Plaintiff stabbed his girlfriend and his alleged prior aggressions against her and concludes that this "course of conduct leads the panel to concur that the instant offense is an absolute display of [his] criminal, assaultive and murderous behavior."

"While the seriousness of the underlying offense remains acutely relevant in determining whether the petitioner should be released on parole, the record supports the petitioner's contention that the Parole Board failed to take other relevant statutory factors into account." *Mitchell v. New York State Div. of Parole*, 58 AD3d 742, 743 [2d Dept. 2009]. As such, "notwithstanding the seriousness of the underlying offense, the Parole Board's 'determination to deny the petitioner release on parole evinced irrationality bordering on impropriety' [citations omitted]." *Coleman, supra* at 673.

Further, although Respondent argues that the Board may consider an inmate's limited expression of remorse and a lack of insight, the record here does not support the Board's finding that Petitioner's remorse was "shallow."<sup>6</sup> The Court notes that in his final statement to the Board at p. 16, Petitioner states:

I would like to say, as I've said in the past, that I'm sorry for what happened and I had no right to take anyone's life and it was wrong for me to do something like that. I want to apologize to the family as well as I've done in the past and to my family as well, I not only hurt their family but I hurt mine as well so I want to say I'm sorry to everyone, and if I'm released, something like that will never happen again and I would lead a good, clean life and stay out of trouble.

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<sup>6</sup> The Board appears to focus on Petitioner's statements during his sentencing wherein he denied killing his victim and that Petitioner maintained his innocence during the "majority" of his incarceration. However, the record is clear that Petitioner has acknowledged his guilt in both of his appearances before the Parole Board.

Moreover, Petitioner's personal statement letter is contained in the record and is specifically acknowledged by the Board during the interview. Transcript, p. 11. That letter goes into detail regarding the remorse that he feels as a result of his actions, which is contrary to the Board's assertion that his remorse was shallow.

Finally, the Board's finding that that there is a reasonable probability that Petitioner would not live and remain at liberty without again violating the law is unsupported by the record and would serve as an additional basis to vacate the June 2019 Decision. The record demonstrates that Petitioner was rated the lowest possible score in the categories of risk of felony violence, arrest risk and abscond risk in his COMPAS assessment and had only had one disciplinary ticket during his 27-year incarceration.

This decision in no way minimizes the fact that Petitioner took the life of an innocent young woman in a brutal fashion. There are few, if any, more heinous crimes. Nevertheless, this Court's responsibility is to ensure that Petitioner's application for parole release be appropriately evaluated pursuant to all applicable laws and regulations.

The Court has considered the additional contentions of the parties not specifically addressed herein. To the extent any relief requested by either party was not addressed by the Court, it is hereby denied. Accordingly, it is hereby

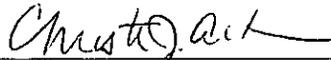
ORDERED that the Petition is granted and the June 12, 2019 determination is annulled; and it is hereby

ORDERED that the matter is remitted to Respondent for a *de novo* parole release interview and review which complies with all applicable statutes and regulations and before a panel of the Board consisting of members who were not involved in the June 12, 2019 interview; and it is further

ORDERED that said interview is to be conducted within forty-five (45) days of the date of this Court's Decision and Order, and a decision is to be issued within fifteen (15) days of the date of such hearing.<sup>7</sup>

The foregoing constitutes the Decision and Order of the Court.

Dated: Poughkeepsie, New York  
September 17, 2020

  
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CHRISTINA ACKER, J.S.C.

To: All Counsel via NYSCEF

<sup>7</sup> According to the Board's Decision, Petitioner's next appearance date is scheduled for December 2020. As such, Respondent should be well prepared to proceed under the timelines ordered herein.