October 2020

Decision in Art. 78 proceeding - Slade, Derek (2019-12-23)

#1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

Present:

Hon. Maria G. Rosa, Justice

DEREK SLADE,

DECISION, ORDER AND JUDGMENT
AFTER HEARING ON CONTEMPT

Petitioner,

Index No. 203/19

-against-

TINA M. STANFORD, Chairwoman NYS Board of Parole
and Department of Corrections and Community Supervision,

Respondent.

Per this court's Decision, Order and Judgment of June 4, 2019 granting the Petition for a *de novo* Parole Board hearing, the June 19, **2018** determination of the Board of Parole (the "Board") denying parole release was vacated due to the Board's failure to demonstrate that it considered the statutory factors and to articulate a reason for denial other than the crime of conviction. The Respondent Board was directed to hold a *de novo* hearing within 90 days. At that hearing held September 16, 2019 the Board again failed to comply with Executive Law Section 259-i, 9 NYCRR 8002.1 and the relevant case law requiring consideration of the relevant factors and articulation of them in it's determination which again denied parole release.

In it's June 4, 2019 decision this court directed the Board to consider those factors and to articulate a reason, if any, for the denial of parole other than the underlying offense. As this court held, " While the severity of the crime lends understanding to the Board's determination, neither the Board nor this court may usurp the authority of the sentencing court..." Moreover, our justice system, which includes our system of incarceration, contemplates an inmate's potential ability to be rehabilitated and to live in the community without violating the law and without undermining respect for the law or threatening the welfare of society. To this day the respondents have failed to articulate a basis for anyone to rationally conclude that Mr. Derek Slade is not such an inmate.

At the *de novo* hearing held on September 16, 2019, again, release was denied. The court's directives and the statutory requirements were not met. In addition, several serious errors were made at that hearing. First, only two commissioners, not the three required, participated. Second, the determination erroneously stated that Mr. Slade was on probation when he was charged with the underlying crime. That is false as was admitted by DOCCS in papers submitted to this court and as stated in open court on December 16, 2019. In fact, the underlying crime was Mr. Slade's only crime. He had no prior, and has had no subsequent, criminal history. It is further undisputed that Mr. Slade

has been an exemplary inmate participating in numerous voluntary rehabilitation programs and earning an Associate's degree and a Bachelor's degree. He has participated in mandatory and voluntary programs including educational programs, therapeutic programs, substance and alcohol abuse programs (even though there is no claim that substance abuse was related to his crime) and has done everything he can do to gain release. Still, Mr. Slade has been denied parole 7 times.

After the September hearing, Mr. Slade moved this court for an order holding Respondents in contempt based upon the alleged failure to comply with this court's June 4, 2019 decision, order and judgment. The motion was granted to the extent that a contempt hearing was scheduled for December 16, 2019. Respondents were expressly advised that Petitioner had made a *prima facie* showing of contempt and that to defeat the motion they would need to present a witness with first hand knowledge.

At the contempt hearing, the respondents' only witness, Tijuana Patterson, a Supervisor Offender Rehabilitation Counselor, testified to nothing to address the respondents' failure to comply with this court's orders, the rules and the statutes. The Board, in recognition of some of its own errors, and unbeknownst to the court until the middle of the contempt hearing, had held another parole release hearing for Mr. Slade on November 19, 2019. Still, only two commissioners participated. Mr. Slade was not released and the only reason given in its written decision is the Board's conclusion that he lacks insight with regard to domestic violence/the underlying crime, a position which has no support in the record. Mr. Slade clearly articulated his remorse during the November hearing, the transcript of which Respondents moved into evidence, and again expressed his remorse, insight and regret before this court on December 16, 2019. Mr. Slade testified that he does not know what else he can do to be granted parole.

The Board acknowledged that the COMPAS (Correctional Offender Management Profiling for Alternative Sanctions) risk assessment scored Mr. Slade low for all risks of recidivism expressing concern only regarding possible substance abuse, and without a discernable basis for that. This is inconsistent with the Board's conclusion that Mr. Slade lacks insight.

This court's decision specifically required the Parole Board to include the relevant statutory factors in Executive Law §259-c(4) in rendering a new determination on parole release. Both determinations, September 16, 2019 and November 19, 2019, (based on the transcript of the hearing) appear to be in clear violation of this court's prior decisions as the Board has again based it's decisions exclusively on the facts underlying the conviction and has not demonstrated consideration of the statutory factors.

In order to prevail on a motion for contempt, the moving party must prove by clear and convincing evidence : (1) the existence of a clear and lawful mandate of the court; (2) that the party alleged to have disobeyed the order was aware of its terms and (3) that the moving party's rights were prejudiced. See El-Dehdan v El-Dehdan, 114 AD3d 4 (2nd Dept. 2013). "It is not necessary that the disobedience be deliberate or willful; rather, the mere act of disobedience, regardless of its motive, is sufficient if such disobedience defeats, impairs, impedes, or prejudices the rights or

remedies of a party." Gomes v Gomes, 106 AD3d 868, 869 (2nd Dept. 2013). Nor is it necessary for the movant to show that alternative remedies to contempt have been pursued unsuccessfully or that resort to such remedies would be ineffectual. See Cassarino v. Cassarino, 149 A.D.3d 689 (2nd Dept 2017).

This court is without authority to order the petitioner released and does not wish to usurp the Board's authority but hopes that the legislature will soon address the recurrent problem with indeterminate sentencing and that perhaps, in situations such as this one, the Supreme Court might have the authority to refer the matter back to the sentencing court to determine whether parole release should be granted. For now let us hope that Mr. Slade is able to maintain the expectation of his eventual release and that he does not succumb to the depths of despair as inmates before him have done.

On the basis of the foregoing, it is hereby

ORDERED and ADJUDGED that Respondents are in contempt of court. The Respondents have failed to present competent evidence from individuals with first-hand knowledge of any relevant facts and have presented no written evidence, and no witness with first hand knowledge, and have failed to articulate any basis to controvert the conclusion that the denial of parole is solely due to the underlying offense. It is therefore

ORDERED that pursuant to Judiciary Law Section 753(A)(3) and §773 the respondents are fined $250.00 per day starting today and for each day until a *de novo* hearing is held and either a determination is made to release Mr. Slade to parole or a legitimate basis for denial is articulated in a manner consistent with the requirements of the statutes, including Executive Law Section 259, the rules, the case precedent and this court's prior determinations.

The foregoing constitutes the decision, order and judgment of the Court.

Dated: December 23, 2019
Poughkeepsie, New York

ENTER:

MARIA G. ROSA, J.S.C.

Pursuant to CPLR §5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

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