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November 2020

### Decision in Art. 78 proceeding - Bottom, Anthony (2020-08-10)

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STATE OF NEW YORK  
COUNTY OF SULLIVAN

SUPREME COURT

**In the Matter of  
ANTHONY BOTTOM,**

Petitioner.

-against-

**ORDER**

**Tina M. Stanford, Chair of the  
New York State Parole Board,**

**Index No: E2020-745**

Respondent.

Upon consideration of the Notice of Petition and Petition with Exhibits of Kathy Manley, Esq.; the Answer and Exhibits of Assistant Attorney General Elizabeth Gavin, Esq.; the Reply Affirmation of Kathy Manley, Esq; and the Oral Argument held via Skype on August 4, 2020,

IT IS HEREBY ORDERED that the Petition is granted to the extent that the Parole Board shall afford the petitioner a *de novo* Parole hearing, which shall take place in September, 2020, when Petitioner was already scheduled for his regular Parole hearing; in the event that the *de novo* hearing results in denial of release, the regular hearing shall occur within SIXTY (60) days of the *de novo* hearing;

IT IS HEREBY ORDERED that the *de novo* hearing shall consist of at least two Parole Board members, none of whom sat on the October, 2019 panel which was the basis for the instant petition;

IT IS HEREBY ORDERED that if the Parole Board denies release after the *de novo* interview, it must provide an individualized explanation for departing from the completely low COMPAS risk scores, and must specify the COMPAS scale(s) from which the Board departed; and

IT IS HEREBY ORDERED that if the Parole Board denies release after the *de novo* interview, it must provide an individualized explanation for said denial based on the record.

ENTERED:

DATED: August 10 2020  
Monticello, New York



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HON. STEPHAN G. SCHICK, JSC

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF SULLIVAN

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3 In the Matter of ANTHONY BOTTOM,

4 Petitioner,

5 -against-

Index No. E2020-745

6 Tina M. Stanford, Chair of the New York State  
7 Parole Board,

8 Respondent.

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9 ARTICLE 78 - ORAL ARGUMENT

10 VIRTUALLY VIA SKYPE

11 August 4, 2020

12  
13 B E F O R E:

14 HONORABLE STEPHAN G. SCHICK,  
15 Justice of the Supreme Court.

16 APPEARANCES:

17 LAW OFFICE OF KATHY MANLEY  
18 Attorneys for Petitioner  
26 Dinmore Road  
Selkirk, New York 12158-1528  
BY: KATHY E. MANLEY, ESQ.

19 LETITIA JAMES, Attorney General  
20 State of New York  
Attorneys for Respondent  
21 One Civic Center Plaza, Suite 401  
Poughkeepsie, New York 12601-3157  
22 BY: ELIZABETH GAVIN, ESQ.  
(Appearing via telephone)

23  
24 Georgette H. Sayers, RMR,  
Senior Court Reporter.  
25

1 THE COURT: All right. This is in the matter  
2 of Anthony Bottom, Petitioner, against Tina Stanford,  
3 Chair of the New York State Board of Parole.

4 This is an Article 78 brought by the  
5 petitioner to overrule the decision by the Parole Board  
6 in denying the petitioner parole which was appealed  
7 administratively within the parole system and the  
8 appeal was denied and that brought the petitioner here  
9 before the Court.

10 Miss Manley, on behalf of your client,  
11 Mr. Bottom, you filed a petition, the Attorney General  
12 filed a -- an answer and a record on appeal.

13 Miss Manley, you requested oral argument, is  
14 that correct?

15 MS. MANLEY: I did, Your Honor.

16 THE COURT: All right. What do you wish to  
17 bring to my attention specifically in regard to this  
18 oral argument?

19 I did read the petition and the attached  
20 exhibits, I read the answer and the exhibits attached.  
21 They were quite lengthy in exhibits but I did go  
22 through all of that, and I was refreshing my  
23 recollection about a half an hour ago, make sure I  
24 could remember everything I could, possibly could.

25 What specifically, Miss Manley, do you want

1 to bring to my attention?

2 MS. MANLEY: Well, Your Honor, I wanted to  
3 highlight some of the issues I raised and particularly  
4 with regard to the board's findings being contrary to  
5 the record and with regard to the COMPAS departure and  
6 the requirement under the new regulations. So I wanted  
7 to just go through some of the issues.

8 Anthony Bottom who's also known as Jalil  
9 Muntaqim has been locked up since 1971, when he was 19  
10 years old and now he's a great grandfather. He did  
11 acknowledge committing a horrendous crime nearly a half  
12 a century ago when he with his co-defendant ambushed  
13 two police officers and brutally murdered them.

14 Petitioner is extremely honest and  
15 conscientious when discussing this crime. He explained  
16 to the Parole Board that he became part of the Black  
17 Panther party at a young age and was involved in many  
18 positive activities. Unfortunately during those very  
19 volatile times, the Black Panther party split into two  
20 different directions and Anthony, influenced by older  
21 members, chose to join the Black Liberation Army. At  
22 that point he believed himself to be at war with law  
23 enforcement.

24 Now this is an important point, there's a  
25 huge difference between an explanation and a

1 justification. At the Parole Board's behest, Anthony  
2 honestly explained why he had done what he did at that  
3 time, what his beliefs were at that time, but he also  
4 clearly stated that he knows now that it was very wrong  
5 and that he caused an immense amount of harm to the  
6 victim officers and their families.

7 Anthony expressed his strong remorse to the  
8 Board many times, even breaking down in tears at one  
9 point when reflecting on the lives he had taken and how  
10 he felt that he needed to redeem himself.

11 It's hard to imagine how his remorse could  
12 have been deeper or more heartfelt, and anyone reading  
13 that transcript from last October should know that  
14 Anthony Bottom does not believe that these murders were  
15 in any way righteous. Again, the fact that he was able  
16 to sincerely explain his thinking at that time does not  
17 mean that he was justifying that thinking or those  
18 actions. He was not and he made that crystal clear.

19 Yet, the Parole Board denied parole for the  
20 thirteenth time and they tried to justify this by  
21 claiming that somehow his remorse lacked depth and that  
22 he came across as still believing in the righteousness  
23 of his crime. There was simply no support in the  
24 record for those claims. In fact the record shows the  
25 exact opposite, as I described in my petition. The

1 Parole Board would have to believe that Anthony Bottom  
2 was flat-out lying to them. Yet the record shows that  
3 they did not think that. Towards the end of the  
4 interview, Commissioner Davis thanked petitioner for  
5 being open and honest with them, and he said: We  
6 appreciate your openness. We appreciate your  
7 willingness to thoroughly and completely answer our  
8 questions and we value truth telling on this panel. So  
9 thank you, sir. That's what he said.

10 Respondent couldn't point to much of anything  
11 in this record to back up the board's erroneous  
12 conclusions about remorse, so he reached back years to  
13 two old transcripts, one from 2016 and one from back in  
14 2006. And as I discussed in the reply, they say  
15 nothing about his remorse now in this record, but they  
16 show his evolution in taking responsibility for the  
17 offense and then learning how to discuss it with the  
18 board and let them know his deep remorse. He did both  
19 of those things in the last few boards and particularly  
20 here, which is the one that matters.

21 So as I argued, the board's findings as to  
22 remorse and petitioner's beliefs were not supported by  
23 the record, and in fact fly in the face of that record  
24 and that is a legal error requiring a new hearing.

25 And now for the COMPAS issue. All of Anthony



1 Bottom's COMPAS risk scores were low, which means that  
2 under 9 New York CRR 8002.2, the board is required to  
3 do two things: One, to explain why they departed from  
4 those low risk scores; and two, to specify which COMPAS  
5 scales they departed from.

6 Here the board did attempt to explain why  
7 they disagreed with the COMPAS scores, but that  
8 explanation was entirely comprised of the very same  
9 erroneous statements I just discussed about -- that the  
10 claims that the remorse were not supported by the  
11 record, and that does not suffice to justify the  
12 departure.

13 The board also did not specify any particular  
14 COMPAS scale they departed from and that is also a  
15 requirement under the regulations.

16 In the answer, respondent creatively argued  
17 that the board was not required to justify departing  
18 from the COMPAS low risk scores. She said that the  
19 board found that petitioner was not likely to commit  
20 any new crimes if he were released. So the board was  
21 actually agreeing with the COMPAS scores that he was  
22 low risk. Think about that for a minute.

23 All of the parole reform over the past  
24 several years, from the 2011 statutory amendments to  
25 this new regulation, has been about requiring the board

1 to look at how people change over time and not to be  
2 stuck denying release based on the offense itself,  
3 which can never change.

4 It is true that the parole statute does also  
5 say that release can be denied when it is -- quote --  
6 "not compatible with the welfare of society" or when  
7 release -- quote -- "would so deprecate the offense as  
8 to undermine respect for the law." But these are  
9 boilerplate phrases repeated in almost all parole  
10 denials, and they were stated in this case as well, but  
11 without any explanation as to how they applied or that  
12 they -- with any factual basis for them. No factual  
13 basis was given.

14 And significantly in terms of the new  
15 regulations regarding COMPAS, when the board says that  
16 release is -- quote -- "not compatible with the welfare  
17 of society," as they did here, that is an indication  
18 that there is a risk to society from the petitioner.  
19 And so that is a discrepancy from completely low COMPAS  
20 scores. That is exactly what the courts said in  
21 Sullivan v. Stanford and Robinson v. Stanford, two  
22 fairly recent decisions.

23 In Robinson the Court said -- quote --  
24 "Petitioner correctly asserts that the Parole Board's  
25 finding that discretionary release would not be

1 compatible with the welfare of society directly  
2 contradicts those scores in his COMPAS instrument. It  
3 was required to articulate with specificity the  
4 particular scales from which it was departing and to  
5 provide an individualized reason for such departure."  
6 The board here did not do that, and a new hearing is  
7 required.

8 I'd also like to briefly address the issue of  
9 community opposition versus community support in this  
10 case.

11 Respondent tries to equate the vast amount of  
12 support petitioner has received with the opposition,  
13 and I believe that opposition essentially consists of  
14 statements that no one who has ever killed a police  
15 officer should ever be released. That is a statement  
16 of penal philosophy and basically expresses a wish that  
17 the law was different from what it actually is, because  
18 the law does allow for release.

19 The support, on the other hand, which  
20 includes a letter from the son of Waverly Jones, one of  
21 the victim officers, the support was instead focused on  
22 Anthony Bottom and his transformation and  
23 accomplishments over the past half century. At least  
24 97 of the support letters were from people who know  
25 petitioner personally, have visited with him, spoken

1 with him on the phone, and/or corresponded directly  
2 with him. Others may not know him personally but they  
3 know of his particular accomplishments. I could spend  
4 a couple hours just talking about that, but I won't.

5 The Court has the letters of support and I  
6 discussed them at length in my petition. Briefly they  
7 describe how petitioner has developed strong conflict  
8 resolution skills in prison which he used to help  
9 prevent two riots, that he established the first men's  
10 council in any prison in order to help men learn to  
11 talk about their feelings instead of reacting  
12 violently, that he helped establish victory gardens to  
13 provide healthy food to low income communities, that he  
14 obtained two college degrees while in prison, and that  
15 he became a teacher and mentor to hundreds, if not  
16 thousands of people, both in and out of prison. If he  
17 can accomplish all of this while locked behind bars,  
18 just imagine what he can do if released.

19 The many letters from the community in  
20 Rochester, New York, show how much the community  
21 welcomes Anthony Bottom, and already, as I discussed in  
22 the petition, already they have many projects lined up  
23 for him. Now more than ever we need people who  
24 honestly understand how individuals and society can  
25 transform for the better when they critically examine

1 their past. We need people who help resolve  
2 differences non violently, people who light up with joy  
3 when they see a student learn. Anthony Jalil is all of  
4 those things.

5 Far from hurting society, as the board  
6 claims, his release would be a gift to society.

7 THE COURT: All right. Well, Miss Manley,  
8 that's a very nicely presented argument on behalf of  
9 Mr. Bottoms. But assuming for the sake of argument  
10 that I agree with almost everything you said and  
11 assuming if I were on the Parole Board, I would have  
12 voted to extend him parole, even assuming all of those  
13 things, that's not the -- that's not the legal issue  
14 that's before this Court. What's before this Court  
15 really, doesn't it boil down to whether the board's  
16 decision was so irrational as to border on impropriety.  
17 So even if I disagree with the board's decision and  
18 feel badly for their decision in that it's not the  
19 correct decision, is it so irrational as to border on  
20 impropriety?

21 MS. MANLEY: Well, well, yes, I believe so,  
22 Your Honor, because there's been many decisions that  
23 have granted de novo hearings because the board's  
24 findings, the board's reasons, 'cause they have to give  
25 reasons, when the board's reasons are not supported by

1 the record, there's been many courts, including in the  
2 Third Department, which have granted new hearings for  
3 that reason.

4 THE COURT: All right. Well, let me stop you  
5 there then. So is it fair to say then that that's what  
6 you're requesting here? You're not requesting a  
7 finding that the board acted irrationally and therefore  
8 the board's decision is overruled. You're just asking  
9 for a new hearing, is that what you're saying?

10 MS. MANLEY: Well, I -- my understanding is  
11 that Your Honor isn't legally able to grant release --

12 THE COURT: Right.

13 MS. MANLEY: -- but can only grant a new  
14 hearing, and many new hearings have been granted for  
15 the reasons I've argued and, you know, the decision can  
16 state what the board did wrong and then if the board  
17 proceeds to do the same exact thing again, that's --  
18 that's another issue, but we're not there at this  
19 point.

20 THE COURT: I get that. Okay. I've been  
21 there in that situation. I don't know -- all right.  
22 So that eases somewhat the consideration.

23 Miss Gavin, can you hear me?

24 MS. GAVIN: Yes, I can, Your Honor.

25 THE COURT: All right. Isn't it true that

1 Mr. Bottom is in fact scheduled for a new hearing in  
2 less than 30 days anyway?

3 MS. GAVIN: I am unaware of his next hearing  
4 date.

5 THE COURT: Miss Manley?

6 MS. MANLEY: Yes, I believe he is scheduled  
7 for one in September, which is why I wanted this to  
8 move as quickly as possible. And if he is granted a de  
9 novo, I believe he would forego the regular hearing and  
10 instead have the de novo hearing.

11 THE COURT: But the de novo hearing may be  
12 later, because the attorney general's office is asking  
13 for 60 days on the de novo.

14 MS. MANLEY: And I would ask for 30 days,  
15 but --

16 THE COURT: Right.

17 MS. MANLEY: -- but he would, I believe, be  
18 willing to wait an extra month.

19 THE COURT: Well, Miss -- Miss Gavin,  
20 wouldn't it be -- wouldn't it be fair to do a de novo  
21 in 30 days 'cause you're prepared to hold another  
22 hearing in 30 days anyway, correct?

23 MS. GAVIN: It does appear that he is  
24 scheduled, based on Miss Manley's representations. He  
25 is on the calendar for September. Since he is on the

1 calendar for September for his regular parole  
2 appearance, I do not believe that there would be any  
3 issue with changing that appearance from a regular  
4 board appearance to a de novo appearance. The -- the  
5 only issue that would -- the board would need  
6 additional time for is because Criminal Procedure Law  
7 requires that the board seeks Victim Impact Statements  
8 from the victims of the petitioner's crime and give them  
9 the opportunity to weigh in prior to a de novo hearing.

10 THE COURT: Well, does it --

11 MS. GAVIN: I'm imagining that they've done  
12 that for the September appearance. If the Court wishes  
13 to do de novo, then I believe that the de novo could  
14 take place in September and the board would need  
15 permission from the Court to schedule his regular  
16 parole appearance for 60 days after his September  
17 appearance.

18 THE COURT: Well, all right. Is that a  
19 problem, Miss Manley? But that's -- that's  
20 presupposing he, you know, he doesn't get granted  
21 parole on the de novo.

22 MS. GAVIN: You are correct, Your Honor.  
23 This is Elizabeth Gavin speaking.

24 THE COURT: Yeah. Does that sound fair to  
25 you, Miss Manley?



1 MS. MANLEY: Well, we'd have to see what  
2 happens and if he is denied on the de novo, then I  
3 would have to examine whether it made sense to come  
4 back here, honestly, and file for contempt or not. So  
5 I couldn't say right now whether he would then go ahead  
6 with his regular board a month or two later or we would  
7 do something else.

8 THE COURT: All right. Does anybody wish to  
9 argue anything further?

10 MS. GAVIN: Your Honor, this is Elizabeth  
11 Gavin. I'd just --

12 THE COURT: Miss Gavin, you're breaking up.  
13 I don't know, you might be speaking too close to the  
14 phone or too far away.

15 Can you try again?

16 MS. GAVIN: Yes, Your Honor. Can you hear  
17 me?

18 THE COURT: Yes, much better.

19 MS. GAVIN: Okay. I was holding the phone  
20 very close.

21 What I would like you to know is that during  
22 the course of the petitioner's interview with the  
23 board, he identified himself as the last remaining  
24 incarcerated Black Panther in the State of New York.  
25 The respondent's position is that that declaration

1 represents a belief on the part of the petitioner that  
2 he is a political prisoner. I believe that that is why  
3 the board found that he continues to support his  
4 position from 40 years ago.

5 Additionally --

6 THE COURT: Well --

7 MS. GAVIN: -- the board was able to  
8 personally observe the petitioner, and based on the  
9 petitioner's words and demeanor --

10 THE COURT: Go ahead.

11 MS. GAVIN: -- that he is not credible, that  
12 he is not credible and --

13 THE COURT: All right, all right. I can't  
14 hear -- you're breaking up again. I'm sorry. Based  
15 upon the board's what?

16 MS. GAVIN: The board was in a position to  
17 determine whether or not the petitioner's remorse was  
18 credible, and the board as fact finders found that they  
19 did not believe his remorse.

20 THE COURT: All right. Well --

21 MS. GAVIN: This --

22 THE COURT: -- that -- that may be so. I  
23 don't know. They may -- they may have interviewed him  
24 for the thirteenth time and determined that -- that in  
25 their opinion, in their -- that there was something

1 about his demeanor or his words to indicate that he  
2 wasn't being honest.

3           However, I think they're also obligated to  
4 consider that he's been, you know, a mentor in the  
5 prison system, apparently he has prevented violence and  
6 riots in the prison system by intervening and calming  
7 people down and that he has, while he's been  
8 incarcerated, he has instituted programs to bring  
9 farmer's fresh fruit to poor urban communities.

10           It seems troubling to this Court that however  
11 he said things at the Parole Board meeting -- at the  
12 Parole Board hearing, somehow their subjective ideas  
13 that his demeanor wasn't perfect completely wipes out  
14 accomplishments that are proven by documentary evidence  
15 and by affidavits submitted on his behalf from a large  
16 number of people in the community supporting him, at  
17 least all or partially because of those programs that  
18 he's helped to -- either helped to or on his own  
19 actually created while he's been incarcerated.

20           So as far as this Court is concerned, this  
21 Court's going to grant the petition to the extent of  
22 ordering a de novo hearing, because this Court is  
23 concerned that the -- and agrees with Miss Manley that  
24 the COMPAS risk assessment findings that were submitted  
25 to the Parole Board were not sufficiently countermanded

1 or explained in the decision by the Parole Board.

2 So I mean I understand how difficult this  
3 must -- this case must be for everyone because I  
4 understand how difficult it is for me. It's a very  
5 difficult case, a very difficult matter, it's very  
6 difficult, but despite anybody's feelings or attitude,  
7 this Court and I believe the Parole Board must follow  
8 the law of the State of New York. And if the law is  
9 that if you commit this kind of crime, you're never  
10 entitled to parole, that would be one thing, but I  
11 don't think we can have a Parole Board system that  
12 bases its decision in the manner in which it was based  
13 here which would make it impossible for the petitioner  
14 or anyone in his position to ever get parole. I mean  
15 after thirteen Parole Board hearings and the record  
16 that has been established by Mr. Bottom, I don't know  
17 that anybody could do anything more than he's doing.  
18 And the law gives him the right to a fair hearing and  
19 the right to parole if he accomplishes things that are  
20 set out.

21 So I would expect a better establishment of  
22 what Mr. Bottom could possibly do. He's entitled to  
23 consideration. He's been apparently entitled to  
24 consideration for parole for thirteen times. He's not  
25 entitled automatically to parole, that's certainly

1 true, but he was not sentenced to life without parole.

2 So if the law in the State of New York is  
3 that someone in his situation is entitled to  
4 consideration by the Parole Board, and looking at the  
5 record here of the reasoning set forth by the Parole  
6 Board in contrast to the record before the Parole  
7 Board, it's the finding of this Court that their  
8 reasoning was insufficient and that the petitioner's  
9 entitled to a de novo hearing or a de novo interview.

10 So that being the case, I'm going to order  
11 that de novo hearing to take place at the time he was  
12 regularly scheduled in September for his next full  
13 Parole Board hearing. So that should be very  
14 accomplished, very able to be accomplished by the  
15 state, by the Parole Board, since they must have been  
16 preparing anyway, regardless of this decision.

17 Now, I also think it's reasonable that his  
18 usual Parole Board hearing then be adjourned for 60  
19 days after that to give the Parole Board sufficient  
20 time to hold a de novo hearing, look at the record and  
21 make a decision before there would be a new parole  
22 hearing. So I don't remember off the top of my head if  
23 it was in the record, the exact date of his next  
24 hearing, but it was in the record that it would be in  
25 September 2020.

1                   So Miss Gavin, do you require a written order  
2 of this Court?

3                   MS. GAVIN: Not at this time, Your Honor.

4                   THE COURT: So Miss Manley, you can either  
5 submit an order on notice or you can just rely upon  
6 this oral decision made here at this Skype hearing.  
7 There is a stenographer taking down everything that's  
8 being said here. So you decide what you want to do.  
9 You can order the transcript and have it so ordered or  
10 you can submit an order on notice consistent with this  
11 Court's finding, as you wish.

12                   MS. MANLEY: Thank you, Your Honor.

13                   THE COURT: Do you know what you are going to  
14 do?

15                   MS. MANLEY: I believe I will try to submit  
16 an order.

17                   The only thing I'm thinking of is that the  
18 Parole Board needs to see the decision usually in order  
19 to know what they did wrong and in what, you know, they  
20 not -- they can't repeat the next time, so it might be  
21 helpful to have something that says that. So it -- I  
22 could prepare a draft of an order, Your Honor could --

23                   THE COURT: All right. You can submit your  
24 proposed order. I suggest if you have the ability and  
25 the time, to do it as quickly as possible.

1                   So I would -- today is July -- I mean, excuse  
2 me. I'm going back into the summer which I wish I  
3 could do, but it's August, all the way into August 4th  
4 now. Winter is tomorrow. But, so if you could do that  
5 by a week from now, August 12th, that would probably  
6 make things go quicker.

7                   MS. MANLEY: Yeah, I'll try to do it even  
8 sooner than that, Judge.

9                   THE COURT: All right. Does anybody wish to  
10 put any further argument or statement on the record?

11                  MS. MANLEY: No, Your Honor.

12                  MS. GAVIN: No, Your Honor.

13                  THE COURT: All right. I thank you both for  
14 your appearances. And I want to say particularly that  
15 both Miss Gavin and -- both the assistant attorney  
16 general and Miss Manley provided very, very persuasive  
17 and competent legal papers and argument here today, so  
18 I appreciate that, and I'm impressed by it. I thank  
19 you for your appearances and your arguments on both  
20 sides.

21                  MS. MANLEY: Thank you.

22                  THE COURT: All right. That concludes --

23                  MS. GAVIN: Thank you so much for your time,  
24 Your Honor.

25                  THE COURT: All right. That concludes this

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proceeding, and again, thank you. Be safe.

\* \* \* \* \*

C E R T I F I C A T I O N

Certified to be a true and correct  
transcript of the proceedings held above.

Georgette H. Sayers

Georgette H. Sayers, RMR,  
Senior Court Reporter.