

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

Decisions in Art. 78 Proceedings

Article 78 Litigation Documents

November 2020

Decision in Art. 78 proceeding - Miranda, Javier (2020-10-13)

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

Recommended Citation

"Decision in Art. 78 proceeding - Miranda, Javier (2020-10-13)" (2020). Parole Information Project
<https://ir.lawnet.fordham.edu/pdd/152>

This Parole Document is brought to you for free and open access by the Article 78 Litigation Documents at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Decisions in Art. 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.

Matter of Miranda v New York State Parole Bd.

2020 NY Slip Op 33346(U)

October 13, 2020

Supreme Court, New York County

Docket Number: 150995/2020

Judge: Melissa A. Crane

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

After Mr. Miranda commenced this proceeding, he reappeared before the Parole Board on July 8, 2020. The Board again denied his parole in a July 24, 2020 decision. In a letter, dated July 31, 2020, counsel for Mr. Miranda argued that this petition was not moot because (1) the errors the Parole Board made occurred again in the July 24, 2020 decision, (2) are likely to recur and (3) these issues will evade review absent a ruling from the court. Respondent opposed arguing the Petition was moot and that the Parole Board had not erred, so there was no error to reoccur.

The court finds that it would be an unfair result and a waste of resources to require Mr. Miranda to commence an entirely new petition just to challenge the propriety of the Parole Board's subsequent order when Mr. Miranda's circumstances are nearly identical to those 18 months ago. Indeed, given that every 18 months the Parole Board conducts a reappearance interview, by the time the new petition is briefed and the court gets to it, every petition Mr. Miranda files would likely become moot. Thus, this issue certainly will evade review. Accordingly, the court will analyze the July 8, 2020 decision using the prior papers the parties filed, as well as the letters to the court following the July 24, 2020 Parole Board decision.

The Executive Law enumerates eight statutory factors to determine whether an inmate should be released on parole. The court finds the following five relevant to this case:

“(i) the institutional record including program goals and accomplishments, academic achievements, vocational education, training or work assignments, therapy and interactions with staff and inmates; ...; (iii) release plans including community resources, employment, education and training and support services available to the inmate ...; (v) any statement made to the board by the crime victim or the victim's representative, where the crime victim is deceased or is mentally or physically incapacitated ...; (vii) the seriousness of the offense with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court, the district attorney, the attorney for the inmate, the pre-sentence probation report as well as consideration of any mitigating and aggravating factors, and activities following arrest prior to confinement; and (viii) prior criminal record, including the nature and pattern of offenses, adjustment to

any previous probation or parole supervision and institutional confinement” (Executive Law § 259-i [2] [c] [A]).

A parole board must consider all eight factors, but it need not give equal weight to each factor (see *Matter of King v New York State Div. of Parole*, 190 AD2d 423, 431 [1st Dept 1993], *affd* 83 NY2d 788 [1994]). However, a parole board must ensure that it considers only the relevant guidelines and factors (*id.* at 791).

Although a parole board must consider the seriousness of the crime, it should, nevertheless, do so in conjunction with the other factors the statute enumerates, and conduct a risk assessment analysis to determine if rehabilitation of an inmate occurred (see Executive Law § 259-c [4]). The legislative intent behind the Executive Law for parole board determinations relies on a forward-looking paradigm, rather than a backward-looking approach that focuses on the severity of the crime (see *Platten v NYS Bd. of Parole*, 47 Misc 3d 1059, 1062 [Sup Ct, Sullivan Cty. 2015]). Thus, a parole board may not deny parole based solely on the seriousness of the offense (see *Matter of Rossakis v NYS Bd. of Parole*, 146 AD3d 22, 27 [1st Dept 2016]; *Matter of Ramirez v Evans*, 118 AD3d 707 [2d Dept 2014]; *Matter of Gelsomino v NYS Bd. of Parole*, 82 AD3d 1097, 1098 [2d Dept 2011]). Rather, risk and needs principles should guide a parole board. The board needs to explain, with particularity, its reasons for departing from a risk-assessment analysis (Division of Parole Regulations § 8002.2 [a]). When the record indicates that a parole board considered other factors impermissible under the statute and related regulations, the court must remand the matter for a new interview before a new parole board (*King*, 83 NY2d at 791).

The record here contains substantial evidence that Mr. Miranda has transformed, has accepted responsibility for his actions, expresses remorse and now conducts himself as a model prisoner. The Parole Board recognized this, as well as his low risk COMPAS score.

Nevertheless, the Parole Board denied parole. While not a model of clarity, the Parole Board's July 24, 2020 decision is neither arbitrary nor capricious. For instance, although they departed from Mr. Miranda's COMPAS score recommendation, they gave reasons for doing so. The Parole Board was troubled that Mr. Miranda's commentary during his July 8th interview focused "heavily" on restating his accomplishments, even when the Board was trying to elicit statements of remorse. The transcript of the interview reflects this characterization. Moreover, the Parole Board had concerns because Mr. Miranda's current account of the crime differed from that in the PSI. However, Petitioner never supplied the court with the PSI, all the while urging the court to consider the subsequent July 2020 decision on this record. Thus, the "seriousness of the crime" factor did not overwhelm the focus of the Board's analysis. Rather, the Board appropriately considered other factors.

That the Bronx DA's Office did not give an official letter opposing Mr. Miranda's parole does not change the outcome here in light of the other factors. Finally, Mr. Miranda is not entitled to the documents Respondent supplied to the court for *in camera* review because they contain confidential witness information.

Accordingly, it is

ORDERED that the court denies the petition and dismisses this proceeding.

Dated: October 13, 2020
New York, New York

ENTER:



HON. MELISSA A. CRANE, J.S.C.

