December 2020

Decision in CPLR Article 78 proceedings - Stokes, Robert (2014-06-09)

Decided on June 9, 2014
Supreme Court, Albany County

In the Matter of the Application of Robert Stokes, DIN No. 94-A-5427, Petitioner, For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules

against

Tina M. Stanford, CHAIRWOMAN, BOARD OF PAROLE, Respondent.

94-A-5427

Robert Stokes, DIN# 94-A-5427

Petitioner & Self Represented Litigant

Otisville Correctional Facility

P.O. Box 8

57 Sanitorium Road

Otisville, New York 10963-0008

Eric T. Schneiderman, Esq.

Attorney General

Attorneys For Respondent

Colleen D. Galligan, Esq., of counsel

The Capitol

Albany, New York 12224-0341
Henry F. Zwack, J.

Petitioner and inmate Robert Stokes in this Article 78 proceeding seeks the vacatur and remand of the latest denial of his parole application, following a hearing on June 11, 2013. As he points out in his petition, in 1994 petitioner was sentenced upon a plea of guilty to second degree murder to an indeterminate term of 15 years to life; and now, despite his "relatively clean institutional record", his parole has been denied for the fourth time — arguably solely because of the serious nature an circumstances of his crime — and most recently the Parole Board erring in denying him release and by failing to consider all the factors required by Executive Law 259-i. The respondents have answered and oppose the petition.

It is well established that parole release decisions are discretionary and will not be disturbed so long as the Board complied with the statutory requirements of Executive Law § 259-I (Matter of Maricevic v Evans, 86 AD3d 879 [3d Dept 2011]). In the absence of affirmative proof to the contrary, the presumption must be that the respondent fully complied with applicable statutory directives (Matter of Bottom v New York State Board of Parole, 30 AD3d 657 [3d Dept 2006]). The law is also clear that the nature and severity of the crime standing alone is not sufficient to sustain a denial of parole, and a determination based solely on that factor is "irrational and must be annulled" (Wallman v Travis, 18 AD3d 304 [1st Dept 2005]; Matter of King v NYS Division of Parole, 190 AD2d 423 [1st Dept 2003]). Here, the Court is mindful that judicial intervention in the determination of the Parole Board is warranted only where there is a showing of irrationality bordering on impropriety (Silmon v Travis, 95 NY2d 470 [2000]). Simply stated, a court may not substitute its judgment for that of an administrative agency (Daxor Corporation v New York Department of Health, 90 NY2d 89 [1990]; Veras v New York State Division of Parole, 56 AD3d 878 [3d Dept 2008]), and therefore a severe limitation on judicial review is imposed in a proceeding such as this (Johnson v Ambach, 74 AD2d 986 [3d Dept 1980]).

The 2011 amendment to Executive Law § 259-c (4) requires the Parole Board to give adequate consideration to an inmate's efforts at rehabilitation. It's determination must be sufficiently detailed so as to apprise petitioner of the reasons for the denial of his parole release (Matter of Davis v Travis, 292 AD2d 742 [3d Dept 2002]). In petitioner's interview with the Board, it made note that there were no negatives in his prison disciplinary history since his last appearance, he has made positive efforts towards his rehabilitation, including obtaining his GED, done vocational training, ART, ASAT, Phase I, II and III, would be living with his wife if released, and that his COMPAS risk reveals he is at low risk for violence, re-arrest or absconding. However, and in stark contrast, in its determination the Board denied parole release based only upon the finding that petitioner committed murder during a robbery, and that his plea to the murder charge resolved three pending robberies. The determination simply fails to make any analysis of the steps toward rehabilitation, or his post-release plans, and why and how those factors were dismissed. Absent any discussion of what petitioner needs to do to improve his chances at of release at the next parole release hearing, the determination lacks a rational basis in the record (Matter of McBride v Evans, 42 Misc 3d 1230 (A) [*2][Sup Ct, Dutchess County 2014]).

The Court has also reviewed the ISR and the COMPAS, neither of which conclude that if petitioner is released into society he would place anyone at risk. Particularly, the COMPAS report found him at low risks in all categories it considered. Petitioner has a supportive family, a place to learn, a clear understanding that he may need retraining in order to find a job, and has programmed at an acceptable level. Reading the record as a whole, including the transcript of the parole hearing, the inescapable conclusion is that petitioner was denied parole simply on the basis of the serious nature of his crime. Although the determination parrots the applicable statutory language, the Board does not even attempt to explain the disconnect between it's conclusion and petitioner's rehabilitation efforts and his low risk scores.[FN1]

The Court has considered the remaining arguments of the parties and finds them to be unavailing.

Accordingly, it is

ORDERED, that the petition is granted, and the determination vacated and remanded for a new parole hearing, to be held within 30 days of the date of this Decision and Order.

This constitutes the Decision and Order of the Court. This original Decision and Order is returned to the attorneys for the Respondents. All other papers are delivered to the Supreme Court Clerk for transmission to the County Clerk. The signing of this Decision and Order shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provisions of this rule with regard to filing, entry and Notice of Entry.

Dated:June 9, 2014

Troy, New York_____

Henry F. Zwack

Acting Supreme Court Justice

Papers Considered:

Order to Show Cause dated December 31, 2013; Affidavit in Support, sworn to December 9, 2013; Petition, sworn to December 9, 2013, together with Exhibits "A" and "B"

Answer dated March 10, 2014, together with Exhibits "A" through "Q"; Affirmation by Colleen D. Galligan, Esq., dated March 5, 2014.

Footnotes

Footnote 1:Compare Matter of Partee v. Evans, 984 NYS2d 894 (3d Dept 2014), where the seriousness of petitioner's crime was held to be sufficient to deny parole release under what appear to be similar circumstances, except that Mr. Partee had a recent infraction involving violent conduct.