September 2021

Decision in Art. 78 proceeding - Agront, Macrello (2008-05-23)

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In the Matter of the Application of
MACRELLO AGRONT, #81-A-5422,

Petitioner,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

-against-

DECISION and ORDER
INDEX NO. 9831-07
RJI NO. 01-08-ST8548

WILLIAM LAPE, et al.,

Respondent.

Supreme Court of Albany County All Purposes Term, April 11, 2008
assigned to Justice Joseph C. Teresi

APPEARANCES:

Linda C. Braunsberg, Esq.
Attorney for the Petitioner
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Staten Island, New York 10312

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Attorney General of the State of New York
Attorney for the Respondents
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TERESI, J.:

This CPLR Article 78 proceeding is brought by an inmate challenging the denial of parole. Petitioner asserts in conclusionary fashion that respondent's determination is arbitrary and capricious, procedurally defective and irrational. Respondent asserts a general denial and seeks

dismissal of the petition for failure to state a cause of action pursuant to CPLR 3211(a)(7).

Petitioner is serving a term of 25 years to life after a conviction of the crimes of Manslaughter, 2nd Degree, Manslaughter 1st Degree and Criminal Possession of a Weapon 2nd Degree. Petitioner appeared before the Parole Board for his third parole release interview on January 9, 2007. Parole was denied and the Board ordered the petitioner held for 24 months. The Board noted petitioner's programing and discipline but denied parole after considering the fact petitioner killed an innocent victim, robbed another person and stole a handgun. The Board concluded that "it is apparent from your behavior that you have a selfish disregard for the life and welfare of others." On April 5, 2007 the petitioner filed an appeal with the Parole Appeals Unit. The determination of the Board was affirmed on October 25, 2007. Petitioner now brings this Article 78 proceeding.

The parole board's actions are judicial in nature and may not be reviewed if done in accordance with the law (see, Executive Law § 259-i(5); Valderroma v. Travis, 19 AD 3d 904). Executive Law § 259-i(2)(c) provides that discretionary release to parole supervision is not to be granted to an inmate merely as a reward for good behavior while in prison, but after considering whether "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 depreciate the seriousness of his crime as to undermine respect for the law" (Matter of King v New York State Division of Parole, 83 NY 2d 788).

Petitioner argues that respondents failure to discuss every statutory guideline factor demonstrates that they were not considered. It is well established that the Parole Board need not expressly discuss each factor (Matter of King v New York State Division of Parole, supra 71).

While the relevant statutory factors must be considered, it is well settled that the weight to be accorded to each of the factors lies solely within the discretion of the Parole Board (Wood v. Dennison , 25 AD 3d 1056). Petitioner does not meet his burden of overcoming the presumption that the Board fulfilled its duty and considered all of the factors (Matter of Rivera v. New York Div. of Parole, 23 AD 3d 863) simply by showing that the Board failed to discuss each or to include it in the decision (Matter of Hawkins v Travis, 259 AD 2d 813). The Parole Board's determination will not be disturbed unless it is so irrational as to border on impropriety (Silman v. Travis, 95 NY 2d 470).

It is reasonable for the parole board to consider the criminal history and other background of the parole candidate when deciding on early release (Matter of Tatta v. Dennison, 26 AD 3d 663). The seriousness of the offense is still a valid factor for consideration following a twenty-four month hold, and the board properly inquired into that (see, Executive Law § 259-i(1)(a) and (2)(c) Matter of Rios v. New York State Div. of Parole, 24 AD 3d 1147). If the Board afforded greater weight to petitioner's criminal behavior, that does not render the denial of parole irrational or improper (Matter of Dudley v Travis, 227 AD 2d 863). Executive Law § 259-i(2)c does not grant parole release merely as a reward for appellant's good conduct or achievements while incarcerated (Larrier v New York State Board of Parole Appeals Unit, 283 AD 2d 700). In addition, the Parole Board's decision to hold petitioner for the maximum period of 24 months is within the Board's discretion and was supported by the record (Matter of Tatta v. State, 290 AD 2d 907; lv denied 98 NY 2d 604).

Petitioner's claim that he was denied due process has been examined and found to be without merit. Executive Law § 259-i, does not create an entitlement to release on parole and

therefore does not create interests entitled to due process (Paunetto v. Hammock, 516 F. Supp 1367 [US Dist. Ct., SD NY, 1981]). There is no due process right to parole (Russo v. New York State Board of Parole, 50 NY 2d 69). Also, there is no due process right to an inmate obtaining a statement as to what he should do to improve his chances for parole in the future (Boothe v. Hammmock 605 F. 3d 661 (2nd Cir 1979)). Appellant's claim that the denial of parole release amounted to resentencing is without merit. (Crews v. New York State Executive Department of Parole Appeals Unit, 281 AD 2d 672).

Petitioner is incorrect in asserting that he had a legitimate expectation of early release from prison based on the state's sentencing scheme. New York's system is discretionary and holds out no more than the possibility of parole. (Matter of Russo v. New York State Board of Parole, supra 74). Petitioner is also incorrect in arguing that he is entitled to release because he has served more than the parole guidelines. The guidelines are intended only as a guide and are not a substitute for the careful consideration of the many circumstances of each individual case. (Matter of Davis v. Travis, 292 AD 2d 742, lv dismissed 98 NY 2d 669). The parole ranges simply serve as benchmarks for the discretionary determinations rather than as the limits upon the exercise of discretion. (see, Executive Law § 259-c(4); 9 NYCRR § 8001.3(a); Matter of Ganci v. Hammock, 99 AD 2d 546). The Board is vested with discretion to determine whether release is appropriate, notwithstanding what the minimum period of incarceration which was set by the sentencing court. (Cody v. Dennison, 33 AD 3d 1141; lv denied 8 NY 3d 802).

Petitioner alleges the Board failed to consider the sentencing minutes and the recommendations of the sentencing judge. The respondent offered a copy of the sentencing minutes dated November 18, 1981. The record does not contain any recommendation from the

sentencing judge. Although the Board is required to consider recommendations of the sentencing court (Edwards v. Travis, 304 AD 2d 576, "the Board must consider a recommendation contained in sentencing minutes once an inmate informs the Board of the existence of the recommendation" (Daniel Carter v. Robert Dennison, Index No. 4294-04, Supreme Court, Albany County, November 8, 2004). Petitioner did not inform the Board of any sentencing recommendations and a review of the sentencing minutes indicates that no recommendation was made by the Court relating to parol release. (Schettino v. New York State Division of Parole, 45 AD 3d 1086).

Petitioner's allegation that the Board has adopted a more punitive approach toward convicted violent offenders is also unfounded. Courts have consistently rejected unsupported allegations that the Board merely effectuates an informal executive policy when it denies parole release to violent offenders. (Matter of Scott v. New York State Div. of Parole, 23 AD 3d 950). Moreover, a review of the record reveals that petitioner's speculative and conclusionary assertion that his denial of parole was influenced by political or media pressures is unpersuasive. (Matter of Huber v. Travis, 264 AD 2d 887).

Finally, petitioner offers no proof, other than a conclusionary allegation that the Board's decision was predisposed to denying his release and therefore, his argument with respect to theses issues are without merit (Matter of Connelly v. New York State Division of Parole, 286 AD 2d 792, appeal dismissed 97 NY 2d 677). The record discloses the Board rendered its determination after considering the full record, including the hearing testimony, the petitioner's institutional background, his criminal history and release plans (Salahuddin v. Dennison, 34 AD 3d 1082; Matter of Colon v. Travis, 305 AD 2d 407). Since respondent acted in accordance with

the statutory requirements, and the petitioner has failed to meet his burden of showing irrationality bordering on impropriety, judicial interference is unwarranted (Matter of Russo v. NYS Board of Parole, supra 77).

All papers, including this Decision and Order are being returned to the attorneys for the respondent. The signing of this Decision and Order shall not constitute entry or filing under CPLR 2220. Counsel are not relieved from the applicable provision of that section respecting to filing, entry and notice of entry.

So Ordered.

Dated: Albany, New York
May 23, 2008

Joseph C. Teresi, J.S.C.

PAPERS CONSIDERED:

1. Order to Show Cause dated February 11, 2008;
2. Verified Petition dated February 8, 2008 with attached exhibits A-R;
3. Verified Answer dated April 3, 2008;
4. Affirmation of Adele Taylor Scott, Esq. dated April 3, 2008 with attached exhibits A-I;
5. Affirmation of Linda C. Braunsberg, Esq. dated April 24, 2008.