September 2021

Decision in Art. 78 proceeding - Almonor, Chester (2007-03-29)

[*1]

Matter of Almonor v New York State Bd. of Parole
2007 NY Slip Op 50710(U) [15 Misc 3d 1116(A)]
Decided on March 29, 2007
Supreme Court, New York County
York, J.
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Decided on March 29, 2007

Supreme Court, New York County

In the Matter of Chester Almonor, Petitioner,

against

New York State Board of Parole, Respondent.

405208/2006

Petitioner-Chester Almonor,

Pro Se:

Chester Almonor

No. 93A2860

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Louis B. York, J.

On December 1, 1991, petitioner then 20 years old was at a nightclub with some friends when a fight broke out. Petitioner and other friends were drawn into the fight, the details of which are unclear. According to petitioner, he was slashed in the face with a knife;

and one of his friends gave him a gun with which to defend himself. Ultimately, petitioner fired the gun three times, injuring one woman and killing one man. He was sentenced to 12 ½ to 25 years for criminal use of a firearm in the first degree, and to 8 1/3 to 25 years for manslaughter one.

Petitioner's record, which he submitted with this proceeding, reveals the following: During his years in jail, petitioner successfully completed various programs to deal with his aggression. He received his GED and also completed training programs that enable him to work as an electrician's assistant and a custodial maintenance worker. In addition, he trained in legal research, received an associate's degree in paralegal studies; and, he has worked as a paralegal in the prison library. The Law Library Supervisor, Corrections Officer M. Duminuco, has given him consistently superior evaluations for his conduct. His record also details other vocational and rehabilitative achievements, including his work with the hearing impaired and his work as an HIV/AIDS Peer Educator between February 2000 and February 2002.

His file also contains information about his personal life. In 2004, petitioner married Jennifer L. Hallman Almonor, his high school sweetheart. Ms. Hallman Almonor, a former teacher who now works as a Guidance Counselor with the New York City Department of Education, wrote a letter on behalf of her husband in connection with his 2006 application for parole. In addition to his wife, numerous relatives and friends and Karim Camara, petitioner's local assemblyman, wrote letters to the Parole Board on petitioner's behalf. Finally, he submitted evidence showing that he was actively seeking both employment and entrance into a four-year [*2]college in the event of his release on parole.

As for his behavioral record, petitioner's record includes one minor infraction since 2002. In all, since 1991, he received seven tier II tickets and one tier III tickets. The significance of the tiers has not been discussed in the papers before the court.

At his parole hearing on April 18, 2006, the Commissioners discussed these various factors. One of the Commissioners, named Rodriguez, commented that he found it "rather interesting" that his manslaughter charge received a smaller sentence than his weapons charge. (Hearing, at p. 2). The Commissioners also gave petitioner the opportunity to make a closing statement, in which he expressed his remorse and stated that he was older and wiser and he would not repeat his earlier mistakes. The entire hearing, which is transcribed in a mere 12 pages (pages 2-13 of the hearing transcript), must have lasted approximately 10-15 minutes.

Following deliberation, the Commissioners issued their determination on the record. In full, they stated:

Parole is again denied due to the serious nature and violent circumstances of the instant offenses, criminal use of a firearm first and manslaughter one, wherein you shot and killed one man and shot and injured a female victim.

All considered, discretionary release cannot be granted at this time.

Guidelines are unspecified.

(Hearing, at p 14).

Petitioner filed an administrative appeal on May 19, 2006. Respondent did not issue a determination within 120 days, or by approximately September 19, 2006. To preserve his statutory rights, petitioner commenced this proceeding around October 24, 2006. As "petitioner's administrative remedy was deemed exhausted when the Appeals Unit failed to render a decision within four months," the court allows the petition to proceed. *See Miller v. Board Of Parole*, 278 AD2d 697, 697, 717 NYS2d 747, 748 (3rd Dept. 2000).

Before proceeding to its decision, the Court notes that, although it received proper notice and, in fact, sought and obtained a two-month adjournment[FN1], respondent has filed no opposition to the petition.

Petitioner challenges the denial of his parole application as arbitrary and capricious. After considering the unopposed petition and without deciding the merits of petitioner's parole application, the Court finds that petitioner has shown his right to a new parole hearing. The Parole Board "has been vested with an extraordinary degree of responsibility in determining who will go free and who will remain in prison, and a petitioner who seeks to obtain judicial review [*3]on the grounds that the Board did not properly consider all of the relevant factors, or that an improper factor was considered, bears a heavy burden." *Garcia v. New York State Div. of Parole*, 239 AD2d 235, 239, 657 NYS2d 415, 418 (1st Dept. 1998). Therefore, the Board has been accorded great discretion in reaching its decisions on

the issues before it. "Absent a convincing demonstration to the contrary, the Board is presumed to have acted properly in accordance with statutory requirements." *Nankervis v. Dennison*, 30 AD3d 521, 522, 817 NYS2d 123, 124 (2nd Dept. 2006).

Nonetheless, this discretion is not unfettered. The Board cannot base its determination solely on the serious nature of the crime. *See Guzman v. Dennison*, 32 AD3d 798, 821 NYS2d 208 (1st Dept. 2006)(affirming trial court decision which denied petition, where additional factors were set forth as basis for parole denial). Instead, although it need not discuss every statutory factor, it must consider these factors "as to every person who comes before it." *Rios v. New York State Div. of Parole*, Index No. 31731/06 (Sup. Ct. Kings County March 12, 2007)(avail at 2007 WL 846561, at *4)(citation and internal quotation marks omitted); *Prout v. Dennison*, 26 AD3d 540, 541, 809 NYS2d 261, 262 (3rd Dept. 2006). This includes consideration of the inmate's institutional record including, as is relevant here, the inmate's vocational education, his training and work assignments, therapy, and his release plans. *Silmon v. Travis*, 95 NY2d 470, 476-77, 718 NYS2d 704, 708 (2000). "[W]here the record convincingly demonstrates that the Parole Board did in fact fail to consider the proper standards, the courts must intervene." *King v. New York State Div. of Parole*, 190 AD2d 423, 431, 598 NYS2d 245, 250 (1993).

Here, the Board relied exclusively on the severity of the offense in its decision to deny parole. Indeed, the decision which the court quoted above in its entirety does not mention any factor other than the seriousness of the crime as its basis. Thus, the Board's action here "not only contravenes the discretionary scheme mandated by statute, but also effectively constitutes an unauthorized resentencing of the defendant." *Wallman v. Travis*, 18 AD3d 304, 307, 794 NYS2d 381, 386 (1st Dept. 2005). In this, the Board's review even fell below the level deemed irrational and unsatisfactory in other recent Article 78 proceedings. *E.g.*, *Coaxum v. New York State Bd. of Parole*, 14 Misc 3d 661, 827 NYS2d 489, 494 (Sup. Ct. Bronx County 2006); *Rios*, Index No. 31731/06 (avail at 2007 WL 846561). In addition, the Court notes the short length of the parole hearing, the Commissioners' unwillingness to discuss petitioner's letters in support of his application, and Commissioner Rodriguez's comment suggesting that he thought petitioner's sentence for manslaughter was too short. (Hearing, at p. 2). Finally, the Court again notes that, although it sought and obtained a two-month adjournment to consider petitioner's papers, respondent does not oppose the petition or challenge the allegation that in this instance it acted irrationally.

Petitioner has also asserted that Respondent reflexively denies parole to violent offenders, without regard to the statutory mandates. However, the court does not reach this argument.

Based on the above, therefore, it is

ORDERED that the petition is granted without opposition, and it is further

ORDERED that the court annuls respondent's decision denying petitioner's release to parole supervision and remands petitioner's request for parole to respondent, which, within 30 days of the service of a copy of this order with notice of entry, shall hold a new hearing before a different panel. That panel shall consider the statutorily required factors; and within 14 days after [*4]the hearing respondent shall issue a decision, in non-conclusory terms, on the appropriateness of petitioner's release to parole supervision. The foregoing constitutes the decision, order and judgment of the court.

ENTER:

Dated:_____

LOUIS B. YORK, J.S.C.

Footnotes

Footnote 1: Respondent mailed petitioner a copy of its application for an adjournment only one day before making the application to the Court, alleging that it could not contact petitioner in advance of that date because petitioner was incarcerated. Presumably, despite petitioner's incarceration, respondent which has resources far exceeding those of petitioner could have mailed its request to petitioner earlier. In the future, the Court expects that respondent will conduct itself more professionally and properly.

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