September 2021

Decision in Art. 78 proceeding - Alvarez, Alejandro (2014-05-05)

Matter of Alvarez v Schneiderman
2014 NY Slip Op 31159(U)
May 5, 2014
Sup Ct, Albany County
Docket Number: 162-14
Judge: Joseph C. Teresi

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In the Matter of the Application of
ALEJANDRO ALVAREZ, # 95-A-1161,

Petitioner,

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

-against-

DECISION and ORDER
RJI NO.: 01-14-ST5439
INDEX NO.: 162-14

MR. ERIC T. SCHNEIDERMAN ATTORNEY GENERAL OF THE STATE OF NY MS. TINA M. STANFORD CHAIRWOMAN OF THE STATE OF NEW YORK DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION BOARD OF PAROLE,

Respondents.

Supreme Court Albany County All Purpose Term, April 11, 2014
Assigned to Justice Joseph C. Teresi

APPEARANCES:
Alejandro Alvarez
Petitioner, Pro Se
95-A-1161
Ulster Correctional Facility
750 Berme Road, P.O. Box 800
Napanoch, New York 12458

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Attorney General of New York State
Attorneys for the Respondent
Melissa A. Latino, AAG
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Albany, New York 12224

TERESI, J.:

This is an Article 78 proceeding brought by Petitioner challenging Respondent's denial of parole release. The record reveals that during the interview the Board reviewed with

Petitioner the circumstances of Petitioner's instant criminal offenses of armed robbery, Petitioner's institutional history and programming, Petitioner's health problems, and Petitioner's release plans.

The 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] see also Matter of Valderrama v Travis, 19 AD3d 904, 905 [3d Dept 2005]). Executive Law § 259-i(2)(c)(A) 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 an 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 deprecate the seriousness of his crime as to undermine respect for law" (Matter of King v New York State Division of Parole, 83 NY2d 788, 790 [1994], affg 190 AD2d 423 [1st Dept 1993]). Decisions regarding release on parole are discretionary and will not be disturbed if they satisfy the statutory requirements (Executive Law § 259-i; Matter of Walker v New York State Div. of Parole, 203 AD2d 757 [3d Dept 1994]) and there is no showing of "irrationality bordering on impropriety" (Matter of Russo v New York State Bd. of Parole, 50 NY2d 69, 77 [1980]; Matter of Silmon v Travis, 95 NY2d 470, 476 [2000]; Matter of Saunders v Travis, 238 AD2d 688 [3d Dept 1997]; Matter of Felder v Travis, 278 AD2d 570 [3d Dept 2000]).

The Court begins its analysis by declining to engage in a line-by-line, case-by-case response to Petitioner's 11 pages of boilerplate arguments. The Court has considered Petitioner's arguments and finds they are not valid, are unsupported, and rest in large measure on cases that have been superceded (see Matter of Montane v Evans, _ AD3d _, 2014 WL 958465, [3d Dept 2014]). Some of the alleged technical violations and errors in the

administrative record are not supported by any allegations that the Respondent relied on them in concluding that Petitioner should not be paroled or other practical harm to Petitioner, were known to Petitioner prior to the hearing, and/or Petitioner waived them by failing to raise them at a time when they could have been corrected by the Board.

Petitioner seeks to avoid shouldering his burden of demonstrating there has been a statutory violation by the Board or that the denial of parole release reflected "irrationality bordering on impropriety" by the Board. Petitioner has cited no statutory violation by the Respondent when denying parole release. Denial of parole release could not be arbitrary and capricious because Petitioner has not established that he would necessarily live and remain at liberty without violating the law, or that his release at this time is compatible with the welfare and safety of the community, or that his release at this time would not diminish the seriousness of his engaging in armed robbery.

The Board's decision here reflects that it considered the relevant statutory factors, such as Petitioner's positive institutional programming accomplishments and his disciplinary record, as well as the seriousness of the crime (see Executive Law § 259-i; Matter of Marcus v Alexander, 54 AD3d 476, 476-477 [3d Dept 2008]; Matter of Gutkaiss v New York State Div. of Parole, 50 AD3d 1418, 1418-1419 [3d Dept 2008]). The Board was not required to give each factor equal weight and was free to place greater emphasis on the heinous nature of Petitioner's criminal behavior than on Petitioner's medical problems (Matter of Marcus v Alexander, 54 AD3d 476, 476-477 [3d Dept 2008]). In light of this and upon review of the record as a whole, the Court does not agree that the Board's decision "evidenced irrationality bordering on impropriety" (Matter of Marcus v Alexander, 54 AD3d 476, 476-477 [3d Dept 2008]; Matter of Romer v Dennison, 24 AD3d 866, 868 [3d Dept 2005]).

The decision was sufficiently detailed to apprise Petitioner of the reasons for his denial of parole release. No further detail was necessary (Matter of Davis v Travis, 292 AD2d 742 [3d Dept 2002]; Matter of Whitehead v Russi, 201 AD2d 825 [3d Dept 1994]). Petitioner mistakenly assumes that the Board was not permitted to rely on his criminal history as factors that outweigh his good conduct while incarcerated. The Courts have routinely held that parole may be denied based upon the seriousness of the crime (Matter of Siao-Pao v Dennison, 51 AD3d 105, 109 [1st Dept 2008]; Matter of Wilcher v Dennison, 30 AD3d 958, 959 [3d Dept 2006]; Matter of Walker v Travis, 252 AD2d 360, 362 [1st Dept 1998]; Matter of Santos v New York State Division of Parole, 234 AD2d 840 [3d Dept 1996]; Matter of Moore v New York State Bd. of Parole, 233 AD2d 653 [3d Dept 1996]; Matter of Keindl v Russi, 225 AD2d 988 [3d Dept 1996]). It is settled that even a written statement citing just the extraordinary seriousness of the instant offense and criminal history as reasons for denying parole release is proper and sufficient, notwithstanding the Petitioner's exemplary institutional record and educational achievements (Matter of Secilmic v Keane, 225 AD2d 628, 629 [2d Dept 1996]; Matter of McLain v New York State Division of Parole, 204 AD2d 456, 457 [2d Dept 1994]).

Petitioner has failed to meet his burden of demonstrating that the Board violated any positive statutory requirement in determining not to release him. Petitioner's records and responses to the Board's questions support the rationality of the Board's determination, and it certainly cannot be held that the determination is so irrational as to border on impropriety (Matter of Russo v New York State Board of Parole, 50 NY2d 69, 77 [1980]; Matter of Wright v Parole Division, 132 AD2d 821, 822 [3d Dept 1987]). Petitioner's contentions have been reviewed and found to be without merit.

Accordingly, it is hereby

ORDERED, that the petition is denied and the relief requested in this proceeding is in all respects denied.

This Decision and Order is being returned to the attorneys for the Respondent. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that Rule respecting filing, entry and notice of entry.

So Ordered.

Dated: Albany, New York
~~April~~ May 5, 2014 JCT

Joseph C. Teresi, J.S.C.

PAPERS CONSIDERED:

1. Order to Show Cause dated January 23, 2014.
2. Petition dated January 3, 2014, with attached exhibits.
3. Answer dated April 4, 2014.
4. Affirmation of Melissa A. Latino, Esq. dated April 4, 2014, with attached exhibits.
5. Affirmation of Terrence X. Tracy, Esq. dated March 31, 2014, with attached exhibits.