Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

Decisions in Art. 78 Proceedings | Article 78 Litigation Documents

September 2021

# Decision in Art. 78 proceeding - Baker, Lamont (2015-02-05)

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

Recommended Citation
"Decision in Art. 78 proceeding - Baker, Lamont (2015-02-05)" (2021). Parole Information Project
https://ir.lawnet.fordham.edu/pdd/166

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 Baker v Stanford** |
| --- |
| 2016 NY Slip Op 30284(U) |
| February 5, 2016 |
| Supreme Court, Clinton County |
| Docket Number: 2015-1135 |
| Judge: S. Peter Feldstein |
| Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office. |
| This opinion is uncorrected and not selected for official publication. |

**STATE OF NEW YORK**
**SUPREME COURT** **COUNTY OF CLINTON**

---

In the Matter of the Application of
**LAMONT BAKER, #00-A-4845**,
Petitioner,

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

-against-

**DECISION AND JUDGMENT**
**RJI #09-1-2015-0468.14**
**INDEX #2015-1135**
**ORI #NY009013J**

**TINA M. STANFORD**, Chairwoman,
New York State Board of Parole,
Respondent.

---

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the Petition of Lamont Baker, verified on August 11, 2015 and filed in the Clinton County Clerk's office on August 20, 2015. Petitioner, who is an inmate at the Clinton Correctional Facility, is challenging the January 2015 determination denying him discretionary parole release and directing that he be held for an additional 24 months. The Court issued an Order to Show Cause on August 28, 2015 and has received and reviewed respondent's Answer and Return, including *in camera* materials, verified on October 21, 2015 and supported by the Letter Memorandum of Christopher J. Fleury, Esq., Assistant Attorney General, dated October 21, 2015. No Reply has been received from petitioner.

On August 22, 2000, petitioner was sentenced in Supreme Court, New York County, as a persistent violent felony offender, to a controlling indeterminate sentence of 16 years to life upon his convictions of the crimes of Attempted Assault 1° and Criminal Possession of a Weapon 2°. He made his initial appearance before a Parole Board on January 20, 2015. Following that appearance petitioner was denied discretionary parole release and it was directed that he be held for an additional 24 months. The parole denial determination reads as follows:

[* 2]

> "FOLLOWING CAREFUL REVIEW AND DELIBERATION OF YOUR RECORD AND INTERVIEW, THIS PANEL CONCLUDES THAT DISCRETIONARY RELEASE IS NOT PRESENTLY WARRANTED DUE TO CONCERN FOR THE PUBLIC SAFETY AND WELFARE. THE FOLLOWING FACTORS WERE PROPERLY WEIGHED AND CONSIDERED: YOUR INSTANT OFFENSES IN MANHATTAN INVOLVED ATT. ASSAULT 1ST AND CPW 2ND.
>
> YOUR CRIMINAL HISTORY INCLUDES BURGLARY, DRUG AND WEAPON RELATED OFFENSES.
>
> YOUR INSTITUTIONAL PROGRAMMING INDICATES PROGRESS AND ACHIEVEMENT WHICH IS NOTED TO YOUR CREDIT.
>
> YOUR DISCIPLINARY RECORD REFLECTS THREE(3) TIER 2 AND THREE(3) TIER 3 REPORTS. YOU HAVE SERVED SHU TIME.
>
> YOU HAVE APPROXIMATELY FIVE(5) FELONIES AND ONE(1) MISDEMEANOR. THIS IS YOUR THIRD(3) STATE BID.
>
> REQUIRED STATUTORY FACTORS HAVE BEEN CONSIDERED, INCLUDING YOUR RISK TO THE COMMUNITY, REHABILITATION EFFORTS AND YOUR NEEDS FOR SUCCESSFUL COMMUNITY RE-ENTRY.
>
> YOUR DISCRETIONARY RELEASE, AT THIS TIME, WOULD THUS NOT BE COMPATIBLE WITH THE WELFARE OF SOCIETY AT LARGE, WOULD TEND TO DEPRECATE THE SERIOUSNESS OF THE INSTANT OFFENSE(S), AND UNDERMINE RESPECT FOR THE LAW."

The document perfecting petitioner's administrative appeal from the January 2015 parole denial determination was received by the DOCCS Board of Parole Appeals Unit on March 3, 2015. Although the Appeals Unit apparently failed to issue its findings and recommendation within the four-month time frame set forth in 9 NYCRR §8006.4(c), a belated decision on administrative appeal was, in fact, issued on or about September 2, 2015, after this proceeding had been commenced.

Executive Law §259-i(2)(c)(A), as amended by L 2011, ch 62, part C , subpart A, §§38-f and 38-f-1, effective March 31, 2011, provides, in relevant part, as follows:

> "Discretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties while confined but after considering if 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 deprecate the seriousness of his crime as to undermine respect for the law. In making the parole release decision, the procedures adopted pursuant to subdivision four of section two hundred fifty-nine-c of this article shall require that the following be considered: (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 . . . (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 presentence 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 . . ."

Discretionary parole release determinations are statutorily deemed to be judicial functions which are not reviewable if done in accordance with law (Executive Law §259-i(5) unless there has been a showing of irrationality bordering on impropriety. *See Silmon v. Travis,* 95 NY2d 470, *Hamilton v. New York State Division of Parole,* 119 AD3d 1268, *Vasquez v. Dennison*, 28 AD3d 908 and *Webb v. Travis*, 26 AD3d 614. Unless the petitioner makes a "convincing demonstration to the contrary" the Court must presume that the New York State Board of Parole acted properly in accordance with statutory requirements. *See Jackson v. Evans,* 118 AD3d 701, *Nankervis v. Dennison,* 30 AD3d 521 and *Zane v. New York State Division of Parole*, 231 AD2d 848.

A significant portion of the Petition focuses upon the argument that the Parole Board failed to adequately consider all required statutory factors and instead relied excessively/exclusively on the serious nature of the crimes underlying petitioner's incarceration. In this regard petitioner specifically alleges that he " . . . successfully

completed Phase 1 programe [sic] Vocational completion thrugh [sic] Industry programing, A.R.T. [Aggression Replacement Training] program . . . forklift certification, Hazardous material removal and has (6) six letters of reasonable assurances. These accomplishment[s] coupled with limited disciplinary record at this parole hearing should have weighed in petitioner favor for parole release . . . These accomplishments and release plans of the petitioner were brushed over. There was only a brief discussion of what he did in the (16) sixteen years that he served in prison and no real inquiry about his release plans."

Petitioner's above arguments notwithstanding, a Parole Board need not assign equal weight to each statutory factor it is required to consider in connection with a discretionary parole determination, nor is it required to expressly discuss each of those factors in its written decision. *See Montane v. Evans,* 116 AD3d 197, *lv granted* 23 NY3d 903, *app dismissed* 24 NY3d 1052, *Valentino v. Evans,* 92 AD3d 1054 and *Martin v. New York State Division of Parole,* 47 AD 3d 1152. As noted by the Appellate Division, Third Department, the role of a court reviewing a parole denial determination ". . . is not to assess whether the Board gave the proper weight to the relevant factors, but only whether the Board followed the statutory guidelines and rendered a determination that is supported, and not contradicted, by the facts in the record. Nor could we effectively review the Board's weighing process, given that it is not required to state each factor that it considers, weigh each factor equally or grant parole as a reward for exemplary institutional behavior." *Comfort v. New York State Division of Parole,* 68 AD3d 1295, 1296 (citations omitted).

In the case at bar, reviews of the Parole Board Report (Initial January 2015) and transcript of petitioner's January 20, 2015 Parole Board appearance reveal that the Board had before it information with respect to the appropriate statutory factors, including

petitioner's prior criminal record, his vocational, educational and therapeutic programing records, COMPAS ReEntry Risk Assessment Instrument, sentencing minutes, disciplinary record (three Tier II and three Tier III infractions) and release plans/community support (including the six letters of reasonable assurance), in addition to information with respect to the circumstances of the crimes underlying his incarceration. The Court, moreover, finds nothing in the hearing transcript to suggest that the Parole Board cut short petitioner's discussion of any relevant factor or otherwise prevented him from expressing clear and complete responses to its inquiries. Indeed, just prior to the close of the January 20, 2015 Parole Board interview one of the presiding commissioners inquired as follows: "Mr. Baker, what else should we know before we close?" Petitioner responded that he "missed a lot of opportunities with my child, I missed her growing up and graduating from high school and I wish to re-establish my relationship with her."

In view of the foregoing, the Court finds no basis to conclude that the Parole Board failed to consider the relevant statutory factors. *See Pearl v. New York State Division of Parole,* 25 AD3d 1058 and *Zhang v. Travis,* 10 AD3d 828. Since the requisite statutory factors were considered, and given the narrow scope of judicial review of discretionary parole denial determinations, the Court finds no basis to conclude that the denial determination in this case was affected by irrationality boarding on impropriety as a result of the emphasis placed by the Board on the serious nature of the crimes underlying petitioner's incarceration, as well as his prior criminal record and prison disciplinary history. *See McAllister v. New York State Division of Parole,* 78 AD3d 1413, *lv denied* 16 NY3d 707, *Hall v. New York State Division of Parole,* 66 AD3d 1322 and *White v. Dennison*, 29 AD3d 1144.

To the extent petitioner purports to rely on *King v. New York State Division of Parole,* 190 AD2d 423, *aff'd* 83 NY2d 788, the Court finds such reliance to be misplaced. In *King* the Appellate Division, First Department, not only determined that the Parole Board improperly considered matters not within its purview (penal policy with respect to convicted murders) but also that the Parole Board failed " . . . to consider and fairly weigh all of the information available to them concerning petitioner that was relevant under the statute, which clearly demonstrates his extraordinary rehabilitative achievements and would appear to strongly militate in favor of granting parole." *Id.* at 433. In July of 2014 the appellate-level court in *King* went on to note that the only statutory criterion referenced by the Board in the parole denial determination was the seriousness of the crime underlying Mr. King's incarceration (felony murder of an off-duty police officer during the robbery of a fast food restaurant). According to the Appellate Division, First Department, "[s]ince . . . the Legislature has determined that a murder conviction per se should not preclude parole, there must be a showing of some aggravating circumstances beyond the inherent seriousness of the crime itself." *Id.* at 433.

This Court (Supreme Court, Clinton County) first notes that Mr. King had no prior contacts with the law. *Id.* at 426. Petitioner, on the other hand, was sentenced in 2000 as a persistent violent felony offender pursuant to Penal Law §70.08. In addition, although the *King* court did not reference Mr. King's disciplinary record, it characterized his overall prison record as "exemplary." *Id.* at 425. In addition, the parole denial determination in *King,* as quoted by the Appellate Division, First Department, described Mr. King's institutional adjustment as "excellent." *Id.* at 430. In the case at bar, however, petitioner's prison disciplinary record, as specifically referenced in the January 2015 parole denial determination, includes three Tier II infractions and three Tier III infractions. It is also

noted in the parole denial determination that petitioner served time in the Special Housing Unit. It is clear, therefore, that the January 2015 parole denial determination was not based exclusively on the nature of the crimes underlying petitioner's incarceration but, rather, was also based on his disturbing record of prior violent felony offenses and his less than stellar prison disciplinary record. In any event, in July of 2014 the Appellate Division, Third Department - whose precedent is binding on this Court - effectively determined that the "aggravating circumstances" requirement enunciated by the First Department in *King* does not represent the state of the law in the Third Department. *See Hamilton v. New York State Division of Parole,* 119 AD3d 1268. In *Hamilton* it was noted that the Third Department " . . . has repeatedly held - both recently and historically - that, so long as the [Parole] Board considers the factors enumerated in the statute [Executive Law §259-i(2)(c)(A)] it is 'entitled . . . to place a greater emphasis on the gravity of [the] crime' (*Matter of Montane v. Evans,* 116 AD3d 197, 203 (2014), *lv granted* 23 NY3d 903 (2014) [internal quotation marks and citations omitted]' . . ." *Id* at 1271 (other citations omitted). After favorably citing nine Third Department cases decided between 1977 and 2014, the *Hamilton* court ended the string of cites as follows: " . . . *but see Matter of King v. New York State Div. of Parole,* 190 AD2d 423, 434 (1993), *aff'd on other grounds* 83 NY2d 788[1] (1994) [a First Department case holding, in conflict with our precedent, that the Board [of Parole] may not deny discretionary release based solely on the nature of the crime

[1] The Court of Appeals in *King* only referenced the fact that " . . . one of the [Parole] Commissioners considered factors outside the scope of the applicable statute, including penal philosophy, the historical treatment of individuals convicted of murder, the death penalty, life imprisonment without parole, and the consequences to society if those sentences are not in place. Consideration of such factors is not authorized by Executive Law §259-i." 83 NY2d 788, 791. The Court of Appeals, however, did not address that aspect of the Appellate Division, First Department, decision in *King* holding that a parole denial determination must be based upon a showing of some aggravating circumstances beyond the inherent seriousness of the underlying crime.

when the remaining statutory factors are considered only to be dismissed as not outweighing the seriousness of the crime].” 119 AD3d 1268, 1272. The *Hamilton* court continued as follows:

> “Particularly relevant here, we have held that, even when a petitioner’s institutional behavior and accomplishments are ‘exemplary,’ the Board may place ‘particular emphasis’ on the violent nature or gravity of the crime in denying parole, as long as the relevant statutory factors are considered (*Matter of Valderrama v. Travis,* 19 AD3d at 905). In so holding we explained that, despite [the *Valderrama*] petitioner’s admirable educational and vocational accomplishments and positive prison disciplinary history, ‘[o]ur settled jurisprudence is that a parole determination made in accordance with the requirements of the statutory guidelines is not subject to further judicial review unless it is affected by irrationality bordering on impropriety’ (*id.* [internal quotation marks and citations omitted]). We emphasize that this Court [Appellate Division, Third Department] has repeatedly reached the same result, on the same basis, when reviewing denials of parole to petitioners whom we recognized as having exemplary records and as being compelling candidates for release.” 119 AD3d 1268, 1272 (additional citations omitted).

The Court therefore finds petitioner’s reliance on *King* to be misplaced.

The Court also finds that the January 2015 parole denial determination is sufficiently detailed to inform petitioner of the reasons underlying the denial and to facilitate judicial review thereof. *See Comfort v. New York State Division of Parole*, 68 AD3d 1295 and *Ek v. Travis*, 20 AD3d 667, *lv dis* 5 NY3d 862.

Executive Law §259-c(4) was amended by L 2011, ch 62, part C, subpart A, §38-b, effective October 1, 2011, to provide that the New York State Board of Parole shall “. . . establish written procedures for its use in making parole decisions as required by law. Such written procedures shall incorporate risk and needs principles to measure the rehabilitation of persons appearing before the board, the likelihood of success of such persons upon release, and assist members of the state board of parole in determining

which inmates may be released to parole supervision . . ."[2] To the extent petitioner appears to argue that the Parole Board failed to apply the new procedures mandated by the amended version of Executive Law §259-c(4) to his case, the Court rejects such argument. The Court finds that the promulgation of the October 5, 2011 memorandum from Andrea W. Evans, then Chairwoman, New York State Board of Parole, satisfied the Parole Board's obligations with respect to the 2011 amendment to Executive Law §259-c(4). *See Partee v. Evans*, 117 AD3d 1258, *lv denied* 24 NY3d 901, and *Montane v. Evans*, 116 AD3d 197, *lv granted* 23 NY3d 903, *app dis* 24 NY3d 1052.

In the case at bar there is no doubt that a COMPAS risk and needs assessment instrument was prepared in conjunction with the discretionary parole release consideration process. The COMPAS instrument is part of the record in this proceeding and was specifically discussed during the course of petitioner's January 20, 2015 parole interview, with one of the presiding commissioners noting that the COMPAS " . . . assessment has you at a low risk across the board, for felony violence, arrest or absconding."

Although the Appellate Division, Third Department, has determined that a risk and needs assessment instrument (such as COMPAS) must be utilized in connection with post-September 30, 2011 parole release determinations (*see Linares v. Evans,* 112 AD3d 1056*, Malerba v. Evans,* 109 AD3d 1067, *lv denied* 22 NY3d 858 and *Garfield v. Evans*, 108 AD3d 830), there is nothing in such cases, or Executive Law §259-c(4), to suggest that the quantified risk assessment determined through utilization of the risk and needs assessment instrument supercedes the independent discretionary authority of the Parole Board to determine, based upon its consideration of the factors set forth in Executive Law §259-

[2] Prior to the amendment the statute had provided, in relevant part, that the Board of Parole shall ". . . establish written guidelines for its use in making parole decisions as required by law . . . Such written guidelines may consider the use of a risk and needs assessment instrument to assist members of the state board of parole in determining which inmates may be released to parole supervision . . ."

i(2)(c)(A), whether or not an inmate should be released to parole supervision. The "risk and need principles" that must be incorporated pursuant to Executive Law §259-c(4), while intended to measure the rehabilitation of a prospective parolee as well as the likelihood that he/she would succeed under community-based parole supervision, serve only to " . . . assist members of the state board of parole in determining which inmates may be released to parole supervision . . ." Executive Law §259-c(4)(emphasis added). Thus, while the Parole Board was required to consider the COMPAS instrument when exercising its discretionary authority to determine whether or not petitioner should be released from DOCCS custody to community-based parole supervision, it was not bound by the quantified results of the COMPAS assessment and was free to grant or deny parole based upon its independent assessment of the factors set forth in Executive Law §259-i(2)(c)(A) including, as here, the serious nature of the crimes underlying petitioner's incarceration, his prior record of violent felony offenses and his prison disciplinary record. *See Rivera v. New York State Division of Parole,* 119 AD3d 1107 and *Partee v. Evans*, 40 Misc 3d 896, *aff'd* 117 AD3d 1258, *lv denied* 24 NY3d 901.

Based upon all of the above, it is, therefore, the decision of the Court and it is hereby **ADJUDGED**, that the petition is dismissed.

**Dated:** February 5, 2016 at
Indian Lake, New York.

S. Peter Feldstein
Acting Supreme Court Justice