September 2021

Decision in Art. 78 proceeding - Benjamin, Paul E. (2016-08-16)

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

X

In the Matter of the Application of
PAUL E. BENJAMIN, #87-C-0779,
Petitioner,

DECISION AND JUDGMENT
RJI #16-1-2016-0048.14
INDEX #2016-0051

For a Judgment pursuant to Article 78
of the Civil Practice Law and Rules,
-against-

NYS BOARD OF PAROLE, COMMISSIONER FERGUSON,COMMISSIONER ELOVICH, COMMISSIONER STANFORD,

Respondents.

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the Petition of Paul E. Benjamin, verified on January 14, 2016 and filed in the Franklin County Clerk's Office on January 27, 2016. Petitioner, who is an inmate at the Mid-State Correctional Facility, is challenging the October 2014 determination denying his discretionary parole release and directing that he be held for an additional 24 months. The Court issued an Order to Show Cause on February 19, 2016, and an Amended Order to Show Cause on March 16, 2016, and has received and reviewed respondents' Answer and Return verified on May 14, 2016, including confidential Exhibit C. The Court has also received and reviewed the petitioner's reply dated May 25, 2016 and filed with the Franklin County Clerk on June 2, 2016.

On September 23, 1987, Petitioner was sentenced by the Tioga County Court to an indeterminate term of incarceration of twenty (20) years to life upon the conviction of Murder in the Second Degree. He was received into the custody of the Department of Corrections and Community Supervision (hereinafter referred to as "DOCCS") on December 11,1987 and made his initial appearance before a Parole Board on December 2006. The

petitioner has reappeared before the Parole Board in December 2008, October 2010 and October 2012. At each appearance, the petitioner was denied parole release and put on 24 month holds. The petitioner again appeared before the Parole Board on October 1,2014. 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:

> "Denied hold 24 months. Next appearance, 10/2016.
> After a review of the record and interview, the panel has determined that if released at this time, your release would not be compatible with the welfare of society. The Board has considered all required statutory factors including your risk to society, criminogenic needs for successful re-entry, release plans and institutional adjustment. More compelling, however, is the extreme and disturbing violence you exhibited in the I.O. as well as your callous disregard for the victim and sanctity of human life. The victim in the I.O. was shot in the head by you. After you shot her, you placed her body in a 55-gallon drum and put pig manure around her body. You then lived in the victim's home and build a deck over her dead body. This crime was a continuation and severe escalation of a pattern of illegal conduct. Since your last Board interview you incurred a Tier II infraction for creating a disturbance. During the interview you had very little grasp on the gravity and magnitude of this heinous crime. The Board notes the length of time you have served, your work as a mobility assistant, completion of ART, vocational accomplishments, work assignments and information from the community missions transitional program. All factors considered, your release at this time would deprecate the serious nature of the offense as to undermine respect for the law."

An administrative appeal from the October 2014 parole denial determination was filed on petitioner's behalf to the DOCCS Board of Parole Appeals Unit on March 12, 2015. On or about September 9, 2015, the parole denial determination was affirmed. This proceeding ensued.

Preliminarily, the respondents object as a matter of law to the timeliness of the petition. The petitioner received a copy of the final decision of the Board of Parole Appeals Unit on September 24, 2015. As such, the four month statute of limitations pursuant to CPLR §217(1) began to run on the date of service and the last day for the petitioner to commence an Article 78 proceeding challenging the determination was January 24, 2016. In this instance, the petition was received by the Franklin County Clerk's Office on January 27, 2016.

> "It is undisputed that the papers necessary to commence the instant CPLR article 78 proceeding were received by the Clerk's office after the expiration of the four-month statute of limitations, which began to run when petitioner acquired notice of the determination. Inasmuch as the proceeding was clearly untimely, the petition was properly dismissed. Although petitioner claims that he deposited the papers in the prison mail system prior to the expiration of the statute of limitations, this does not constitute sufficient compliance with the statutory requirements (*internal citations omitted*)." *Purcell v. Dennison*, 29 A.D.3d 1128, 1128–29 *citing Grant v. Senkowski*, 95 NY2d 605, 608-609.

In the matter at bar, the petitioner failed to timely file the petition and the petition must be dismissed. Notwithstanding same, the remaining arguments proffered by the petitioner are addressed herein.

Petitioner alleges that the respondents failed to consider the statutory factors contained in Executive Law §259-i(c)(A) and only focused on the petitioner's underlying crime. The petitioner further alleges that the Parole Board failed to specify the reasons for denial and he asserts that the denial was predetermined by the members of the Parole Board. The petitioner argues that he will never be granted parole based upon the Parole Board's reliance solely on the nature of the instant offense and the Parole Board refused to advise him what, if anything, he would need to do for future appearances before the Board.

Respondents argue that the petitioner failed to exhaust administrative remedies relating to certain claims contained in the petition. Specifically, the respondents argue that these arguments raised in this petition were not raised in the appeal to the Board of Parole Appeals Unit. In such appeal, Thomas G. Soucia, Esq., Public Defender, argued that the Parole Board failed to consider any of the petitioner's positive programming while incarcerated and solely focused on the nature of the offense. As such, the respondents' assertion that the petitioner failed to exhaust administrative remedies pertaining to the new arguments is correct.

Executive Law §259-i(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 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 had 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.

The petition focuses upon the argument that the Parole Board failed to adequately consider/properly weigh all of the required statutory factors and instead relied excessively on the nature of the crimes underlying Petitioner's incarceration as well as his prior criminal record. However, in his testimony before the Parole Board, petitioner added new details regarding the instant offense including how he put the victim's dead body in her car with a beer can in her hands to make her appear to be intoxicated as the petitioner attempted to drive her car to New York City to dispose of the body. Resp. Ex. G, p. 5-6. Petitioner admitted that he shot the victim twice in the head, although the second shot was termed as a "mercy shooting", left her dead body in her bed for two days, then buried her body in the backyard in a 55 gallon barrel surrounded by pig manure to mask the smell of a rotting corpse before building a gazebo over the gravesite to hide the remains. Nonetheless, the petitioner still blamed the victim stating:

> "I just want you to know I never meant to harm Margie. I should have just grabbed the rifle and knocked her out instead of trying to get the gun. At least if I'd been out there, she would have bought me a trailer by now. I really miss her. Don't think I'm not haunted by Margie because I

> am. If I had a chance to talk to her right now, I'd say why did you do what you did? Why? I don't know why she did it." Resp. Ex. G, p.14.

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; *see also Valentino v Evans*, 92 AD3d 1054 and *Martin v. New York State Division of Parole*, 47 AD3d 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 (internal citations omitted)." *Comfort v. New York State Division of Parole*, 68 AD3d 1295, 1296.

In the case at bar, reviews of the Parole Board Report and transcript of Petitioner's October 1, 2014- Parole Board appearance reveal that the Board had before it information with respect to the appropriate statutory factors, including Petitioner's educational and therapeutic programming records, COMPAS ReEntry Risk Assessment Instrument, sentencing minutes, disciplinary record and letters of support regarding release, as well as information with respect to the circumstances of the crimes underlying his incarceration and prior criminal record. The Court, moreover, finds nothing in the hearing transcript to suggest that the Parole Board denied the Petitioner an opportunity to answer questions or provide insight into how and why he believed that he would be a good candidate for release.

Indeed, the Petitioner admitted he killed the victim, buried her body and continued to live in the victim's residence for a few months before he was arrested. Yet, based upon the petitioner's testimony, it did not appear that the petitioner understood the seriousness of his actions.

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 the discretionary parole denial determinations, the Court finds no basis to conclude that the denial determination in this case was affected by irrationality bordering on impropriety as a result of the emphasis placed by the Board on the nature of the crimes underlying Petitioner's incarceration and that the petitioner still displayed "very little grasp on the gravity and magnitude of this heinous crime". *See Neal v. Stanford,* 131 AD3d 1320 and *Confoy v. New York State Division of Parole*, 173 AD2d 1014; *see also Graziano v. Evans*, 90 AD3d 1367, 1369["while the Board may not consider[ ] factors outside the scope of the applicable statute, including penal philosophy', it can consider factors—such as remorse and insight into the offense—that are not enumerated in the statute but nonetheless relevant to an assessment of whether an inmate 'present[s] a danger to the community.'"]

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: August 16, 2016 at
Indian Lake, New York.

S. Peter Feldstein
Acting Supreme Court Justice