September 2021

Decision in Art. 78 proceeding - Black, John T. (2010-07-29)

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In The Matter of JOHN T. BLACK,

Petitioner,

-against-

THE NEW YORK STATE DIVISION OF PAROLE,

Respondents,

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

Supreme Court Albany County Article 78 Term
Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding
RJI # 01-10-ST1404 Index No. 2758-10

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DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

The petitioner, an inmate at Woodbourne Correctional Facility, has commenced the instant CPLR Article 78 proceeding to review a determination dated October 6, 2009 in which he was denied release on parole. The petitioner is serving a sentence of two to six years upon his plea of guilty to the charges of manslaughter in the second degree and

misdemeanor driving while intoxicated. The charges arose out of a motor vehicle accident which occurred on December 22, 2005 in which he crossed over a double yellow line into on-coming traffic and struck the victim's vehicle. The petitioner acknowledges being intoxicated at the time of the accident, which caused the death of the operator of the other motor vehicle (a forty-six year old mother of three teenagers). He indicates (and there is no evidence to the contrary) that from the time of the accident to the present he expressed sincere remorse for his actions, and he has accepted complete responsibility for the happening of the accident. Within days of being released on bail he became a patient of a licensed clinical social worker to deal with his alcohol problem, as well as the guilt and remorse he was experiencing. He also entered The Kenneth Peters Center for Recovery Program as an outpatient, and treated there for one year. Prior to his incarceration, the petitioner had been employed by Diversified Acquiring Solutions, a credit card transaction processing business, of which he was the president. He plans to resume that position upon his release. The petitioner holds a Bachelor's degree in Applied Science in Management from St. John's University. He has been married since 1986 and has three children, ages 17, 8 and 6. He indicates that the assistant district attorney, at sentencing, made favorable comments concerning his positive post-accident conduct and genuine remorse.[1] He points out that on behalf the victim's family, the attorney for the victim's estate submitted a letter in support of his release.

Among his many accomplishments while incarcerated, the petitioner has received

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[1]At petitioner's sentencing, the prosecuting attorney made the following comment: "Still and all, Mr. Black did step up to the plate, he did admit his guilt, he appears to be attempting to rectify the pain and sorrow that he's caused for the family of [the victim]".

treatment for his alcoholism. He has participated in Alcoholics Anonymous and the Aggression Replacement Training program. He received a certificate of earned eligibility. He has worked as a Prison Program Clerk's Aide; and as a Chaplain's Clerk with the prison Deacon. He has volunteered in the St. Bonaventure Tour program, which allows selected inmates to engage in panel discussions with college students about the social impact and consequences of driving while intoxicated. He has completed Phase I and III of the Transitional Services Program and is currently completing Phase II. He completed a legal research course and has been involved in two different AIDS programs. He attends Bible studies classes.

The petitioner argues that the Parole Board failed to give consideration to his certificate of earned eligibility (see Corrections Law § 805). He maintains that the Parole Board failed to consider that the petitioner was within four months of the expiration of the applicable guideline range (see 9 NYCRR 8001.3). He asserts that the Parole Board violated of Executive Law § 259-i (2) (a) (i) in that its decision was not sufficiently detailed and was conclusory. The petitioner faults the Parole Board for failing to adequately consider a packet of documents which included character letters submitted in support of his release, an outline of his goals and release plans, and proof that he intended to continue his therapy and treatment after his release.[2] In connection with the foregoing, the petitioner criticizes the Parole Board for having directed him to summarize the important items in the packet, rather than adjourning the parole interview to carefully review the documents. He specifically cites a number of letters submitted in support of his release which he claims the Parole Board did

[2]The packet was apparently received by the Parole Board just prior to the interview.

not consider.

The reasons for the respondent's determination to deny petitioner release on parole are set forth as follows:

> "Despite issuance of an earned eligibility certificate, discretionary release is denied. Following a careful review of your record and interview, this panel concludes that, if released, there is a reasonable probability that you would not live and remain at liberty without violating the law. Your release is thus not presently compatible with the public safety and welfare. Your instant offense, in Suffolk County, in December 2005, involved your driving drunk, resulting in the death of another Driver. Your criminal history indicates the IO is your only crime of record. Your institutional programming indicates progress and achievement which is noted. You positive institutional adjustment is noted to your credit. However, all required factors in the file considered, release at this time, is not consistent with the public safety and welfare."

As stated in Executive Law §259-i (2) (c) (A):

> "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 guidelines 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 interpersonal relationships with staff and inmates; (ii) performance, if any, as a participant in a temporary release program; (iii) release plans including community resources, employment, education and training and support services available to the inmate; (iv) any deportation order issued by the federal government against the inmate []; (v) any statement made to the board by the crime victim or the victim's representative []" (Executive Law §259-i [2] [c] [A]).

Parole Release decisions are discretionary and, if made pursuant to statutory requirements, not reviewable (Matter of De La Cruz v Travis, 10 AD3d 789 [3d Dept., 2004]; Matter of Collado v New York State Division of Parole, 287 AD2d 921 [3d Dept., 2001]). If the Parole Board's decision is made in accordance with the statutory requirements, the Board's determination is not subject to judicial review (Matter of De La Cruz v Travis, supra). Furthermore, only a "showing of irrationality bordering on impropriety" on the part of the Parole Board has been found to necessitate judicial intervention (see Matter of Silmon v Travis, 95 NY2d 470, 476 [2000], quoting Matter of Russo v. New York State Bd. of Parole, 50 NY2d 69, 77 [1980]). In the absence of the above, there is no basis upon which to disturb the discretionary determination made by the Parole Board (see Matter of Perez v. New York State of Division of Parole, 294 AD2d 726 [3rd Dept., 2002]).

The Court finds that the Parole Board considered the relevant criteria in making its decision and its determination was supported by the record. A review of the transcript of the parole interview reveals that, in addition to the instant offense, attention was paid to such factors as petitioner's institutional programming, his disciplinary record, the absence of other criminal convictions, and his plans upon release. He was given ample opportunity to make a statement in support of his release. The decision was sufficiently detailed to inform the petitioner of the reasons for the denial of parole and it satisfied the requirements of Executive Law §259-i (see Matter of Siao-Pao, 11 NY3d 773 [2008]; Matter of Whitehead v. Russi, 201 AD2d 825 [3rd Dept., 1994]; Matter of Green v. New York State Division of Parole, 199 AD2d 677 [3rd Dept., 1993]). It is proper and, in fact, required, that the Parole Board consider the seriousness of the inmate's crime (see Matter of Weir v. New York State Division of Parole, 205 AD2d 906, 907 [3rd Dept., 1994]; Matter of Sinopoli v New York

State Board of Parole, 189 AD2d 960, supra; Matter of Dudley v Travis, 227 AD2d 863, [3rd Dept., 1996]). The Parole Board is not required to enumerate or give equal weight to each factor that it considered in determining the inmate's application, or to expressly discuss each one (see Matter of Wise v New York State Division of Parole, 54 AD3d 463 [3rd Dept., 2008]). Nor must the parole board recite the precise statutory language set forth in the first sentence of Executive Law § 259-i (2) (c) (A) (see Matter of Silvero v Dennison, 28 AD3d 859 [3rd Dept., 2006]). In other words, "[w]here appropriate the Board may give considerable weight to, or place particular emphasis on, the circumstances of the crimes for which a petitioner is incarcerated, as well as a petitioner's criminal history, together with the other statutory factors, in determining whether the individual 'will live and remain at liberty without violating the law,' whether his or her 'release is not incompatible with the welfare of society,' and whether release will 'deprecate the seriousness of [the] crime as to undermine respect for [the] law'" (Matter of Durio v New York State Division of Parole, 3 AD3d 816 [3rd Dept., 2004], quoting Executive Law §259-i [2] [c] [A], other citations omitted). In view of the petitioner's history of alcohol abuse, coupled with a 1982 conviction for driving while his ability was impaired, the Court determines that the respondent's findings are not irrational.

It is well settled that receipt of a certificate of earned eligibility does not serve as a guarantee of release (Matter of Dorman v New York State Board of Parole, 30 AD3d 880 [3rd Dept., 2006]; Matter of Pearl v New York State Division of Parole, 25 AD3d 1058 [3rd Dept., 2006]).

Addressing petitioner's argument with respect to the guideline range, even if he had served time in excess of the guideline range, 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" (9 NYCRR 8001.3 [a]; Matter of Tatta v State of New York Division of Parole, 290 AD2d 907, 908 [3rd Dept., 2002]). Thus, the Court finds that this does not serve as a basis to overturn the Board's decision.

With respect to the packet of documents which were received by the Parole Board on the day of the parole interview the Parole Board, reasonably and properly, directed the petitioner to describe which of the documents were of particular importance to him, which he then proceeded to do. From what can be gleaned from the transcript of the parole interview, it is apparent that as the petitioner did this, Commissioner Ludlow reviewed documents in the packet, and asked pertinent questions. Commissioner Ludlow took note of several letters submitted in support of the petitioner's release, as well as photographs of the petitioner's children. The petitioner never voiced an objection to the procedure that was employed.. Nor did he request an adjournment of the parole interview.[3] There was no statutory or regulatory requirement that was violated, and no abuse of discretion with respect to how the Parole Board handled the submission.

In addition, the Parole Board's decision to hold petitioner for eighteen months is within the Board's discretion and was supported by the record (see Matter of Tatta v State of New York Division of Parole, 290 AD2d 907 [3rd Dept., 2002], lv denied 98 NY2d 604).

The Court has reviewed petitioner's remaining arguments and contentions and finds them to be without merit.

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[3]In addition the Court observes that on page four of the inmate status report dated June 30, 2009 mention is made that the petitioner had re-submitted the parole package he had prepared for his initial appearance before the Parole Board..

The Court finds the decision of the Parole Board was not irrational, in violation of lawful procedure, affected by an error of law, irrational or arbitrary and capricious. The petition must therefore be dismissed.

The Court observes that certain records of a confidential nature relating to the petitioner were submitted to the Court as a part of the record. The Court, by separate order, is sealing all records submitted for *in camera* review.

Accordingly, it is

ORDERED and ADJUDGED, that the petition be and hereby is dismissed.

This shall constitute the decision, order and judgment of the Court. The original decision/order/judgment is returned to the attorney for the respondents. All other papers are being delivered by the Court to the County Clerk for filing. The signing of this decision/order/judgment and delivery of this decision/order/judgment does 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.

ENTER

Dated: July 29 ,2010
Troy, New York

Supreme Court Justice
George B. Ceresia, Jr.

Papers Considered:

1. Notice of Petition dated April 26, 2010, Petition, Supporting Papers and Exhibits
2. Answer dated May 15, 2010, Supporting Papers and Exhibits

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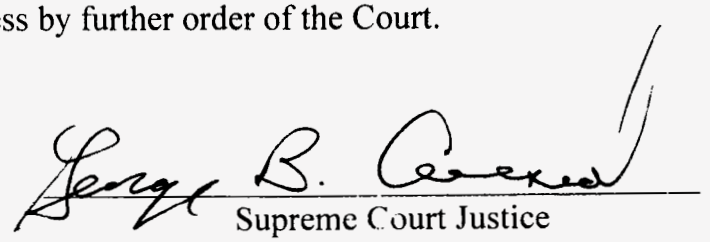
SEALING ORDER

The following documents having been filed by the respondent with the Court for *in camera review* in connection with the above matter, namely, respondent's Exhibit B, Pre-Sentence Investigation Report, and respondent's Exhibit D, Confidential Portion of Inmate Status Report. For good cause shown, it is hereby

ORDERED, that the foregoing designated documents, including all duplicates and copies thereof, shall be filed as sealed instruments and not made available to any person or public or private agency unless by further order of the Court.

ENTER

Dated: July 29, 2010
Troy, New York



Supreme Court Justice
George B. Ceresia, Jr.