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[\*1]

<b>Matter of Brown v NYS Div. of Parole</b>
2018 NY Slip Op 50986(U) [60 Misc 3d 1207(A)]
Decided on June 18, 2018
Supreme Court, St. Lawrence County
Feldstein, J.
Published by <a href="#">New York State Law Reporting Bureau</a> pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on June 18, 2018

Supreme Court, St. Lawrence County

**In the Matter of the Application of Nathan Brown, Petitioner, for Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules**

**against**

**NYS Division of Parole, Respondent.**

151394

S. Peter Feldstein, J.

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the Petition of Nathan Brown supported by the Petitioner's Affidavit in Support of Order to Show Cause, both sworn to on October 18, 2017. Both of these documents were filed in the St. Lawrence County Clerk's Office on October 24, 2017. Petitioner, who is an inmate at the Gouverneur Correctional Facility, is challenging the Parole Board's determination denying parole upon his last appearance.

The Court issued an Order to Show Cause on November 1, 2017. In response thereto, the Court has received and considered the Respondent's Verified Answer and Return dated January 26, 2018, together with confidential exhibits B, C and I. The Court also received and considered the Petitioner's Reply on February 7, 2018, as well as a further exhibit received separately on February 7, 2018.

On February 20, 1990, Petitioner was sentenced by the Supreme Court, New York County, following a conviction by verdict of the crime of Murder in the Second Degree to an indeterminate term of incarceration of twenty-five (25) years to life. On August 2, 2017, the Petitioner re-appeared before the Parole Board. After an opportunity to review the Petitioner's file, including programming, disciplinary record, COMPAS scores, employment prospects and residential plan, as well as the parole interview, the Parole Board made the following determination:

"Denied 12 months, July 2018.

After a review of the record, interview, and deliberation, the panel has determined that if released at this time, there is a reasonable probability that you would not live and remain at liberty without again violating the law and that your release would be incompatible with the welfare and safety of society and would so deprecate the serious nature of the crime as to undermine respect for the law. Parole is denied.

Required statutory factors have been considered together with your institutional [\*2]adjustment including discipline and program participation, your risk and needs assessment, and your needs for successful reentry into the community. More compelling is that the instant offense marks your second New York State incarceration resulting from your conviction for Murder 2nd A1 where you splashed gasoline on your victim and set him on fire. Your victim died from your actions following transportation for treatment of the burns. You were 23 years of age at the time of the instant offense. You are currently 53 years old.

The course of your criminal history is poor; however, your last ticket was in 2014, indicating an improvement in your discipline. Despite COMPAS indicating risk of family support and employment overall, the COMPAS scores low risk.

Case plans are satisfactory.

The interview presented no firm release plans featuring transitional housing, assurance/verified residential proposals.

In addition, vocations/support programming plans would benefit you upon release.

Spend your time continuing your clean discipline.

Therefore, based on all the required factors in the file considered, discretionary release at this time is not appropriate." Res. Ex. E., p. 12-13.

Petitioner filed an administrative appeal on August 18, 2017, and supplemented the appeal on September 20, 2017. The Parole Board's determination was affirmed on October 10, 2017.

Petitioner argues that the Parole Board failed to articulate its reasoning as to why the Petitioner's release would be incompatible with the welfare of society. Petitioner also asserts that the Parole Board failed to understand that the Osborne Association is a work program and that the Petitioner's letter from the Osborne Association provided reasonable assurance of assistance with employment training, job placement and career coaching. Petitioner argues that the Parole Board failed to consider the requisite criteria for parole release.

Respondent argues that the petition should be dismissed in its entirety insofar as the Parole Board is afforded great discretion in determining parole release provided that the board considers the relevant factors as described in Executive Law §259-i(c)(A). Respondent argues that there is no requirement that the Parole Board give equal weight to each factor nor does an inmate's exemplary institutional record compel parole release.

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, [\*3]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.

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 August 2, 2017 Parole Board appearance reveal that the Board had before it information with respect to the appropriate statutory factors, including Petitioner's vocational and therapeutic programming records. It was noted that the COMPAS ReEntry Risk Assessment Instrument score was relatively low. The Parole Board noted that he has completed the ASAT and ART programs. The Parole Board allowed the Petitioner to explain his personal circumstances at the time of the instant offense and noted that he was 23 years old at the time of the crime. The Parole Board noted that the Petitioner was on supervised release at the time of the instant offense. The Petitioner explained that he had been a drug dealer and there was a dispute with one of his sellers regarding money which led to the Petitioner dousing him with gasoline, then lighting the [\*4] victim on fire before fleeing the scene. It is of note that during the interview, when describing the instant offense, the Petitioner stated that: "At that time for me to have behaved in that manner, I went down the wrong path in life and I took an action that I cannot take back. This tragedy will always be the most regrettable and astounding mistake that has ever happened in my life." Res. Ex. E, (3:14-18).

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 crime underlying Petitioner's incarceration. The Board also considered the lengthy criminal history of the Petitioner, including previous state incarceration, as well as the age of the Petitioner at the time of the instant offense. Based upon the transcript of the Parole Board interview, the Petitioner still fails to appreciate that his actions were more than a "mistake" insofar as he deliberately caused the death of another. [See Neal v. Stanford, 131 AD3d 1320](#) and [Confoy v. New York State Division of Parole, 173 AD2d 1014](#).

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:** June 18, 2018  
Lake Pleasant, New York  
S. Peter Feldstein  
Acting Justice, Supreme Court

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