September 2021

Decision in Art. 78 proceeding - Crowningshield, Christopher (2018-03-23)

Matter of Crowningshield v Stanford
2018 NY Slip Op 31116(U)
March 23, 2018
Supreme Court, Franklin County
Docket Number: 2017-671
Judge: S. Peter Feldstein

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

In the Matter of the Application of
CHRISTOPHER CROWNINGSHIELD, #10-A-4015,
Petitioner,

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

DECISION AND JUDGMENT
RJI #16-1-2017-0315.44
INDEX #2017-671

-against-

TINA STANFORD, CHAIRPERSON, 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 Christopher Crowningshield, verified on September 5, 2017, and supported by the Petitioner's Affidavit in Support of Order to Show Cause, sworn to on September 5, 2017. Both of these documents were filed in the Franklin County Clerk's Office on October 11, 2017. Petitioner, who is an inmate at the Franklin Correctional Facility, is challenging a denial of parole release.

The Court issued an Order to Show Cause on October 17, 2017 and has received and reviewed respondent's Answer and Return verified on January 12, 2018, including confidential Exhibit C, together with a Letter-Memorandum by Christopher J. Fleury, Esq., Assistant Attorney General, dated January 12, 2018. The Court received the Petitioner's Reply on January 29, 2018.

On August 2, 2010, following his conviction of five (5) counts of Promoting Sex Performance by a Child, the Clinton County Court sentenced petitioner to an indeterminate term of five (5) to fifteen (15) years of incarceration. The petitioner re-appeared before the Parole Board on March 8, 2017. 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:

> "PAROLE IS DENIED. THIS DECISION IS BASED ON THE FOLLOWING FACTORS. THE INSTANT OFFENSE OF: PROMOTNIG (*sic*) SEXUAL PERFORMANCE BY A CHILD (5 COUNTS) WHEREIN YOU DID POSSESS MULTIPLE STILL AND VIDEO IMAGES OF CHILD PORNOGRAPHY. YOUR EXPLANATION IS SHALLOW AND CREATES CONCERN FOR THIS PANEL SINCE YOU ADMITTED VIEWING ADULT PORNOGRAPHY PRIOR TO BECOMING INVOLVED WITH CHILD PORNOGRAPHY. AFTER A REVIEW OF THE RECORD AND INTERVIEW, THE PANEL HAS DETERMINED THAT IF RELEASED AT THIS TIME THERE IS A REASONABLE PROBABILITY THAT YOU WOULD NOT LIVE AT LIBERTY WITHOUT AGAIN VIOLATING THE LAW. NOTE IS MADE BY THIS BOARD OF YOUR EEC, SENTENCING MINUTES, COMPAS CASE PLAN, COMPAS RISK ASSESSMENT WHICH INDICATES A LOW RISK OF FELONY VIOLENCE, REHABILITATIVE EFFORTS, LETTERS OF SUPPORT AND/OR REASONABLE ASSURANCE, DISCIPLINARY RECORD AND ALL OTHER REQUIRED FACTORS. YOU HAVE LIMITED RELEASE PLANS AND LIMITED INSIGHT INTO YOUR CRIMINAL ACT." Resp. Ex. F.

An appeal of the parole board's determination was filed by the petitioner on July 25, 2017. Res. Ex. I. Thereafter, the Board of Parole Appeals Unit upheld the determination on August 14, 2017. Res. Ex. J.

Petitioner challenges the denial of parole release alleging that the parole board's determination was arbitrary and capricious, as well as irrational bordering on impropriety. The petitioner argues that the parole board failed to consider any of the other criteria pursuant to Executive Law §259-i, including the COMPAS risk assessment, and instead focused solely on the instant offense. Similarly, the petitioner argues that the parole board is relying upon the same criteria the trial judge used in sentencing the petitioner, which the

petitioner argues constitutes an improper re-sentencing. The petitioner alleges that the parole board's decision lacked the required specificity. Finally, the petitioner argues that the parole board failed to overcome the presumption for release created by his Earned Eligibility Certificate.

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. Respondent further asserts that the denial of parole is not akin to a re-sentencing. Furthermore, the petitioner's lack of insight into his instant offense, even after completing the Sex Offender Program, created concerns for the Parole Board.

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.

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 March 8, 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 other than the probability of financial issues after re-entry and unlikely employment expectations. The parole board noted that he was awarded an Earned Eligibility Certificate and considered his brief disciplinary history. There was also a discussion regarding the petitioner's tentative release plans for residence and employment. The parole board allowed the petitioner to explain his personal circumstances at the time of the instant offense and he asserted that he was "looking for answers". Res. Ex. E. [4:2-6]. It is of note that the petitioner explained that an uncle abused him when he was 9 or 10 years old; however, at the time of his sentencing, the petitioner claimed he was raped by a 28 year old cousin when he was 12 years old. The parole board also considered that the sentencing judge commented that the petitioner's reason for viewing child pornography was "light". Res. Ex. E. [8:20-23].

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 circumstances of the petitioner's crime, as well as the programming petitioner has completed while incarcerated. Based upon the transcript of the parole board interview, the petitioner still lacks insight into how his behavior impacted others. *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: March 23, 2018
Lake Pleasant, New York

S. Peter Feldstein
Acting Justice, Supreme Court