September 2021

Decision in Art. 78 proceeding - Davidson, Ronald (2007-10-05)

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In The Matter of RONALD DAVIDSON,

Petitioner,

-against-

ROBERT DENNISON, Chair,
New York State Division of Parole,

Respondent,

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 # 01-07-ST7745 Index No. 3942-07

Appearances: Law Offices of Glenn W. Magnell
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DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

The petitioner, an inmate at Shawangunk Correctional Facility, has commenced the instant CPLR Article 78 proceeding to review a determination of respondent dated June14,

2005 to deny petitioner discretionary release on parole. Petitioner is serving concurrent terms of twenty five years to life on three convictions of murder. The petitioner, in his attorney-verified petition, points out that he has been denied parole five times. Petitioner's attorney summarized petitioner's crime in fairly succinct terms:

> "Petitioner's conviction arose out of an argument with three other individuals over the intent of those individuals to store stolen property at the home of petitioner's parents, which Petitioner refused to allow. Later in the day of the initial argument, Petitioner encountered said individuals, armed with knives, and was attacked by them. During the ensuing struggle, Petitioner shot and killed the three victims."

Petitioner elaborated on the circumstances that led to his incarceration during his June 14, 2005 Parole Hearing. Petitioner indicated that he was involved in an argument with the three victims of his crime. This argument allegedly started when the petitioner refused to allow the decedents to store outboard engines that they had stolen at his parents' house. Following this argument, petitioner, and the decedents went to dinner, where the argument allegedly continued. According to petitioner, this argument escalated into violence when the decedents attempted to attack him. The petitioner maintains that in the scuffle that ensued, two of the three decedents brandished knives, to which the petitioner responded by discharging a gun that he had on his person. The petitioner then chased down and shot his third victim.

During his parole interview the petitioner expressed remorse for having committed

these crimes. He attempted to explain to the board members why he committed these offenses, which he attributed to his violent nature as a youth, resulting from family "turmoil" and an alleged Attention Deficit Disorder. He pointed out the positive steps that he had taken during the course of his incarceration, which included educational achievements and the completion of multiple programs. Petitioner also mentioned his lack of violent disciplinary problems throughout his incarceration and detailed the plans that he had in the event that he was released.

The petitioner was denied release by the Parole Board on June 14, 2005. Following an unsuccessful administrative appeal of this decision the petitioner commenced this Article 78 proceeding. In his petition, the petitioner alleges that the board's decision to deny him parole was improper because the panel failed to consider all of the statutory factors set forth in §259-i of the Executive Law. In his view the Parole Board based it's decision entirely upon the serious nature of his crime. He asserts that the board's decision to deny him parole was a product of an executive policy put in place by the Pataki administration to deny parole to violent felony offenders. According to the petitioner, the board's decision was arbitrary and capricious as it did not consider his application individually on the merits, but instead ruled on it as part of their policy to deny parole to all violent criminals. Finally, the petitioner alleges that the Parole Board's decision to deny him parole was akin to a re-sentencing, a power that they do not possess.

The petitioner asks the Court to overturn the Parole Board's decision and order his immediate release from custody. In the alternative, the petitioner requests a *de novo* hearing

in front of a different panel to determine if petitioner is entitled to parole.

The petitioner's claims are without merit.

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

> "Your instant offense involves you shooting to death your three victims in which you chased down your fleeing third victim and shot him to death. You were sentenced to three consecutive 25-to-life terms which merged by operation of law.
>
> "Note is made of the positive steps you have taken towards programming and education while incarcerated.
>
> "Due to the serious nature and circumstances of your instant offense and your prior violent history and propensity towards criminality, 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. Your release is incompatible with the safety and welfare of society. Therefore parole is denied."

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 Sinopoli v New York State Board of Parole,189 AD2d 960, 960 [3rd Dept., 1993], citing Matter of McKee v New York State Bd. of Parole, 157 AD2d 944). If the parole board's decision is made in accordance with the statutory requirements, the board's determination is not subject to judicial review (see Ristau v. Hammock, 103 AD2d 944 [3rd Dept., 1984]). 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]).

A review of the Parole Board's transcript from that day reveals that, in addition to the instant offense, the parole board considered such things as the petitioner's past offenses, his achievements which included education and the completion of various programs, his disciplinary record, his plans upon release, as well as the letters written on his behalf.

Additionally, when asked by the petitioner what he could do to increase the likelihood of his release, the Parole Board responded by telling him that:

> "There's no magic formula that, if you achieve this, you graduate. You get your diploma, and you get out. That's not how it works. It's a combination of the answers we feel whether or not they're truthful from you during the interview, what we feel the likelihood is that you will be able to go out and successfully do parole, not cause any other injury to anyone else, whether or not people continue to have confidence in the criminal justice system if we release you, whether or not the letters that we may or may not receive from various sources, the district attorney, victims, attorneys, judges, might play a role in terms of their recommendations. So it's a combination of a whole variety of different things, and each one plays a different part to a greater or lesser degree in each different case."

The Court finds that the Parole Board considered the relevant criteria in making its decision, and that it's determination was supported by the record.

The Parole Board's 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 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 crimes and their violent nature (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 Farid v Travis, supra; Matter of Moore v New York State Bd. of Parole, 233 AD2d 653 [3rd Dept., 1996]; Matter of Collado v New York State Division of Parole, 287 AD2d 921 [3rd Dept., 2001]). 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).

The record does not support petitioner's assertion that the decision was predetermined consistent with an alleged executive branch policy mandating denial of parole to all violent felony offenders. The Court, accordingly, finds no merit to the argument (see Matter of Lue-Shing v Pataki, 301 AD2d 827, 828 [3rd Dept., 2003]; Matter of Perez v State of New York Division of Parole, 294 AD2d 726 [3rd Dept., 2002]; Matter of Jones v Travis, 293 AD2d 800, 801 [3rd Dept., 2002]; Matter of Little v Travis, 15 AD3d 698 [3rd Dept., 2005], Matter of Wood v Dennison, 25 AD3d 1056 [3rd Dept., 2006]).

Petitioner's claims that the determination to deny parole is tantamount to a re-sentencing are conclusory and without merit (see Matter of Bockeno v New York State Parole Board, 227 AD2d 751 [3rd Dept., 1996]; Matter of Crews v New York State Executive Department Board of Appeals Unit, 281 AD2d 672 [3rd Dept., 2001]; Matter of Evans v Dennison, 13 Misc3d 1236A [Sup. Ct., Westchester Co., 2006]). Moreover, it is well settled that the Parole Board is vested with the discretion to determine whether release was appropriate notwithstanding the fact that the sentencing court set the minimum term of petitioner's sentence (see Matter of Silmon v Travis, 95 NY2d 470, 476 [2000]; Matter of Cody v Dennison, 33 AD2d 1141, 1142 [3rd Dept., 2006] lv denied 8 NY3d 802 [2007]; Matter of Burress v Dennison, 37 AD3d 930 [3rd Dept., 2007]).

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

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[1].

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. All papers are

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[1]The Court also observes that the petitioner was scheduled for another parole interview in June of 2007. The Department of Corrections' website reveals that the petitioner did in fact reappear before the Parole Board in June of 2007. He was denied parole and ordered to be held for an additional twenty four months. This being the case, it would also appear that the instant petition is now moot.

returned to the attorney for the respondent who is directed to enter this Decision/Order/Judgment without notice and to serve petitioner with a copy of this Decision/Order with notice of entry.

ENTER

Dated: October 5 , 2007
Troy, New York

Supreme Court Justice
George B. Ceresia, Jr.

Papers Considered:

1. Petitioner's Notice of Petition dated November 3, 2006, Petition, Supporting Papers and Exhibits
2. Respondent's Verified Answer dated December 5, 2006, Supporting Papers and Exhibits