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| Matter of Distaola v Annucci |
| 2017 NY Slip Op 51997(U) [59 Misc 3d 1220(A)] |
| Decided on February 9, 2017 |
| Supreme Court, Wyoming County |
| Mohun, J. |
| Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. |
| This opinion is uncorrected and will not be published in the printed Official Reports. |

Decided on February 9, 2017

Supreme Court, Wyoming County

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| <p>In the Matter of the Application of John Distaola, Petitioner,</p> <p>against</p> <p>Anthony Annucci, Acting Commissioner, New York State Department of Corrections and Community Supervision, Respondent</p> |
|---|

21,793-16

For the Petitioner
 WYOMING COUNTY-ATTICA LEGAL
 AID BUREAU, INC.
 Norman P. Effman, Director
 by Adam W. Koch
 Staff Attorney

For the Respondent
 ERIC T. SCHNEIDERMAN, Attorney General
 by Wendy E. Morcio
 Assistant Attorney General

Michael M. Mohun, J.

By petition pursuant to Article 78 of the CPLR verified on October 24, 2016, John Distaola seeks review of a parole release hearing conducted on March 15, 2016, at the Wyoming Correctional Facility. Petitioner, represented by counsel assigned by the order to show cause dated October 25, 2016, contends that he should be granted a *de novo* hearing. The respondent requests that the petition be denied or dismissed upon the answer dated December 6, 2016, and the record of confidential information submitted to the Court.

The petition is without merit. The Board of Parole could cite as sufficient ground for [*2]denying release the brutal nature of the petitioner's instant offense of Murder in the 2nd degree (see, *Matter of Fuchino v. Herbert*, 255 AD2d 914 [4th Dept., 1998]; *Matter of Scott v. Russi*, 208 AD2d 931 [2nd Dept., 1994]; *Matter of Putland v. Herbert*, 231 AD2d 893 [4th Dept., 1996], motion for leave to appeal denied 89 NY2d 806 [1997]; *Matter of Salcedo v. Ross*, 183 AD2d 771 [2nd Dept., 1992]; *People ex rel Justice v. Russi*, 226 AD2d 821 [3rd Dept., 1996]). Furthermore, the commissioners had the discretion to weigh this criminal conduct heavily. They were not required to give equal weight to other, positive factors present in the petitioner's case (*Matter of Gordon v. New York State Board of Parole*, 81 AD3d 1032 [3rd Dept., 2011]; *Matter of Davis v. Lemons*, 73 AD3d 1354 [3rd Dept., 2010]; *Matter of Ristau v. Hammock*, 103 AD2d 944 [3rd Dept., 1984], motion for leave to appeal denied 84 NY2d 910 [1984]). In their decision, the commissioners sufficiently stated their reasons for denying parole (see, *Matter of Sao-Pao v. Dennison*, 11 NY3d 777 [2008]). It was not necessary for

them to discuss in detail every factor weighed in reaching a determination (see *Matter of Mackall v. New York State Board of Parole*, 91 AD2d 1023 [2nd Dept., 1983], motion for leave to appeal denied 58 NY2d 609 [1983]; *Matter of Davis v. New York State Division of Parole*, 114 AD2d 412 [2nd Dept., 1985]). Lastly, the Board acted within its discretion in ordering the petitioner held for twenty-four months before reconsidering him for parole release, and the petitioner has not shown that this twenty-four month period was excessive under the circumstances.

The Petitioner has not demonstrated that the Board failed to give fair consideration to all of the relevant statutory factors pursuant to Executive Law §259-i(2)(c) (see [Matter of Robles v. Fischer](#), 117 AD3d 1558 [4th Dept., 2014]; *Matter of Zane v. Travis*, 231 AD2d 848 [4th Dept., 1996]; *People ex rel Thomas v. Superintendent of Arthur Kill Correctional Facility*, 124 AD2d 848 [2nd Dept., 1986], leave to appeal denied 69 NY2d 611 [1986]). Thus, judicial intervention is precluded in this matter because the petitioner has failed to establish that the respondent's decision was made in violation of the law, or was not supported by the record and tainted by "irrationality bordering on impropriety" (see *Matter of Russo v. New York State Division of Parole*, 50 NY2d 69, 77 [1980]; *Matter of Despard v. Russi*, 192 AD2d 1076 [4th Dept., 1993], motion for leave to appeal denied 82 NY2d 652 [1993]; [Matter of Robles v. Alexander](#), 70 AD3d 1338 [4th Dept., 2010]).

NOW, THEREFORE, it is hereby

ORDERED that the petition is dismissed.

Dated: February 9, 2017.
MICHAEL M. MOHUN
Acting Supreme Court Justice

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