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Decision in Art. 78 proceeding - Gainey, Normond (2007-05-03)

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Matter of Gainey v Alexander

2007 NY Slip Op 31120(U)

May 3, 2007

Supreme Court, Wyoming County

Docket Number: 20438-07/2007

Judge: Mark H. Dadd

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This opinion is uncorrected and not selected for official publication.

At a term of Supreme Court held in and for the County of Wyoming, at Attica, New York, on the 3rd day of May, 2007.

PRESENT: HONORABLE MARK H. DADD
Acting Supreme Court Justice

STATE OF NEW YORK
SUPREME COURT : COUNTY OF WYOMING

In the Matter of the Application of
NORMOND GAINNEY, #95-A-4673`, *Petitioner*

v.

Index No. 20,438-07

GEORGE ALEXANDER, Acting Chairman,
New York State Division of Parole, *Respondent*

For the Petitioner
WYOMING COUNTY-ATTICA LEGAL
AID BUREAU, INC.
Norman P. Effman, Director
14 Main Street
Attica, New York 14011

For the Respondent
ANDREW M. CUOMO, Attorney General
by Paul Volcy
Assistant Attorney General
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Buffalo, New York 14202

MEMORANDUM AND JUDGMENT

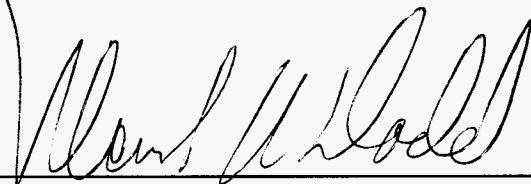
By petition pursuant to Article 78 of the CPLR verified on March 9, 2007, Normond Gainney seeks review of a parole release hearing conducted on May 9, 2006. Petitioner appeared by counsel assigned by an order to show cause dated March 13, 2007 and contended that he should be granted a de novo hearing. Respondent requests that the petition be denied upon the answer dated April 25, 2007 and the record of confidential information submitted to the Court.

The petition is without merit. The Board of Parole could cite the serious and violent conduct underlying the petitioner's murder conviction and his disciplinary record as

sufficient grounds for denying release (see Matter of Fuchino v. Herbert, 255 A.D.2d 914 [1998]; Matter of Scott v. Russi, 208 A.D.2d 931 [1994]; Matter of Putland v. Herbert, 231 A.D.2d 893 [1996], motion for leave to appeal denied 89 N.Y.2d 806; People ex rel Justice v. Russi, 226 A.D.2d 821 [1996]; Matter of Jackson v. New York State Division of Parole, 217 A.D.2d 732 [1995]; Matter of Fortune v. Russi, Supreme Court of Wyoming County, Index No. 17,207, Memorandum and Judgment dated July 22, 1994, annexed, affirmed 219 A.D.2d 869 [1995]). The commissioners had discretion to place greater weight on these factors than they placed on his program performance and proposed release plans (see Matter of Ristau v. Hammock, 103 A.D.2d 944 [1984], motion for leave to appeal denied 63 N.Y.2d 608; Matter of Rentz v. Herbert, 206 A.D.2d 944 [1994], motion for leave to appeal denied 84 N.Y.2d 810). Furthermore, their decision did not have to specifically mention every factor weighed in reaching a determination (see Matter of Mackall v. New York State Board of Parole, 91 A.D.2d 1023 [1983], motion for leave to appeal denied 58 N.Y.2d 609; Matter of Davis v. New York State Division of Parole, 114 A.D.2d 412 [1985]). Petitioner has not demonstrated that the commissioners failed to give fair consideration to all of the relevant statutory factors pursuant to Executive Law §259-i(2)(c) (see Matter of Zane v. Travis, 231 A.D.2d 848 [1996]; People ex rel Thomas v. Superintendent of Arthur Kill Correctional Facility, 124 A.D.2d 848 [1986], leave denied 69 N.Y.2d 611). 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 not supported by the record and tainted by "irrationality bordering on impropriety" (see Matter of Russo v. New York State Division of Parole, 50 N.Y.2d 69, 77 [1980]; Matter of Despard v. Russi, 192 A.D.2d 1076 [1993], motion for leave to appeal denied 82 N.Y.2d 652).

NOW, THEREFORE, it is hereby
ORDERED that the petition is denied.

DATED: May 3, 2007
Warsaw, New York



Acting Supreme Court Justice