September 2021

Decision in Art. 78 proceedings - Guzman, Leonel (2011-05-05)

STATE OF NEW YORK
SUPREME COURT **COUNTY OF ST. LAWRENCE**

- X

In the Matter of the Application of
LEONEL GUZMAN,#98-A-4352,

Petitioner,

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

-against-

DECISION AND JUDGMENT
RJI #44-1-2011-0039.03
INDEX #135261
ORI # NY044015J

NEW YORK STATE DIVISION OF PAROLE,

Respondent.

- X

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the petition of Leonel Guzman, verified on January 11, 2011 and filed in St. Lawrence County Clerk's office on January 14, 2011. Petitioner, who is an inmate at the Gouverneur Correctional Facility, is challenging the April 2010 determination denying him parole and directing he be held for an additional 24 months. The Court issued an Order to Show Cause on January 20, 2011 and has received and reviewed respondent's Answer/Return, including confidential Exhibits B and E, verified on March 4, 2011. The Court has also received and reviewed petitioner's Reply thereto, filed in the St. Lawrence County Clerk's office on March 21, 2011.

On July 7, 1998 petitioner was sentenced in Supreme Court, New York County, as a second violent felony offender, to an indeterminate sentence of 10 years to life and a concurrent determinate term of 10 years upon his convictions of the crimes of Criminal Possession of a Controlled Substance 2° and Criminal Possession of a Weapon 2°. After having been denied discretionary parole release two previous occasions, petitioner made

his third appearance before a Parole Board on April 20, 2010. Following that appearance a decision was rendered again denying petitioner parole and directing he be held for an additional 24 months. All three parole commissioner's concurred in the denial determination which reads as follows:

> "After a review of the record and interview, the Panel has determined if released at this time your release would be incompatible with the welfare of society.
>
> This decision is based on the following factors: Your instant offenses are criminal possession of a controlled substance second degree and criminal possession of a weapon second degree. These crimes are a continuation of a criminal history that includes two prior heinous robberies of female victims. You were under parole supervision for less than six months at the time of the instant offence. You were undeterred by prior court interventions and have done poorly in the past under community supervision. This is your second time in state prison. Since your last Board appearance you have incurred two Tier II disciplinary infractions.
>
> The Board notes your strong community support and program completions while incarcerated. All factors considered, your release at this time is not appropriate."

The document perfecting petitioner's administrative appeal from the parole denial determination was received by the Division of Parole Appeals Unit on August 25, 2010. The Appeals Unit, however, failed to issue its findings and recommendation within the four-month time frame set forth in 9 NYCRR §8006.4(c). This proceeding ensued.

Executive Law §259-i(2)(c)(A) 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 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 . . . [and] (iii) release plans including community resources, employment, education and training and support services available to the inmate . . .” In addition to the above, where, as here, the minimum period of imprisonment was established by the sentencing court, the Board must also consider the seriousness of the underlying offense (with “due consideration” to, among other things, the “recommendations of the sentencing court . . .”) as well as the inmate’s prior criminal record. *See* Executive Law §259-i(2)(c)(A) and §259-i(1)(a).

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 has been a showing of irrationality bordering on impropriety. *See Silmon v. Travis,* 95 NY2d 470, *Vasquez v. Dennis*on, 28 AD3d 908, *Webb v. Travis*, 26 AD3d 614 and *Coombs v. New York State Division of Parole*, 25 AD3d 1051. 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 Nankervis v. Dennison,* 30 AD3d 521*, Zane v. New York State Division of Parole*, 231 AD2d 848 and *Mc Lain v. Division of Parole*, 204 AD2d 456.

Citing 9 NYCRR §8002.3(b), petitioner contends that neither the nature of the crimes underlying his current incarceration nor his prior criminal history was a proper factor to be considered by the Parole Board in the reappearance context. The regulation

in question does not mention those two factors for consideration "[i]n those [discretionary parole release] cases were the [parole] guidelines have previously been applied . . ." Petitioner asserts, in effect, that the parole guidelines were applied at his previous Board appearances so as to bring the April 2010 discretionary parole release decision within the ambit of 9 NYCRR §8002.3(b). This argument, however, was rejected by the Appellate Division, Third Department, in *Flecha v. Travis*, 246 AD2d 720. Citing, *inter alia*, Executive Law §259-i(2)(c), the *Flecha* court found as follows: "Because the trial court set petitioner's minimum period of imprisonment, the Board was required to take into account, among other statutory factors, the seriousness of petitioner's crimes and his prior criminal record." *Id.* (other citations omitted). *See also Guerin v. New York State Division of Parole*, 276 AD2d 899. This Court also finds that the April 2010 Parole Board was not barred by double jeopardy or collateral estoppel considerations from denying discretionary parole release based upon the same factors that supported previous parole denial determinations.

A significant portion of the petition is focused, in one way or another, on the assertion that the April 2010 Parole Board placed inordinate weight on petitioner's criminal history and prison disciplinary record while failing to adequately consider other statutory factors such as his institutional achievements. A parole board, however, 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 Martin v. New York State Division of Parole*, 47 AD3d 1152, *Porter v. Dennison*, 33 AD3d 1147 and *Baez v. Dennison,* 25 AD3d 1052, *lv den* 6 NY3d 713. 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. *Comfort v. New York State Division of Parole,* 68 AD3d 1295, 1296 (citations omitted).

A review of the Inmate Status Report and the transcript of the parole hearing reveals that the Board had before it, and considered, the appropriate statutory factors including petitioner's programming and vocational achievements, community support, disciplinary record and release plans, as well as the circumstances of the crimes underlying his incarceration (committed less than six months after being released from DOCS custody to parole supervision) and disturbing prior criminal record. *See Zhang v. Travis*, 10 AD3d 828. The petitioner was also afforded an opportunity at the parole hearing to make his own statement to the presiding commissioners. 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 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 crimes underlying petitioner's incarceration, committed while on parole, as well as

his prior criminal record and prison disciplinary record. *See Champion v. Dennison,* 40 AD3d 1181*, lv dis* 9 NY3d 913*, Valerio v. Dennison*, 35 AD3d 938*, McCorkle v. New York State Division of Parole,* 24 AD3d 926*, Larmon v. Travis,* 14 AD3d 960 and *Zhang v. Travis,* 10 AD3d 828.

This Court next finds that the parole denial determination was sufficiently detailed to inform petitioner of the reasons underlying the denial and to facilitate judicial review thereof. *See Ek v. Travis*, 20 AD3d 667, *lv dis* 5 NY3d 862. In addition, there is no statutory, regulatory or judicial requirement mandating that a Parole Board provide guidance as to how an inmate might improve his or her chances of securing discretionary release at a future Board appearance. *See Freeman v. New York State Division of Parole*, 21 AD3d 1174.

The Parole Board did not have a copy of petitioner's 1998 sentencing minutes before it at the time of the April 20, 2010 appearance or when the parole denial determination was issued. Petitioner contends that his decision to proceed with the parole interview in the absence of such minutes cannot be considered a voluntary waiver of his rights. The respondent, however, produced a copy of the 1998 sentencing minutes (Answer/Return Exhibit A) and a review thereof reveals no parole recommendations by the sentencing judge. Accordingly, any error associated with the Board's failure to obtain a copy of the sentencing minutes was harmless. *See Motti v. Alexander*, 54 AD3d 1114 and *Schettino v. New York State Division of Parole*, 45 AD3d 1086.

Finally, petitioner also argues that the 24-month hold imposed by the Board was excessive. The Court disagrees. "The scheduling of the reconsideration hearing was a matter for the Board to determine the exercise of its discretion . . . subject to the statutory

24-month maximum." *Tatta v. State of New York, Division of Parole*, 290 AD2d 907, 908, *lv den* 98 NY2d 604 (citations omitted). The Court finds the 24-month hold is not excessive nor improper under the circumstances of this case. *See Lue-Shing v. Travis*, 12 AD3d 802, *lv den* 4 NY3d 705 and *Tatta v. State of New York Division of Parole*, 290 AD2d 907, *lv den* 98 NY2d 604.

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: May 5, 2011 at
Indian Lake, New York

S. Peter Feldstein
Acting Justice, Supreme Court