September 2021

Decision in Art. 78 proceeding - Hyman, Caleb (2014-04-01)

Matter of Hyman v New York State Dept. of Parole
2014 NY Slip Op 30792(U)
April 1, 2014
Sup Ct, Albany County
Docket Number: 5688-13
Judge: Joseph C. Teresi

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In the Matter of the Application of
CALEB G. HYMAN, # 97-A-3031,

Petitioner,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules,

-against-

DECISION and ORDER
RJI NO.: 01-13-ST5313
INDEX NO.: 5688-13

NEW YORK STATE DEPARTMENT OF PAROLE,
Respondent.

Supreme Court Albany County All Purpose Term, February 7, 2014
Assigned to Justice Joseph C. Teresi

APPEARANCES:
Caleb G. Hyman
Petitioner, Pro Se
97-A-3031
Washington Correctional Facility
P.O. Box 180
Comstock, New York 12821

Eric T. Schneiderman, Esq.
Attorney General of New York State
Attorneys for the Respondent
Kristen Quaresimo, AAG
Department of Law
The Capitol
Albany, New York 12224

TERESI, J.:

This is an Article 78 proceeding brought by Petitioner challenging Respondent's denial of parole release. The record reveals that during the interview the Board reviewed with Petitioner the circumstances of Petitioner's instant criminal offense, Petitioner's institutional history and programming, and his release plans.

The Board's actions are judicial in nature and may not be reviewed if done in accordance with the law (see Executive Law §259-i[5] see also Matter of Valderrama v Travis, 19 AD3d 904, 905 [3d Dept 2005]). Executive Law § 259-i(2)(c)(A) provides that discretionary release to parole supervision is not to be granted to an inmate merely as a reward for good behavior while in prison, but after considering whether "there is a reasonable probability that, if such an 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" (Matter of King v New York State Division of Parole, 83 NY2d 788, 790 [1994], affg 190 AD2d 423 [1st Dept 1993]). Decisions regarding release on parole are discretionary and will not be disturbed if they satisfy the statutory requirements (Executive Law § 259-i; Matter of Walker v New York State Div. of Parole, 203 AD2d 757 [3d Dept 1994]) and there is no showing of "irrationality bordering on impropriety" (Matter of Russo v New York State Bd. of Parole, 50 NY2d 69, 77 [1980]; Matter of Silmon v Travis, 95 NY2d 470, 476 [2000]; Matter of Saunders v Travis, 238 AD2d 688 [3d Dept 1997]; Matter of Felder v Travis, 278 AD2d 570 [3d Dept 2000]).

The Court begins its analysis by declining to engage in a line-by-line, case-by-case response to Petitioner's 17 pages of boilerplate and conclusory arguments. The Court has considered Petitioner's arguments and finds they are not valid, are unsupported, and in places rest on cases that have been superceded. Some of the alleged technical violations are not supported by any allegations of practical harm to Petitioner, were known to Petitioner prior to the hearing, and/or Petitioner waived them by failing to raise them at a time when they could have been corrected by the Board.

Petitioner seeks to avoid shouldering his burden of demonstrating there has been a statutory violation by the Board or that the denial of parole release reflected "irrationality bordering on impropriety" by the Board. Petitioner has cited no statutory violation by the Respondent when denying parole release. Denial of parole release could not be arbitrary and capricious because Petitioner has not established that he would necessarily live and remain at liberty without violating the law, or that his release at this time is compatible with the welfare and safety of the community, or that his release at this time would not diminish the seriousness of his stabbing his victim 150 times. Instead of addressing those relevant matters, Petitioner attempts to divert attention away from the established standard for judicial review of the Board's decision with arguments that do not warrant serious consideration.

The Court rejects Petitioner's claim that he was "resentenced" by the Board when it determined not to release him to parole supervision. Petitioner's statement is factually incorrect. Petitioner is also fundamentally mistaken in suggesting that the sentencing court intended that he be released upon serving his minimum sentence. The court gave no promise, either express or implicit, that Petitioner would be released by the Parole Board as soon as he appeared for parole consideration. Petitioner has no constitutional right to release before his completion of the whole valid sentence (Matter of M.G. v Travis, 236 AD2d 163, 167 [1st Dept 1997]). Under our sentencing system the court initially sets a minimum and a maximum period of incarceration, but the Board makes the ultimate determination whether to release an inmate prior to his or her completion of the maximum sentence (Matter of Silmon v Travis, 95 NY2d 470, 476 [2000]; Matter of Russo v New York State Bd. of Parole, 50 NY2d 69, 77 [1980]).

The Court rejects Petitioner's claim that the Board had predetermined not to release him to parole supervision. Petitioner has presented no evidence to support his accusation. Petitioner's arguments for inferring such misconduct are both insufficient and unpersuasive. A presumption of regular and honest motivation attaches to official acts and renders them impervious to attacks such as Petitioner's that consist of conclusory assertions unsupported by factual allegations (Matter of Altamore v Barrios-Paoli, 90 NY2d 378, 386 [1997]; Matter of Entergy Nuclear Indian Point 2, LLC v New York State Dept., of Environmental Conservation, 23 AD3d 811, 813-814 [3d Dept 2005]). In the absence of a convincing demonstration to the contrary, the Court presumes that Respondent acted properly and in accordance with statutory requirements (Matter of Putland v Herbert, 231 AD2d 893 [4th Dept 1996]; Matter of McClain v New York State Div. of Parole, 204 AD2d 456, 456 [2d Dept 1994]).

Petitioner asserts that denying him parole release and holding him for two years before allowing him to appear again before the Board is harsh and excessive. Petitioner continued using illegal drugs while incarcerated. Petitioner is fundamentally mistaken in arguing that his achievements entitle him to release, that the Board's failure to conclude that he should be released demonstrates that their decision is arbitrary or irrational, or that the Board failed to consider all of the factors. Discretionary release on parole shall not be granted merely as a reward for good conduct (Executive Law § 259-i[2][c]; Matter of Gutkaiss v New York State Div. of Parole, 50 AD3d 1418, 1418 [3d Dept 2008]; Matter of Guerin v New York State Div. of Parole, 276 AD2d 899, 900 [3d Dept 2000]).

Petitioner fails to support his conclusory allegation that the Board was even aware that Petitioner was the subject of a petition against him, much less that the petition was considered

by the Board and played a role in the challenged determination. Petitioner's conclusory allegations of misconduct by the Board are not borne out by the hearing transcript. Petitioner fails to address what actually transpired at the parole hearing, or to give specific examples of wrongdoing by the Board.

The Court also notes the absence of any merit in Petitioner's legal arguments, for Petitioner's failure to demonstrate that any of the improper factors he refers to played a role in the challenged determination, to address what actually transpired at the parole hearing, or to give examples of actual wrongdoing by the Board.

Petitioner's contentions have been reviewed and found to be without merit. Petitioner has failed to meet his burden of presenting evidence demonstrating that the Board violated any positive statutory requirement in determining not to release him. Petitioner's records support the rationality of the Board's determination, and it certainly cannot be held that the determination is so irrational as to border on impropriety (Matter of Russo v New York State Board of Parole, 50 NY2d 69, 77 [1980]; Matter of Wright v Parole Division, 132 AD2d 821, 822 [3d Dept 1987]).

Accordingly, the petition is dismissed and the relief requested therein is in all respects denied.

This Decision and Order is being returned to the attorneys for the Respondent. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall

not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that Rule respecting filing, entry and notice of entry.

So Ordered.

Dated: Albany, New York
April / , 2014

Joseph C. Teresi, J.S.C.

PAPERS CONSIDERED:

1. Order to Show Cause dated November 19, 2013; Petition dated October 4, 2013;
2. Answer dated January 22, 2014; Affirmation of Kristen Quaresimo, AAG dated January 22, 2014, with attached exhibits A - L.
3. Affidavit of Caleb G. Hyman dated February 4, 2014.