September 2021

Decision in Art. 78 proceeding - Jennette, Alvena (2007-03-01)

[*1]

Matter of Jennette v Dennison
2007 NY Slip Op 50339(U) [14 Misc 3d 1237(A)]
Decided on March 1, 2007
Supreme Court, Kings County
Harkavy, 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This opinion is uncorrected and will not be published in the printed Official Reports.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 March 1, 2007

Supreme Court, Kings County

In the Matter of the Application of Alvena Jennette, Petitioner, For a Judgement Pursuant to Article 78 of the Civil Practice Law and Rules,

against

Robert Dennison, Chairman New York State Division of Parole, Respondent.

30040/06

Petitioner:

Alvena Jennette

88A8232

Wyoming Correctional Facility

P.O. Box 501

Atica. New York 14011

Respondent Attorney:

Andrew M. Cuomo, Attorney General

120 Broadway

New York, New York 10271

(212) 416-8561

Ira B. Harkavy, J.

By Notice of Petition, dated October 16, 2006, petitioner Alvena Jennette, seeks an Order, pursuant to CPLR Article 78, vacating the decision of the respondent New York State Division of Parole ("the Parole Board"), dated December 7, 2006, which denied petitioner discretionary release to parole. Petitioner further seeks an Order directing respondent to, inter alia, provide petitioner with a de novo parole hearing. By Notice of Cross-Motion, dated February 16, 2007, the respondent seeks an Order dismissing the petition.

On July 28, 1988, petitioner was convicted of Murder in the Second Degree after a jury trial. On August 18, 1988, petitioner was sentenced to an indeterminate term of eighteen years to life. On June 7, 2005, petitioner appeared in front of the Parole Board for the first time and was denied discretionary release to parole. Petitioner administratively appealed that decision and was granted a de novo hearing on the grounds that the Parole Board considered erroneous information regarding plaintiffs prior criminal history. On December 6, 2006, a new hearing was held and petitioner was again denied discretionary release to parole. Petitioner again administratively appealed the decision of the Parole Board, and commenced the instant Article 78 proceeding on a number of different grounds. Subsequent to the bringing of the instant petition, the Parole Board again vacated its decision and granted petitioner a de novo hearing. The new hearing was held on February 14, 2007, and, by a decision dated February 15, 2007, the Parole Board [*2]again denied petitioner's request for discretionary release to parole.

The general rule in such situations is that a subsequent appearance before the Parole Board renders moot any claim with respect to a prior appearance before the Parole Board (*see e.g. Matter of Finkelstein v Travis*, 259 AD2d 546 [1999]; *Matter of Rivera v Travis*, 8 AD3d 716 [2004]; *Matter of Siao-Pao v Travis*, 5 AD3d 150 [2004]). This rule arises out of the fundamental principle that the power of a court is limited to determining issues which will actually affect the rights of the parties with respect to the controversy before it (*Matter of Marino v Travis*, 13 AD3d 453 [2004], citing *Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 714-715 [1980]). Courts have at times, however, recognized an exception to the doctrine of mootness and addressed petitioners claims even when a new Parole Hearing has been held (*see Matter of McLaurin v New York State Board of Parole*, 27 AD3d 565 [2006], *lv. denied* 7 NY3d 708 [2006]; *Matter of Standley v New York State Div. of Parole*, 34 AD3d 1169 [2006]; *Marino*, 13 AD3d at 454-455). The recognition of an exception to the doctrine of mootness requires three factors: "(1) a likelihood of repetition, either between the parties or among other members of the public; (2) a phenomenon typically evading review; and (3) a showing of significant or important questions not previously passed on, i.e., substantial and novel issues." (*Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 714-715 [1980][internal citations omitted]).

In *McLaurin*, 27 AD3d at 566, the petitioner challenged the decision of the Parole Board which denied him parole on the grounds that the Parole Board did not possess the minutes of petitioner's resentencing, and could not consider them at the parole hearing. The court in that case found that, although a new hearing was conducted, the Parole Board still did not have the minutes in its possession, and that the same issue which was the basis of petitioners claim would recur. In *Standley*, 34 AD3d 1169, the court similarly found that the Parole repeatedly failed to consider the sentencing minutes and recommendations of the sentencing court when it considered petitioner's request for parole on four separate occasions.

This Court does not find such an exception to the doctrine of mootness in this case, on this record. Petitioner appealed the June 7, 2005, decision of the Parole Board to deny petitioner's request for discretionary parole. On October 17, 2005, a three-member panel of Parole Commissioners considered petitioner's appeal. The panel recommended that the prior decision of the board be vacated and reversed, and that petitioner be give a de novo parole hearing. The decision of the Parole Board was based, in part, upon erroneous information that petitioner's criminal history included two prior felony drug convictions. In regard to the December 6, 2006, hearing there is no evidence before the court that the Parole Board again considered the same erroneous information and that such an error did recur.

The instant petition challenges the December 6, 2006, decision of the Parole Board on a number of different grounds. Petitioner asserts that the December 6, 2006, decision was improperly based, in part, upon a youthful offender adjudication; that petitioner was denied the opportunity to perfect an administrative appeal because petitioner was not [*3]given a verbatim copy of the record of the parole hearing; that the Parole Board improperly relied upon information outside of the record; and that the Parole Board failed to state their reason for denying petitioner's release to parole in sufficient detail. There is no evidence before the Court that any of petitioner's claims satisfy the three criteria for recognizing an exception to the doctrine of mootness.

Moreover, were the Court to consider petitioner's claims, the Court would be compelled to find that the Parole Board acted within its discretion, and that the December 6, 2006, decision of the Parole Board was neither arbitrary nor capricious (*see e.g. Matter of Serrano v New York State Exec. Dept-Div. of Parole*, 261 AD2d 163 [1999]; *Matter of Garcia v New York State Div. of Parole*, 239 AD2d 235 [1997]; *Matter of Putland v Herbert*, 231 AD2d 893 [1996]; *Matter of Heitman v New York State Board of Parole*, 214 AD2d 673 [1995]; *Mater of McLain v New York State Div. of Parole*, 204 AD2d 456 [1994]; *Matter of Davis v New York State Div. of Parole*, 114 AD2d 412 [1985]). Accordingly, it is

ORDERED and ADJUDGED, that the petition of Alveena Jenette to challenge the

December 6, 2006, decision of the New York State Division of Parole is hereby denied.

Dated: March 1, 2007

ENTER,

_____

IRA B. HARKAVY

J.S.C.

Return to Decision List