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[*1]

Matter of Lin v New York State Div. of Parole Chairperson Tina Stanford
2019 NY Slip Op 50439(U) [63 Misc 3d 1208(A)]
Decided on March 28, 2019
Supreme Court, St. Lawrence County
Feldstein, J.
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Decided on March 28, 2019

Supreme Court, St. Lawrence County

In the Matter of the Application of Danny Lin, Petitioner,
against
New York State Division of Parole Chairperson Tina Stanford, Respondent.

153548

S. Peter Feldstein, J.

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the Verified Petition of Danny Lin sworn to on August 7, 2018, which was filed in the St. Lawrence County Clerk's Office on August 17, 2018. Petitioner, who is an inmate at the Riverview Correctional Facility, is challenging the denial of parole release.

The Court issued an Order to Show Cause on August 23, 2018. In response thereto, the Court has received and considered the Answer and Return submitted by Alicia M. Lendon, Esq., Assistant Attorney General. In further support of the petition, the Court has considered the Reply papers of the Petitioner.

On October 17, 2016, the Petitioner was sentenced by the Supreme Court, New York County, to an indeterminate term of one and two-thirds (1 &frac23) to five (5) years incarceration upon the conviction following jury trial of one count of Manslaughter in the Second Degree. The Petitioner was found guilty of striking and killing a pedestrian while driving a motor vehicle at approximately 60 mph in a 25 mph zone. Petitioner initially appeared before the Parole Board on February 6, 2018 and was denied parole release with a 24 month hold. Petitioner timely appealed and the denial was affirmed.

Petitioner challenges the determination of the Parole Board as he argues that the seriousness of the crime was the basis of the denial. Petitioner asserts that the Parole Board failed to appreciate that he had taken full responsibility for his actions and that the Parole Board failed to consider the victim's intoxication was a factor in the accident despite the speed. Petition argues that the Parole Board failed to consider the statutory factors enumerated in Executive Law §259-i(2)(c).

The Parole Board denied parole and stated the following Conditions of Release/Staff Instructions/Reasons for Denial:

"Despite an earned eligibility certificate, parole is denied. After a record review, personal interview and due deliberation, it's the determination of this panel that, if released at this [*2]time, there is a reasonable probability that you would not live at liberty without violating the law, your release at this time is incompatible with the welfare and safety of the community. You stand convicted of manslaughter in the 2nd degree. The instant offense involved your speeding down the street at 6 (sic) in a vehicle you manipulated to travel faster. As a result, your vehicle struck and killed your victim. Your criminal hlistory (sic) reflects the instant offense.

This panel questions your judgment and disregard for law. Your COMPAS indicates a low risk in several individual areas as follows:

Arrest risk, prison misconduct, abscond risk. Consideration has been given to your case plan as well as assessment of your risk and needs for success on parole supervision. This panel notes your accomplishment in completing transitional services 1. However, despite this accomplishment, when considering all relevant factors, discretionary release is not warranted at this time. Your reckless behavior in manipulating your vehicle to drive at an accelerated speed, compiled with driving approximately 60 mph in a 25 mph jurisdiction placed both the driving public and pedestrians at grave risk. This panel notes your positive institutional behavior. (However, positive programming is not a reward for)." Answer, Ex. E.

Respondent argues that the petition should be dismissed. Respondent also asserts that "the Court's role 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.'" [Matter of Comfort v. New York State Div. of Parole, 68 AD3d 1295](#) citing [Matter of Hamilton v. New York State Div. of Parole, 119 AD3d 1268](#). Respondent argues that the Board considered all of the statutory guidelines, including the COMPAS Risk Assessment instrument as indicated in the Board's decision.

Executive Law §259-i(c)(A), as amended by L 2011, ch 62, part C, subpart A, §§38-f and 38-f-1, effective March 31, 2011, 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 procedures 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 interactions with staff and inmates; . . . (iii) release plans including community resources, employment, education and training and support services available to the inmate; . . . (vii) the seriousness of the offense with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court, the district attorney, the attorney for the inmate, the presentence probation report as well as consideration of any mitigating and aggravating factors, and activities following arrest prior to confinement; and (viii) prior criminal record, including the nature and pattern of [*3] offenses, adjustment to any previous probation or parole supervision and institutional confinement."

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 had been a showing of irrationality bordering on impropriety. *See Silmon v. Travis*, 95 NY2d 470; [Hamilton v. New York State Division of Parole, 119 AD3d 1268](#); [Vasquez v. Dennison, 28 AD3d 908](#) and [Webb v. Travis, 26 AD3d 614](#). 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 Jackson v. Evans, 118 AD3d 701](#), [Nankervis v. Dennison, 30 AD3d 521](#) and [Zane v. New York State Division of Parole, 231 AD2d 848](#).

The petition focuses upon the argument that the Parole Board failed to adequately consider/properly weigh all of the required statutory factors and instead relied excessively on the nature of the crime underlying Petitioner's incarceration. A Parole Board 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 Montane v. Evans, 116 AD3d 197](#); [see also Valentino v. Evans, 92 AD3d 1054](#) and [Martin v. New York State Division of Parole, 47 AD3d 1152](#). 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 (internal citations omitted)." [Comfort v. New York State Division of Parole, 68 AD3d 1295](#), 1296.

In the case at bar, a review of the Parole Board Report and transcript of Petitioner's February 6, 2018 appearance before the Parole Board reveal that the Board had before it information with respect to the appropriate statutory factors, including Petitioner's educational and therapeutic programming records, COMPAS ReEntry Risk Assessment Instrument, sentencing minutes, disciplinary record and letters of support regarding release, as well as information with respect to the circumstances of the crime underlying his incarceration and his lack of a prior criminal record. The Court, moreover, finds nothing in the hearing transcript to suggest that the Parole Board denied the Petitioner an opportunity to answer questions or provide insight into how and why he believed that he would be a good

candidate for release. The Parole Board also clearly had the sentencing minutes before it and had an opportunity to review the words of the trial judge. Of particular note, the sentencing judge stated the following:

"I accept that the defendant is a decent person, as most people would consider decent people who have lived a law abiding life in the past.

I can't consider this an aberration, however. It is also clear to me that this defendant basically, as the People have pointed out, lived a life of worshipping (*sic*) speed and fast driving, and was well aware of the consequences that this kind of activity could have." Answer, Ex. J (13:4-11)

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 the 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 crime underlying Petitioner's incarceration even in light of the Petitioner's remorse^[EN1]. [See *Neal v. Stanford*, 131 AD3d 1320](#) and [Confoy v. New York State Division of Parole](#), 173 AD2d 1014; [see also *Graziano v. Evans*, 90 AD3d 1367](#), 1369 [" 'while the Board may not consider [] factors outside the scope of the applicable statute, including penal philosophy', it can consider factors—such as remorse and insight into the offense—that are not enumerated in the statute but nonetheless relevant to an assessment of whether an inmate 'present[s] a danger to the community.' "]

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: March 28, 2019 at

Lake Pleasant, New York

S. Peter Feldstein

Acting Justice, Supreme Court

Footnotes

Footnote 1: It is noted that in the petition, the Petitioner alleges contributory negligence by the victim due to his intoxication. While this was not discussed during the Parole Board interview, it is apparent that the Petitioner's remorse is not absolute.

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