September 2021

Decision in Art. 78 proceeding - Louis, Jackson (2017-06-26)

Matter of Louis v New York State Bd. of Parole
2017 NY Slip Op 31990(U)
June 26, 2017
Supreme Court, St. Lawrence County
Docket Number: 149140
Judge: S. Peter Feldstein
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STATE OF NEW YORK
SUPREME COURT **COUNTY OF ST. LAWRENCE**

In the Matter of the Application of
JACKSON LOUIS,#91-A-1371,
Petitioner,

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

DECISION AND JUDGMENT
RJI #44-1-2017-0001.01
INDEX # 149140

-against-

NEW YORK STATE BOARD OF PAROLE,
Respondent.

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the Petition of Jackson Louis supported by the Petitioner's Affidavit in Support of Order to Show Cause, both sworn to on December 20, 2016. Both of these documents were filed in the St. Lawrence County Clerk's Office on January 3, 2017. Petitioner, who is an inmate at the Riverview Correctional Facility, is challenging the denial of parole in January of 2016.

The Court issued an Order to Show Cause on January 11, 2017 and has received and reviewed respondent's Answer and Return verified on March 31, 2017, including confidential Exhibit B, C and I. No further reply was received.

On February 19, 1991, following his conviction after a jury trial of the crimes of one (1) count of Murder in the Second Degree, the petitioner was sentenced by the Supreme Court, Kings County to an indeterminate term of incarceration for twenty-five (25) years to life. The petitioner re-appeared before the Parole Board on January 5, 2016. Following that appearance, Petitioner was denied discretionary parole release and it was directed that he be held for an additional 24 months. The parole denial determination reads as follows:

> "PAROLE IS DENIED. AFTER A REVIEW OF THE RECORD AND INTERVIEW, THE PANEL HAS DETERMINED THAT IF RELEASED AT

> THIS TIME THERE IS A REASONABLE PROBABILITY THAT YOU WOULD NOT LIVE AT LIBERTY W/O AGAIN VIOLATING THE LAW. THIS DECISION IS BASED ON THE FOLLOWING FACTORS. THE I.O. IS MURDER 2ND WHEREIN YOU DID SHOOT YOUR VICTIM TO DEATH DURING AN ARGUMENT. THIS IS YOUR 2ND NYS TERM OF INCARCERATION. YOUR RECORD DATES BACK TO APPROXIMATELY 1980. IT INCLUDES FELONIES AND MISDEMEANORS AS WELL AS PRIOR PRISON AND/OR JAIL AND FAILURE AT COMMUNITY SUPERVISION. YOU HAVE FAILED TO BENEFIT FROM PRIOR EFFORTS AT REHABILITATION, INCLUDING FAMILY COURT INTERVENTION. NOTE IS MADE BY THIS BOARD OF YOUR SENTENCING MINUTES, COMPAS CASE PLAN, COMPAS RISK ASSESSMENT, REHABILITATIVE EFFORTS, LETTERS OF SUPPORT AND OR REASONABLE ASSURANCE, DISCIPLINARY RECORD AND ALL OTHER REQUIRED FACTORS. ADDITIONALLY, YOUR RELEASE AT THIS TIME WOULD BE INCOMPATIBLE W/ THE WELFARE OF SOCIETY AND WOULD SO DEPRECATE THE SERIOUS NATURE OF THE CRIME AS TO UNDERMINE RESPECT FOR THE LAW." Resp. Ex. E.

An appeal of the parole board's determination was filed by the petitioner on July 20, 2016. Thereafter, the Board of Parole Appeals Unit upheld the determination on September 6, 2016.

Petitioner challenges the denial of parole release alleging that the parole board's determination was arbitrary and capricious, as well as irrational bordering on impropriety. The petitioner argues that the parole board failed to consider any of the other criteria pursuant to Executive Law §259-i, including the COMPAS risk assessment, and instead focused on the instant offense as well as the petitioner's previous criminal history without adequate consideration of positive factors, particularly that the petitioner faces likely deportation. Similarly, the petitioner argues that the parole board is relying upon the same criteria the trial judge used in sentencing the petitioner, which the petitioner argues constitutes an improper re-sentencing and such violates the double jeopardy clause. The

petitioner alleges that the parole board's decision was not sufficiently detailed to inform the petitioner of the reason for denial or provide guidance for future appearances. Finally, the petitioner asserts that there is a liberty interest in the expectation of early release and the petitioner has served more than 29 years.

Respondent argues that the petition should be dismissed in its entirety insofar as the parole board is afforded great discretion in determining parole release provided that the board considers the relevant factors as described in Executive Law §259-i(c)(A). Respondent argues that there is no requirement that the parole board give equal weight to each factor nor does an inmate's exemplary institutional record compel parole release. Respondent further asserts that the denial of parole is not akin to a re-sentencing. Furthermore, the petitioner's lengthy criminal history prior to the instant offense, including previous state incarceration, as well as a serious disciplinary record within the 24 months prior to the parole board appearance, were factors the parole board considered. Insofar as the petitioner failed to preserve the argument regarding his personal circumstances before the parole board, the respondent asserts that the petitioner cannot now raise such issue on appeal.

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 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.

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, reviews of the Parole Board Report and transcript of Petitioner's January 5, 2016 Parole Board appearance reveal that the Board had before it information with respect to the appropriate statutory factors, including Petitioner's vocational and therapeutic programming records. It was noted that the COMPAS ReEntry Risk Assessment Instrument score was relatively low other than the high scores for prison misconduct and history of violence. The parole board discussed with the petitioner his two (2) Tier II and one (1) Tier III disciplinary tickets that occurred between the initial appearance before the board and the current appearance. The parole board allowed the petitioner to explain his personal circumstances at the time of the instant offense for which he expressed remorse for his actions and attributed the crime to the lifestyle he had at the time which revolved around illegal drugs. The petitioner admitted that he had used drugs at the time of the instant offense. The petitioner asserted at length his desire to be deported to his native Haiti, although he currently does not have any family there nor a well-developed plan to support himself.

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. The Board also considered the lengthy criminal history of the petitioner, including previous state incarceration, as well as the age of the petitioner at the time of the instant offense. Based upon the transcript, the parole board considered all of the relevant factors, both positive and negative, and the decision to deny parole has not been shown to be arbitrary and capricious nor irrational. *See Neal v. Stanford,* 131 AD3d 1320 and *Confoy v. New York State Division of Parole*, 173 AD2d 1014.

Notwithstanding the petitioner's argument that the Parole Board's denial of parole is tantamount to re-sentencing, the argument is without merit. "[W]hile petitioner argues that the Board improperly extended his 20-year minimum period of incarceration by denying him parole, the Board was vested with the discretion to determine whether release was appropriate notwithstanding the fact that the sentencing court set this as the minimum term of petitioner's sentence (*see Matter of Silmon v Travis*, 95 NY2d 470, 476 [2000])." *Cody v. Dennison*, 33 AD3d 1141, 1142.

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: June 26, 2017
Indian Lake, New York

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S. Peter Feldstein
Acting Justice, Supreme Court