September 2021

Decision in Art. 78 proceeding - Patman, Tony (2013-09-04)

Matter of Patman v New York State Bd. of Parole
2013 NY Slip Op 32086(U)
September 4, 2013
Supreme Court, Albany County
Docket Number: 2539-13
Judge: George Ceresia

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In The Matter of TONY PATMAN,

Petitioner,

-against-

NEW YORK STATE BOARD OF PAROLE,

Respondent,

For A Judgment Pursuant to Article 78
of the Civil Practice Law and Rules.

Supreme Court Albany County Article 78 Term
Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding
RJI # 01-13-ST4756 Index No. 2539-13

Appearances: Tony Patman
Inmate No. 06-R-3684
Petitioner, Pro Se
Woodbourne Correctional Facility
99 Prison Road
P.O. Box 1000
Woodbourne, NY 12788-1000

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DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

The petitioner, an inmate at Woodbourne Correctional Facility, commenced the instant CPLR Article 78 proceeding to review a determination of respondent dated June 12, 2012

to deny petitioner discretionary release on parole. The petitioner is serving an aggregate concurrent term of five to ten years upon conviction of two counts of burglary in the third degree. In support of the instant petition, the petitioner indicates that since his incarceration he has kept himself occupied with positive programs including working outside the prison facility. He indicates that he has worked at outside construction sites; has painted churches; and worked at outside festivals, and in public parks. He has performed electrical work, installed sheet rock and helped remodel a children's youth center. He indicates that he has consistently expressed remorse for this crimes, as evidenced by his a plea of guilty. In his view he has taken full responsibility for his wrongdoing. He maintains that the Parole Board's determination was based chiefly, if not exclusively on his past criminal history; and that the Board gave little weight to his present ability to remain at liberty according to law. In his view the Parole Board was biased against him, and was not impartial. He contends that the Parole Board failed to consider the statutory factors under Executive Law 259-i (c) (c) (A), and that the determination was arbitrary and capricious and violated his right to due process. He indicates the Parole improperly failed to give any weight or credence to the recommendations and evaluations of counselors of the correctional facility. In addition, he maintains that the twenty-four month hold was excessive.

The reasons for the respondent's determination to deny petitioner release on parole are set forth as follows:

> "Denied - Hold for 24 months, Next appearance date: June 2014
>
> "Despite receipt of an earned eligibility certificate after a careful review of your record, personal interview and deliberation parole is denied. Your institutional record and release plans are noted. Required statutory factors have been considered

> including your risk to the community, rehabilitation efforts and your needs for successful reintegration into the community. This panel remains concerned however about your lengthy history of unlawful conduct including while on community supervision which when considered with required and relevant factors leads us to the conclusion that if released at this time there is a reasonable probability that you would not live and remain at liberty without violating the law and your release at this time is incompatible with the welfare and safety of the community."

Parole Release decisions are discretionary and, if made pursuant to statutory requirements, not reviewable (Matter of Campbell v Evans, 106 AD3d 1363, 1363-1364 [3d Dept., 2013]; Matter of De La Cruz v Travis, 10 AD3d 789 [3d Dept., 2004]; Matter of Collado v New York State Division of Parole, 287 AD2d 921 [3d Dept., 2001]). Furthermore, only a "showing of irrationality bordering on impropriety" on the part of the Parole Board has been found to necessitate judicial intervention (see Matter of Silmon v Travis, 95 NY2d 470, 476 [2000], quoting Matter of Russo v. New York State Bd. of Parole, 50 NY2d 69, 77 [1980]; see also Matter of Graziano v Evans, 90 AD3d 1367, 1369 [3d Dept., 2011]). In the absence of the above, there is no basis upon which to disturb the discretionary determination made by the Parole Board (see Matter of Perez v. New York State of Division of Parole, 294 AD2d 726 [3rd Dept., 2002]).

The Court finds that the Parole Board considered the relevant criteria in making its decision and its determination was supported by the record. A review of the transcript of the parole interview reveals that, in addition to the instant offenses, attention was paid to such factors as petitioner's institutional employment (including work outside the facility), and his plans upon being released (including entry into a drug treatment program, and eventually joining his mother in Athens, Georgia). The Commissioners noted that he had received an

earned eligibility certificate. The petitioner indicated that he would like to become employed in the construction industry. The Board acknowledged having received petitioner's risk assessment evaluation. The petitioner was given ample opportunity to make a statement on his own behalf in support of his release. Contrary to the assertions of the petitioner, there is no evidence of bias on the part of the Commissioners.

The decision was sufficiently detailed to inform the petitioner of the reasons for the denial of parole and it satisfied the requirements of Executive Law §259-i (see Matter of Siao-Pao, 11 NY3d 773 [2008]; Matter of Whitehead v. Russi, 201 AD2d 825 [3rd Dept., 1994]; Matter of Green v. New York State Division of Parole, 199 AD2d 677 [3rd Dept., 1993]). It is proper and, in fact, required, that the Parole Board consider the seriousness of the inmate's crimes and their violent nature (see Matter of Matos v New York State Board of Parole, 87 AD3d 1193 [3d Dept., 2011]; Matter of Dudley v Travis, 227 AD2d 863, [3rd Dept., 1996), as well as the inmate's criminal history (see Matter of Farid v Travis, 239 AD2d 629 [3rd Dept., 1997]; Matter of Cohen v Gonzalez, 254 AD2d 556 [3rd Dept., 1998]). The Parole Board is not required to enumerate or give equal weight to each factor that it considered in determining the inmate's application, or to expressly discuss each one (see Matter of Davis v Evans, 105 AD3d 1305 [3d Dept., 2013]; Matter of MacKenzie v Evans, 95 AD3d 1613 [3d Dept., 2012]; Matter of Matos v New York State Board of Parole, supra; Matter of Young v New York Division of Parole, 74 AD3d 1681, 1681-1682 [3rd Dept., 2010]). Nor must the parole board recite the precise statutory language set forth in the first sentence of Executive Law § 259-i (2) (c) (A) (see Matter of Silvero v Dennison, 28 AD3d 859 [3rd Dept., 2006]). In other words, "[w]here appropriate the Board may give

considerable weight to, or place particular emphasis on, the circumstances of the crimes for which a petitioner is incarcerated, as well as a petitioner's criminal history, together with the other statutory factors, in determining whether the individual 'will live and remain at liberty without violating the law,' whether his or her 'release is not incompatible with the welfare of society,' and whether release will 'deprecate the seriousness of [the] crime as to undermine respect for [the] law'" (Matter of Durio v New York State Division of Parole, 3 AD3d 816 [3rd Dept., 2004], quoting Executive Law §259-i [2] [c] [A], other citations omitted).

It is well settled that receipt of a certificate of earned eligibility does not serve as a guarantee of release (Matter of Dorman v New York State Board of Parole, 30 AD3d 880 [3rd Dept., 2006]; Matter of Pearl v New York State Division of Parole, 25 AD3d 1058 [3rd Dept., 2006]).

With regard to petitioner's arguments concerning an alleged violation of his right to due process, the Court first observes that there is no inherent right to parole under the constitution of either the United States or the State of New York (see Greenholtz v Inmates of the Nebraska Penal and Correctional Complex, 442 US 1, 7 [1979]; Matter of Russo v New York State Bd. of Parole, 50 NY2d 69, 73, supra). It has been repeatedly held that Executive Law § 259-i does not create in any prisoner an entitlement to, or a legitimate expectation of, release; therefore, no constitutionally protected liberty interests are implicated by the Parole Board's exercise of its discretion to deny parole (see Barna v Travis, 239 F3d 169, 171 [2d Cir., 2001]; Marvin v Goord, 255 F3d 40, 44 [2d Cir., 2001]; Boothe v Hammock, 605 F2d 661, 664 [2d Cir., 1979]; Paunetto v Hammock, 516 F Supp 1367, 1367-

1368 [SD NY, 1981]; Matter of Russo v New York State Bd. of Parole, 50 NY2d 69, 75-76, supra, Matter of Gamez v Dennison, 18 AD3d 1099 [3rd Dept., 2005]; Matter of Lozada v New York State Div. of Parole, 36 AD3d 1046, 1046 [3rd Dept., 2007]). The Court, accordingly, finds no due process violation.

The Parole Board properly engaged in a risk and needs assessment as required under Executive Law § 259-c (4).

Lastly, the Parole Board's decision to hold petitioner for the maximum period (24 months) is within the Board's discretion and was supported by the record (see Matter of Campbell v Evans, 106 AD3d 1363, supra, at 1364, citing Matter of Tatta v State of New York Division of Parole, 290 AD2d 907 [3rd Dept., 2002], lv denied 98 NY2d 604 [2002]).

The Court has reviewed petitioner's remaining arguments and contentions and finds them to be without merit.

The Court finds the decision of the Parole Board was not irrational, in violation of lawful procedure, affected by an error of law, irrational or arbitrary and capricious. The petition must therefore be dismissed.

The Court observes that certain records of a confidential nature relating to the petitioner were submitted to the Court as a part of the record. The Court, by separate order, is sealing all records submitted for *in camera* review.

Accordingly, it is

ORDERED and ADJUDGED, that the petition be and hereby is dismissed.

This shall constitute the decision, order and judgment of the Court. The original decision/order/judgment is returned to the attorney for the respondents. All other papers are

being delivered by the Court to the County Clerk for filing. The signing of this decision/order/judgment and delivery of this decision/order/judgment does 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.

ENTER

Dated: September 4, 2013
Troy, New York

George B. Ceresia, Jr.
Supreme Court Justice

Papers Considered:

1. Order To Show Cause dated May 20, 2013, Petition, Supporting Papers and Exhibits
2. Respondent's Answer dated July 17, 2013, Supporting Papers and Exhibits

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SEALING ORDER

The following documents having been filed by the respondent with the Court for *in camera* review in connection with the above matter, namely, respondent's Exhibit B, Presentence Investigation Report, and respondent's Exhibit D, Confidential Portion of Inmate Status Report, it is hereby

ORDERED, that the foregoing designated documents, including all duplicates and copies thereof, shall be filed as sealed instruments and not made available to any person or public or private agency unless by further order of the Court.

ENTER

Dated: September 4, 2013
Troy, New York

George B. Ceresia, Jr.
Supreme Court Justice