September 2021

Decision in Art. 78 proceeding - Quartararo, Michael (1995-08-03)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 39
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IN THE MATTER OF THE APPLICATION OF
MICHAEL QUARTARARO,

Petitioner, Index No. 45734/92

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

- against -

THE NEW YORK STATE DIVISION OF
PAROLE, RAUL RUSSI, Chairman,

Respondent.

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KRISTIN BOOTH GLEN, J.:

On February 11, 1992 petitioner was denied parole after a hearing which he subsequently challenged in this court by way of an Article 78 proceeding. In a decision dated January 31, 1994, I granted his petition and remanded to the Parole Board for a de novo consideration, finding that:

> ...the Board misconstrued its role and prejudged this parole application and therefore its determination to deny parole must be set aside and a de novo hearing held.

In addition to the "misconstruing of its role" which was the basis for the reversal, I also considered several issues raised by petitioner concerning materials allegedly improperly considered by the Board. I carefully reviewed and wrote about each of the claimed errors "in order to avoid their repetition at the de novo

hearing."

I specifically held that the Board could not consider the confession of Peter Quartararo, petitioner's brother, which had been found unconstitutionally and illegally obtained, Quartararo v Montello, 715 F. Supp. 449 (E.D.N.Y. 1989) aff'd 888 F 2d 126 (2nd Cir. 1989).[1] A subsequent decision of our Court of Appeals, People v Brenesic, 70 NY2d 910 (1987) found that Peter Quartararo's confession was not only unconstitutionally obtained but also unreliable as a matter of law.[2]

In addition to the confession itself, I also considered that the Parole Board had relied upon the fact of petitioner's first conviction. Since this conviction had been overturned on constitutional grounds because of the ineffective assistance of counsel, I held:

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[1] The District Court took note of the fact that the Temporary Commission of Investigation of the State of New York, in its investigation of the practices of the Suffolk County District Attorney's Office and Police Department found that the Suffolk County police deliberately violated the United States Constitution and New York laws and that their behavior was "characteristic of conduct long tolerated by responsible officials of the Suffolk County Police Department and the District Attorney's Office." 715 F. Supp. at 456. See also, Report of the Temporary Commission on Investigation of the State of New York, dated April, 1989.

[2] This was an appeal by one of the co-defendants, who was tried separately from the petitioner and Peter. The other co-defendant, Thomas Ryan also had his conviction reversed based on the illegally obtained and unreliable confession of Peter Quartararo. People v Ryan, 134 AD2d 300 (2nd Dept. 1987).

> The contents of an unreliable confession and the outcome of a trial so defective that the conviction was reversed on ineffective assistance of counsel grounds, have no place in a Parole Board hearing and determination.

Third, I noticed that there was some evidence that the Parole Board members improperly relied upon press accounts in their review of petitioner's application. This was a notorious crime, and continues to arouse strong feelings, even so many years after its occurrence. In accordance with such cases as People ex rel Howlind v Henderson, 54 AD2d 614 (4th Dept. 1976) and Brennan v Cunningham, 813 F. 2d 1 (1st Cir. 1987) I specifically held that:

> The Parole Board shall not weigh or even mention press reports or their contents in a hearing de novo or in any future hearings.

I next considered petitioner's allegations that the Board had improperly considered the revocation of his participation in work release. In an in camera examination of the parole file I found documents relating to investigation of allegations made against petitioner which resulted in the revocation, although petitioner was never given an opportunity to rebut the allegations, or any other due process in relation to the Department of Correctional Services' revocation. Nevertheless it seemed clear that the board had relied upon these completely unchallenged ex parte allegations. Accordingly, I ordered that:

> ... all documentation concerning the work release revocation investigation be removed

> from the parole file, unless in the interim, petitioner has had notice of the basis for the revocation, and the opportunity for a hearing or review of the determination in accordance with Correction Law §150 et. seq. and 7 NYCRR §1904.

Finally, I considered the inclusion of photographs of the victim which were apparently furnished to the Parole Board by the District Attorney of Suffolk County, allegedly in an attempt to inflame the Parole Board against the petitioner.[3] I ordered that the photographs be removed from the parole file and returned to the District Attorney or Supreme Court, Suffolk County, whichever was appropriate. The respondent did not appeal my decision, and on February 23, 1994, the de novo parole hearing which I had ordered was held.

The February 1994 Hearing

Although denominated a de novo hearing, no new Inmate Status Report, required for parole hearings, was prepared or utilized. Instead, the contents of the Report which had been prepared for the February 1992 hearing was employed. The only changes were the typeface and the date at the top of the Report, but in all other respects the two Reports were identical. Unfortunately, in many other respects, the February 1994 hearing was a replay of that

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[3] The inflammatory and gratuitous use of these pictures at trial had already been commented upon by a federal court in overturning petitioner's conviction. Quartararo v Fogg, supra, 679 F. Supp. at 243.

which I had already found improper. This hearing was conducted by Parole Commissioners Treen and Tauriello.

Despite my order that Peter Quartararo's confession not be considered, it is clear from a number of facts that the confession was prominent in the minds of the two Parole Commissioners. For example, petitioner stated in an unrebutted affidavit that he observed Commissioner Treen reading the 1992 transcript, a transcript which, as already noted, contained substantial reference to Peter Quartararo's confession. Commissioner Treen's affidavit here does not deny that she reviewed the 1992 transcript. Instead, she claims that she was instructed "not to consider Peter Quartararo's suppressed confession and petitioner's first conviction which was reversed... press reports of the crime or documents concerning a work release revocation investigation." Having been specifically told inflammatory, prejudicial, and improper items upon which the question of parole could not be determined, it strains credulity to believe that these matters were not in some way in the mind of Commissioner Treen during the de novo hearing.

More to the point, however, the file contained letters from the Suffolk County District Attorney's which specifically discussed and relied upon Peter Quartararo's confession. District Attorney Patterson wrote:

> Peter Quartararo confessed to police and his own mother that he and three other youths had killed John Pius. Peter Quartararo's detailed confession was fully corroborated by evidence found at the crime scene and information received from independent sources.
>
> (emphasis added)

Patterson went on to comment on the reversal of the 1981 conviction, stating that it was "not based on any question of [petitioner's] guilt," thus demonstrating his unfamiliarity with the requirements of Strickland v Washington, 466 U.S. 668, 694 (1984) and Judge Korman's comments about the weakness of the case. The file also contains a letter from an Assistant District Attorney Jones which similarly refers to the suppressed confession and asserts, erroneously, that it was fully corroborated by other evidence.

In addition, the file, like all others, contains the minutes of petitioner's sentence, see Pen. L. §380.70, see also Exec. L. §259-a. At sentencing the District Attorney, over objection, read extensively from Peter Quartararo's confession. It is clear that references to this suppressed confession appear in at least two places, and excerpts from it appear on a third. Neither these extensive references to, and excerpts from Peter Quartararo's confession, nor the references in the two Assistant District Attorney's letters were redacted from the parole file which was submitted to Commissioners Treen and Tauriello as was required by

my decision and order.

The transcript of the February hearing indicates that much of what occurred was an attempt to have petitioner confess to the crime, which he refused to do, based on assertion of his Fifth Amendment privilege[4] although he repeatedly expressed sorrow over the death of John Pius, and sympathy with the loss suffered by his parents. The Board denied parole based on what it characterized as his lack of remorse, with his assertions of innocence characterized as "intellectualism of the crime." The Board found that such lack of remorse and "intellectualism" was "an impression of insensitivity on [petitioner's] part, and as such we maintain a belief that [his] release at this opportunity is not in the best interest of the welfare of the community."

Because of the delay caused by the various levels of appeal from the first parole hearing, petitioner's next regularly scheduled parole hearing occurred a month after the de novo hearing, on March 23, 1994.

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[4] At the time of the hearing, a challenge to petitioner's conviction by way of federal habeas corpus was pending. One of petitioner's arguments in this proceeding is that this questioning and the "punishment" which he alleges flowed from his assertion of the privilege violated his constitutional rights, and requires reversal of the Parole Board's determinations. Because I have decided this proceeding in his favor on other grounds, it is neither necessary nor appropriate to reach the constitutional issue.

The March Hearing

This time the hearing was before Commissioners George King and Julian Rhodes. As at the February hearing, the letters containing information of Peter Quartararo's confession, as well as the sentencing minutes were in the file presented to and considered by those Commissioners. Once again, there is extraneous evidence that the confessions were considered during the course of this hearing. The minutes contain an undeniable reference to the suppressed confession, where Commissioner King asks:

> Do you know of any reason that the co-defendants would have to implicate you in [John Pius's] death? Do you have any bad blood - - was there bad blood or some disagreement between you and the co-defendant's that requires them to implicate you in this crime?
>
> (emphasis added)

Once again petitioner expressed deep sorrow for the death of John Pius stating:

> That was a horrible kind of tragic thing that happened, and I'm sorry that it happened...

but refused to discuss his "guilt." Parole was again denied, this time the basis set forth by the Board was the seriousness of the crime and its belief that his refusal to admit to the crime despite counseling meant that he had gained no insight into the behavior which resulted in his conviction. It wrote:

> Further extensive confinement within a structured setting is required to safeguard

> community protection while you participate in extensive counseling to erode the massive wall you've placed between your emotions and your criminal behavior.

Violations of the January 1993 Order

As is clear from this brief recitation of the facts of the de novo and March parole hearings, the Board continued to consider and, in the case of the confession, may well have relied upon material which I specifically ordered removed from the files. This includes not only references to the suppressed confession already discussed, but also documents pertaining to the work release issue, and "public pressure."

As to work release documents, despite an initial denial here, the State has now conceded that the file contains the following documents relating to the petitioner's participation in the work release program.

> Application and Denial for Program for April 1991; Application and Denial of Application 9/91; Queensborough TRP Memorandum of Agreement 1/17/92, Furlough papers dated 1/24/92, and E-Mail referencing a 2/12/92 review to the Temporary Release Committee (TRC) at Queensborough Correctional Facility from Senior Counselor Lester advising of petitioner's removal from work release program due to the two-year hold imposed by the February 1992 Board of Parole decision (in accord with statutory requirements)[5]

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[5] Despite an earlier claim that the law required work release to be revoked upon denial of parole, it is now conceded (continued...)

My order required that no information about removal from work release be contained in the file unless and until petitioner was given notice and a hearing or similar due process. The State initially claimed that petitioner had been given such notice by virtue of a February 27, 1992 memo from the Director of Temporary Release Programs which simply affirmed the revocation. The second document which the State claims provided notice was a June 15, 1993 letter to the petitioner from Department of Correctional Services Deputy Commissioner Coombe, indicating that removal from the work release program occurred because petitioner was denied parole. As already noted, this is an incorrect statement of the law.

In addition, this document, the only one received by the petitioner, (except by virtue of submission of the first document to court and, therefore presumably made available to petitioner through his attorneys) is dated almost a year and a half after petitioner's work release was revoked and affirmed. This can

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[5](...continued)
that removal from the work release program is not automatic due to a two year parole hold. In Volpis v Department of Correction, 154 Misc 2d 625 (Sup. Ct. Kings Co. 1992) the court interpreted NYCL §851, holding that when an inmate currently participating in a temporary release program is denied parole the inmate cannot automatically become ineligible for temporary release because of the parole denial. Rather, the Department is required to review the inmate's status to determine if continued participation is appropriate. The court additionally noted that the statute indicates that the concept of "Temporary Release Program" is separate and unrelated to parole denial.

hardly be considered notice, nor, in any way, satisfy even minimal requirements of due process. The inclusion of such documents therefore also clearly violates my order.

Finally, petitioner claims that the February de novo hearing was affected by public pressure in the form of letters from the public. Despite denial by the respondent in its Verified Answer, the hearing transcript reveals that the Commissioners were familiar with these letters.[6] Thus, although no specific press accounts have been found in the file, it appears that letters other than those specifically permitted under the statute, reflecting the public pressure against which my prior opinion warned, were before the Board and considered by them.

It is clear that not once, but twice after my decision and order, the Board impermissibly considered a number of highly prejudicial and unlawful items in denying petitioner parole in February and March of 1994. This impermissible consideration and

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[6] Commissioner Treen stated:

> ...obviously this is a very heavy folder. There are letters in here from people who have come in contact with you both from the community for employment and corrections, people I guess you and/or your family have reached out to. And of course there are letters talking about other aspects of Michael Quartararo, with the victim impact letters and so forth.
>
> (emphasis added)

violation of the prior order would clearly call for relief, but the respondent has interposed a number of technical and procedural objections which must be dealt with before proceeding to the merits.

PROCEDURAL ISSUES

In June 1994, petitioner, appearing pro se brought a motion to hold the respondents in contempt for their alleged failure to comply with my January 1994 order. In the alternative, petitioner moved for an order granting release on parole. Respondent opposed the contempt motion on several grounds, including lack of personal jurisdiction. In an order dated August 30, 1994, I granted respondent's motion to dismiss the contempt proceeding. Pursuant to CPLR 103, I converted the motion to an Article 78 petition challenging the parole determination made after the February 1994 de novo hearing.

In its answer to the motion, and to the newly denominated Article 78 petition, respondent mentioned, in passing, that venue was improper, but made no motion for a change of venue. In addition, respondent originally challenged the Article 78 proceeding as moot, because of the new hearing held in March of 1994.[7] At the time of conversion to the Article 78 proceeding,

[7] Because the generally appropriate disposition in an Article 78 challenge to parole hearing is rehearing, see, e.g., (continued...)

the Parole Board's March determination was not final, so the conversion order could not include an Article 78 challenge to that decision. However by March 20, 1995, all administrative remedies for the March parole denial were exhausted. Petitioner, now represented by a clinic at Fordham Law School, moved to have an Article 78 challenge to the March 1994 hearing consolidated in this proceeding. That motion was granted without objection, but with respondent reserving its exception to venue, discussed infra.

Any question of exhaustion of administrative remedies is no longer in this case. The only possible impediment to my consideration of the Board's actions in both the February and March 1994 hearings is respondent's belated claim that there is no venue New York County. It is to this claim which we must next, albeit briefly, turn.

Respondent argues that this proceeding can only be heard in Albany County and that it has been improperly venued in New York County. Respondent relies upon CPLR §78.04(b) which refers to the

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[7](...continued)
Matter of Morgan v Board, 198 AD2d 836 (4th Dept. 1993) Matter of Kenny v Division, 198 AD2d 423, 435, (1st Dept. 1993) a successful resolution of the petition would simply require a new hearing. Since he received an additional release hearing in March, the respondent argued that any challenge to his February hearing was moot, because the result of the February hearing was no longer that which held petitioner in the correctional system. See, Matter of James v Lussi, ____AD2d____ 621 NYS 2d 894 (2nd Dept. 1995).

venue provisions of CPLR §506(b). The latter provides that when an action is brought against a body or officer it must be venued as follows:

> A proceeding against a body or officer shall be commenced in any county within the judicial district where the respondent made the determination complained of... or where the material events otherwise took place, or where the principal office of the respondent is located...

The decision complained of occurred at Walkill Correctional Facility in Ulster County, the final determination occurred in Albany County where the Parole Board's principal office is located and Albany County is also an appropriate venue under the "principal office" provision of the statute.

This, however, does not end the inquiry. Article 5 of the CPLR contains procedures by which improper venue must be challenged. Rule 511 provides for the service of a demand for change of venue on the ground that the county designated is not a proper county, CPLR §511(a). That demand must be served with the answer, or prior to service of the answer. If the party who has improperly venued the action or proceeding does not respond within five days after such service, the party seeking change of venue must move for change of venue within 15 days of service of the demand. Compliance with this demand and motion procedure is mandatory. See, e.g., State v Whitney, 66 AD2d 1029 (4th Dept.

1978).[8]

If a timely statutory demand for change of venue pursuant to CPLR §511(a) is not made, the party seeking a change of venue is "...foreclosed from obtaining a change of venue pursuant to CPLR §504 and the issue is committed to the court's discretion." Losicco v Gardner's Village Inc., 97 AD2d 535, 536 (2nd Dept. 1983). Cf. Morales v City of New York, 189 AD2d 581 (1st Dept. 1993) (because motion was timely made, although undecided, subsequent discretionary motion can be decided in favor of change of venue.)

In the instant case, no statutory demand was ever made. The petitioner's motion to hold respondent in contempt was converted to an Article 78 proceeding by Order dated August 30th, 1994. On October 12, 1994, respondent filed a Verified Answer. Referring to the February, 1994 hearing, the answer states that petition is improperly venued in New York County, but makes no demand for a change of venue.[9] Nor, to this date, has any motion for change of

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[8] The Appellate Division, First Department, like the other departments, has "declined to construe [the] statutory time requirement [or demand a change of venue based on the designation of an improper county] as merely discretionary." Pittman v Maher, 202 AD2d 172, (1st Dept. 1994).

[9] The venue issue was "mentioned" once before. In its June 23, 1994 Notice of Cross Motion to Dismiss, the Affidavit in Support of Respondent's motion included the comment that "petitioner must proceed in the proper venue..." but neither (continued...)

venue been made.[10]

As a technical matter, therefore, the question of improper venue is not before me. However, as a practical matter, this issue was raised during the oral arguments held before me, and, I believe, is properly disposed of here.

At best, were there an actual motion before me, the determination as to whether venue should be removed from New York county would be discretionary because of the failure to serve a §511 demand. I exercise my discretion to deny any change of venue for the following reasons:

1. This court has had jurisdiction over petitioner's problems with the Parole Board since at least 1993. Respondent appeared at all times on the Article 78 proceeding challenging

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[9](...continued)
stated where proper venue lay nor made any demand for change of venue.

[10] It is clear that even if a case or proceeding is improperly venued, there is no lack of jurisdiction in a Supreme Court which renders a decision in that case or proceeding. See, e.g., McLaughlin Practice Commentaries, see 509:1 7(b) McKinney's CPLR p 69 (1976) D. Siegel, New York Practice (2nd Ed. 183 1991). As Professor Siegel states, in an Article 78 proceeding:

> A failure to object to proper venue is a waiver of the objection, citing HVAC and Sprinkler Contractors Ass'n Inc. v State Univ. Constr. Fund, 80 Misc 2d 1047 (Sup. Ct. Nassau Co. 1975) the ensuing judgment on the merits is valid." Siegel, supra at p 886.

petitioner's February, 1992 parole hearing. No objection to venue in New York County was ever made, and this court rendered a lengthy decision, supra, with specific instructions to the Parole Board. No indication that the case was improperly venued was made at that time or at any time thereafter until June of 1994. Respondent is, thus, at the very least, guilty of laches.

2. The interests of conservation of judicial time are served by retaining venue in New York County. I am fully familiar with the facts of this case, having reviewed the Parole Board records in camera, and having heard a number of oral arguments on the instant petition, as well, of course, as on the prior petition. To transfer this case to another county and another judge would result in an enormous waste of judicial resources.

3. The issue of convenience of the parties also clearly weighs toward leaving venue in New York county. The respondent, although it has its principal office in Albany, has an office in New York, and has been represented throughout this proceeding by an Assistant Attorney General located in New York County.

Since June of 1994 the petitioner has been represented by Lincoln Square Legal Services, Inc., a clinic run in conjunction with Fordham University School of Law located in New York County. In its Memorandum in Support of Petition dated April 24, 1995, the clinic states that if the proceeding is transferred to Albany

County, it may no longer be able to represent the petitioner, and even if representation is continued, the lack of resources for travel, etc., would make such representation extremely difficult, if not impossible.

The clinic has done an extraordinary job in representing petitioner thus far;[11] its fine representation is an aid not only to its client but also to the court. The potential deprivation of counsel which would result from changing venue clearly militates against such change, and in favor of retention in New York County.

For all of the above reasons I exercise my discretion, to the extent that the issue is even before me, to retain jurisdiction and to decide this Article 78 proceeding.

REMEDY

Ordinarily, the appropriate remedy upon annulment of the Parole Board's action would be, as in my prior order, to remand for a rehearing in accordance with the specific provisions, if any, of the court's order. On the unique facts of this case, however, a different remedy is required.

I begin by noting that the petitioner has met all of the

[11] Clinical Professor James Cohen and his students Matthew Cushing, Milind Parekh, Sarena Straus and Sarah Watson are to be commended for the quality of their work and the high degree of professionalism they have demonstrated.

statutory requirements to demonstrate that if released, he can "live and remain at liberty without violating the law" Exec. L. 259-i(c)(1) and that his release is compatible with the welfare of society, Exec. L. 259-i(c)(2).

First, as described in my prior opinion, in 1988 petitioner was released on bail by a federal court which held:

> There is no basis for finding that [petitioner] poses a danger to the public if released. Quartararo v Fogg, #86-cv-2337 (E.D.N.Y.) (unpublished order, dated 03/18/88.)

Indeed, following his release on bail pending a new trial, petitioner distinguished himself as a model citizen. He worked, sometimes at two jobs, attended college, met and married his wife Patricia. He became involved in community affairs such as the local Parent Teachers Association, and helped raise and support his wife's two school-aged children. He had no conflicts with the law during this period, and he made all scheduled court appearances.

Second, even after petitioner was returned to prison in 1990, he continued on a path of positive growth, graduating with honors from the State University of New York at New Paltz, continuing his model behavior, and participating in numerous other programs in prison.

In October 1991, after review by no less than six ranking correctional professionals, petitioner was approved for the DOCS

Temporary Release Program. Initially, he left an upstate prison on two unescorted seven-day furloughs for the Thanksgiving and Christmas holidays. In January 1992, petitioner was transferred to work release. He immediately secured employment as an administrative assistant in a manufacturing firm. Petitioner obeyed all rules and regulations, made all required reports, and continued his model behavior.

Third, the record contains three psychological reports. All portray petitioner as a thoroughly self-managing young man without mental illness, without thought disorder, clear thinking and reality oriented, and perhaps most significantly, not suicidal or homicidal or a danger to himself or others. And, finally, as discussed at length in my prior decision petitioner's institutional record is exemplary.

Nor can the third requirement of the "reasonable probability" standard of Exec. L. 251-i(c), that the defendant's release "will serve to deprecate the seriousness of the crime as to undermine respect for the law" Exec. L. 259-i(c)(3) make petitioner ineligible for parole. The seriousness of the crime is not basis by itself, for denying parole. E.g., Matter of King v Division of Parole, 190 AD2d 423 (1st Dept. 1993) aff'd 83 NY2d 788 (1994).

The King case is illustrative. There the defendant was convicted of murder, manslaughter in the second degree, attempted

robbery in the first degree, assault first degree and possession of a dangerous weapon. The charges arose out of the shooting death of an off duty police officer during the robbery of a fast food restaurant by two men. Despite the seriousness of the crime, and the importance of impressing upon the public the utter impermissibility of assaulting or, worse, killing a police officer, the First Department in King noted that the petitioner's extraordinary rehabilitative achievements "...would appear to strongly militate in favor of granting parole" and found "...it difficult to believe that petitioner would be denied parole after a hearing at which the statutory factors are fairly and properly applied." Id. at 532-34.

As in King, the crime for which petitioner was convicted is a most serious one. It is, however, difficult to conclude that this single event which occurred more than sixteen years ago, when the petitioner was fourteen years of age, could be the sole basis for the Parole Board's denial of parole on any of the three statutory grounds, particularly in light of the events which have transpired during the decade and a half since the crime occurred. Like the Appellate Division in King, I find it almost impossible to believe that a parole hearing in which the statutory factors were fairly and properly applied could result in anything other than the petitioner's release on parole, yet this is what has happened not

happened not once, but on three separate occasions. Accordingly, I find that the only appropriate relief left to this court is a direction to the respondent to release the petitioner to parole supervision.

Respondent has demonstrated the petitioner will never receive a fair parole hearing. On three separate occasions respondent has shown that it cannot or will not follow its own regulations, statutory mandate, or the lawful order of this court. Each of petitioner's hearings has been tainted by improper and prejudicial information, including that which I specifically ordered respondent not to consider. The Board has failed to support any of its determinations by adequate evidence, has misconstrued its role, power and duty, prejudged each of petitioner's parole applications, and applied the wrong legal standard. For all of these reasons, and because it is difficult if not impossible to believe that each of the nineteen State Parole Commissioners has not formed an opinion or been tainted in some way by the improprieties in this case, the only appropriate relief is an order directing release.

CPLR §7806 provides that in a proceeding to review an agency determination, "the judgment may grant petitioner the relief to which he is entitled... and may direct or prohibit specified action by the respondent." The court's remedial powers under 7806 are broad, and include the power to direct respondent to release

petitioner on parole. In at least one other remarkably similar case, the court ordered a parole applicant released on parole after several hearings at which the Board ignored court orders and refused to adhere to appellate court rulings. People ex rel Schaurer v Smith, 81 Misc 2d 1039 (Sup. Ct. Wyo. Co. 1975).[12] The court imposed this drastic remedy on the basis of its finding that "it is absolutely useless to send this inmate back [to the Board] for a new hearing" id. at p 1043. It would similarly be "useless"[13] to remand this case for a fourth hearing.

CONCLUSION

For all of the above reasons, the Parole Board's determinations of February and March 1994 are annulled, and the Board is directed to release petitioner to parole supervision.

This constitutes the decision and judgment of the court.

DATED: AUGUST 3 1995

Kristin Booth Glen
J.S.C.

Norman Goodman

[12] A court's power to order this release is also supported by the Second Department's decision in Matter of Telefarro v Hammock, 84 AD2d 790 (2nd Dept. 1981).

[13] Ordering yet another de novo hearing, which respondent suggests is the only available remedy, would result in petitioner being placed on an absurd procedural merry go round in which respondent would be free to make the same irrational and unsupported determination while the court stands powerless to do anything except send the case around for another "spin." This scenario would not only result in a complete waste of judicial and administrative resources, but, more seriously, a total deprivation of petitioner's right to a fair hearing which, if provided, would surely result in his release.