September 2021

Decision in Art. 78 proceeding - Reyes, Joel (2015-12-11)

[*1]

Matter of Reyes v Stanford
2015 NY Slip Op 51843(U) [50 Misc 3d 1201(A)]
Decided on December 11, 2015
Supreme Court, Franklin County
Feldstein, J.
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Decided on December 11, 2015

Supreme Court, Franklin County

In the Matter of the Application of Joel Reyes, No. 88-A-2651, Petitioner, for Judgment Pursuant to Article 78 of the Civil Practice Law and Rules

against

Tina Stanford, Chairwoman, NYS Board of Parole, Respondent.

2015-665
S. Peter Feldstein, J.

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the Petition of Joel Reyes, verified on June 24, 2015 and filed in the Franklin County Clerk's Office on August 11, 2015. Petitioner, who is an inmate at the Franklin Correctional Facility, is challenging the June 2014 determination denying him discretionary parole release. The Court issued an Order to Show Cause on August 17, 2015 and has received and reviewed respondent's Answer and Return, including *in camera* materials, verified on October 2, 2015 and supported by the Letter Memorandum of Christopher J. Fleury, Esq., Assistant Attorney General, dated October 2, 2015. The Court has also received and reviewed petitioner's Reply and Return/Memorandum of Law, both dated October 20, 2015 and both filed in the Franklin County Clerk's office on October 27, 2015.

On February 24, 1988 petitioner was sentenced in Supreme Court, New York County, to a controlling indeterminate sentence of 18 years to life upon his convictions of the crimes of Murder 2°, Manslaughter 2° and Attempted Robbery 2°. The convictions were affirmed on direct appeal to the Appellate Division, First Department. *People v. Reyes*, 162 AD2d 420, *lv denied* 76 NY2d 896. After having been denied discretionary parole release on multiple (five ?) occasions, petitioner reappeared before a Parole Board on June 3, 2014. Following that appearance petitioner was again denied discretionary parole release and it was directed that he be held for an additional 24 months. The June 2014 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 AND REMAIN AT LIBERTY [without] AGAIN VIOLATING THE LAW AND YOUR RELEASE WOULD BE INCOMPATIBLE [with] THE WELFARE OF SOCIETY AND WOULD SO DEPRECATE THE SERIOUS NATURE OF THE CRIME AS TO UNDERMINE RESPECT FOR THE LAW. THIS DECISION IS BASED ON THE FOLLOWING FACTORS: I.O.'S ARE MURDER 2ND, MANSLAUGHTER 2ND, AND ATT. ROBBERY 2ND WHEREIN [*2]WHEN ACTING IN-CONCERT YOU ATTEMPTED TO ROB YOUR VICTIM. YOU THEN ENGAGED IN BEATING THE VICTIM WHICH CAUSED HIM TO FALL ONTO THE SUBWAY TRACKS AS A TRAIN APPROACHED KILLING HIM INSTANTLY. YOU WERE ON PROBATION AT THE TIME OF THE I.O. YOUR RECORD DATES BACK TO 1984 AND INCLUDES FELONIES, MISDEMEANORS, PRIOR VIOLENCE, PRIOR . . . JAIL AND FAILURE AT COMMUNITY SUPERVISION. YOU CLEARLY FAILED TO BENEFIT FROM PRIOR EFFORTS AT REHABILITATION. NOTE IS MADE BY THIS BOARD OF YOUR SENTENCING MINUTES, COMPAS RISK ASSESSMENT, REHABILITATIVE EFFORTS, RISKS, NEEDS[,] PAROLE PLAN[,] DISCIPLINARY RECORD, AN[D] ALL OTHER REQUIRED FACTORS."

The document perfecting petitioner's administrative appeal from the June 2014 parole denial determination was received by the DOCCS Board of Parole Appeals Unit on November 24, 2014. Although the Appeals Unit failed to issue its findings and recommendation within the four-month time frame set forth in 9 NYCRR §8006.4(c), a belated decision on administrative appeal was, in fact, issued on or about July 10, 2015. This proceeding was commenced on August 15, 2015 when the Petition was filed in the Franklin County Clerk's Office. *See* CPLR §304(a).

Executive Law §259-i(2)(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 the 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 [*3]functions which are not reviewable if done in accordance with law (Executive Law §259-i(5) unless there has 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. Dennis*on, 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 Nankervis v. Dennison,* 30 AD3d 521, *Zane v. New York State Division of Parole*, 231 AD2d 848 and *Mc Lain v. Division of Parole*, 204 AD2d 456.

The primary argument advanced in the Petition that the Parole Board focused excessively/exclusively on the serious nature of the crimes underlying petitioner's incarceration, as well as his prior criminal record, without adequate consideration of other statutory factors. In this regard petitioner alleges that he has completed numerous educational, vocational and therapeutic programs as well as various non-mandatory programs. Petitioner also alleges that he possesses the skills and work ethic to succeed in the job market upon release and that he has developed solid, alternative, release plans. Nevertheless, according to petitioner, "[t]he Board of Parole clearly did not take any of these efforts into consideration."

Notwithstanding the foregoing, 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, *lv granted* 23 NY3d 903, *app dismissed* 24 NY3d 1052, *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." *Comfort v. New York State Division of Parole,* 68 AD3d 1295, 1296 (citations omitted).

In the case at bar, reviews of the Parole Board Report (Reappearance June 2014) and transcript of petitioner's June 3, 2014 Parole Board appearance reveal that the Board had before it information with respect to the appropriate statutory factors, including petitioner's therapeutic/vocational programing records, COMPAS ReEntry Risk Assessment Instrument, sentencing minutes, disciplinary record (clean since his last Parole Board appearance) and release plans/community support in addition to the circumstances of the crimes underlying his incarceration (including the fact that such crimes were committed while petitioner was on probation from a previous YO Robbery adjudication) and prior criminal record. The Court, moreover, finds nothing in the hearing transcript to suggest that the Parole Board cut short petitioner's discussion of any relevant factor or otherwise prevented him from expressing clear and complete responses

to its inquiries. Indeed, before the June 3, 2014 Parole Board interview was concluded one of the presiding commissioners inquired of petitioner as follows: "Mr. Reyes, the last word is yours, anything that you would like to let us know tonight?" Petitioner responded as follows: "Like I said in my statement, I am sorry for everything that happened, occurred in my life, and I took this time over this [*4]incarceration to reflect on what I did, it was wrong and I just want to start a brand new life. I am getting old and I would like to pay a visit to my mother's grave, she passed away last year, give my respect, you know, have an opportunity to assist my sister and my father."

In view of the above, 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 discretionary parole denial determinations, the Court finds no basis to conclude that the denial determination in this case was affected by irrationality boarding on impropriety as a result of the emphasis placed by the Board on the serious/violent nature of the crimes underlying petitioner's incarceration, including the fact that such crimes were committed while petitioner was on probation from a previous YO Robbery adjudication, as well as his prior criminal record. *See Thompson v. New York State Board of Parole,* 120 AD3d 1518, *Shark v. New York State Division of Parole Chair,* 110 AD3d 1134, *lv dismissed* 23 NY3d 933 and *Dalton v. Evans,* 84 AD3d 1664.

To the extent petitioner purports to rely on *King v. New York State Division of Parole*, 190 AD2d 423, *aff'd* 83 NY2d 788, the Court finds such reliance misplaced. In *King* the Appellate Division, First Department, not only determined that the Parole Board improperly considered matters not within its purview (penal policy with respect to convicted murders) but also that the Parole Board failed " . . . to consider and fairly weigh all of the information available to them concerning petitioner that was relevant under the statute, which clearly demonstrates his extraordinary rehabilitative achievements and would appear to strongly militate in favor of granting parole." *Id* at 433. The appellate-level court in *King* went on to note that the only statutory criterion referenced by the Board in the parole denial determination was the seriousness of the crime underlying Mr. King's incarceration (felony murder of an off-duty police officer during the robbery of a fast food restaurant). According to the Appellate Division, First Department, "[s]ince . . . the Legislature has determined that a murder conviction per se should not preclude parole, there must be a showing of some aggravating circumstances beyond the inherent seriousness of the crime itself." *Id* at 433.

This Court (Supreme Court, Franklin County) first notes that although the nature of the crime underlying Mr. King's incarceration was somewhat similar in nature to one of the crimes underlying petitioner's incarceration (Murder 2°), Mr. King had no prior contacts with the law (*id.* at 426) while petitioner has a substantial prior criminal record and committed the instant offenses while on probation. These distinguishing features appear to meet the First Department's requirement that a parole denial determination be supported by aggravating circumstances beyond the inherent seriousness of the underlying crime. In any event, in July of 2014 the Appellate Division, Third Department - whose precedent is binding on this Court - effectively determined that the above-referenced "aggravating circumstances" requirement enunciated by the First Department in *King* does not represent the state of the law in the Third Department. *See Hamilton v. New York State Division of Parole,* 119 AD3d 1268. In *Hamilton* it was noted that the Third Department " . . . has repeatedly held - both recently and historically - that, so long as the [Parole] Board considers the factors enumerated in the statute [Executive Law §259-i(2)(c)(A)] it is entitled . . . to place a greater emphasis on the gravity of [the] crime' (*Matter of Montane v. Evans,* 116 AD3d 197, 203 (2014), *lv granted* 23 NY3d 903 (2014) [internal quotation marks and [*5]citations omitted]' . . ." *Id* at 1271 (other citations omitted). After favorably citing nine Third Department cases decided between 1977 and 2014, the *Hamilton* court ended the string of cites as follows: " . . . *but see Matter of King v. New York State Div. of Parole,* 190 AD2d 423, 434 (1993), *aff'd on other grounds* 83 NY2d 788[**FN1**]] (1994) [a First Department case holding, in conflict with our precedent, that the Board [of Parole] may not deny discretionary release based solely on the nature of the crime when the remaining statutory factors are considered only to be dismissed as not outweighing the seriousness of the crime]." 119 AD3d 1268, 1272. The *Hamilton* court continued as follows:

> "Particularly relevant here, we have held that, even when a petitioner's institutional behavior and accomplishments are exemplary,' the Board may place particular emphasis' on the violent nature or gravity of the crime in denying parole, as long as the relevant statutory factors are considered (*Matter of Valderrama v. Travis,* 19 AD3d at 905). In so holding we explained that, despite [the *Valderrama*] petitioner's admirable educational and vocational accomplishments and positive prison disciplinary history, [o]ur settled jurisprudence is that a parole determination made in accordance with the requirements of the statutory guidelines is not subject to further judicial review unless it is affected by irrationality bordering on impropriety' (*id*. [internal quotation marks and citations omitted]). We emphasize that this Court [Appellate Division, Third Department] has repeatedly reached the same result, on the same basis, when reviewing denials of parole to petitioners whom we

recognized as having exemplary records and as being compelling candidates for release." 119 AD3d 1268, 1272 (additional citations omitted).

The Court therefore rejects petitioner's argument on this point.

Executive Law §259-c(4) was amended by L 2011, ch 62, part C, subpart A, §38-b, effective October 1, 2011, to provide that the New York State Board of Parole shall ". . . establish written procedures for its use in making parole decisions as required by law. Such written procedures shall incorporate risk and needs principles to measure the rehabilitation of persons appearing before the board, the likelihood of success of such persons upon release, and assist members of the state board of parole in determining which [*6]inmates may be released to parole supervision . . ."[FN2] To the extent petitioner argues that the Parole Board failed to adopt rules or regulations implementing the above-referenced amendment to Executive Law §259-c(4), the Court finds that the promulgation of the October 5, 2011 memorandum from Andrea W. Evans, then Chairwoman, New York State Board of Parole, satisfied the Parole Board's obligations with respect to the 2011 amendments to Executive Law §259-c(4). *See Partee v. Evans*, 117 AD3d 1258, *lv denied* 2014 NY Slip Op 82439, and *Montane v. Evans*, 116 AD3d 197, *lv granted* 23 NY3d 903.

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: December 11, 2015 at
Indian Lake, New York.

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S. Peter Feldstein
Acting Supreme Court Justice

Footnotes

Footnote 1: The Court of Appeals in *King* only referenced the fact that " . . . one of the [Parole] Commissioners considered factors outside the scope of the applicable statute, including penal philosophy, the historical treatment of individuals convicted of murder, the death penalty, life imprisonment without parole, and the consequences to society if those sentences are not in place. Consideration of such factors is not authorized by Executive Law §259-i." 83 NY2d 788, 791. The Court of Appeals, however, did not address that aspect of the Appellate Division, First Department, decision in *King* holding that a parole denial determination must be based upon a showing of some aggravating circumstances beyond the inherent seriousness of the underlying crime.

Footnote 2: Prior to the amendment the statute had provided, in relevant part, that the Board of Parole shall ". . . establish written guidelines for its use in making parole decisions as required by law . . . Such written guidelines may consider the use of a risk and needs assessment instrument to assist members of the state board of parole in determining which inmates may be released to parole supervision . . ."

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