September 2021

# Decision in Art. 78 proceeding - Rossi, Rudolph (2015-07-27)

| **Matter of Rossi v Stanford** |
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| 2015 NY Slip Op 31509(U) |
| July 27, 2015 |
| Supreme Court, Franklin County |
| Docket Number: 2015-102 |
| Judge: S. Peter Feldstein |
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**STATE OF NEW YORK**
**SUPREME COURT** **COUNTY OF FRANKLIN**

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In the Matter of the Application of
**RUDOLPH ROSSI, #87-A-9513**,
Petitioner,

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

**DECISION AND JUDGMENT**
**RJI #16-1-2015-0060.14**
**INDEX # 2015-102**
**ORI #NY016015J**

-against-

**TINA M. STANFORD**, Chairwoman,
NYS Board of Parole,
Respondent.

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This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the Petition of Rudolph Rossi, verified on January 28, 2015 and filed in the Franklin County Clerk's office on February 3, 2015. Petitioner is an inmate at the Franklin Correctional Facility, is challenging the July 2014 determination denying him discretionary parole release.

The Court issued an Order to Show Cause on February 11, 2015 and has received and reviewed respondent's Answer and Return, including *in camera* materials, verified on March 23, 2015 and supported by the Letter Memorandum of Christopher J. Fleury, Esq., Assistant Attorney General, dated March 23, 2015 and by the Letter Memorandum of Craig Mausler, Esq., Assistant Counsel, New York State Department of Corrections and Community Supervision, dated March 11, 2015. The Court has also received and reviewed petitioner's Reply thereto, dated April 7, 2015 and filed in Franklin County Clerk's office on April 14, 2015.

On October 13, 1987 petitioner was sentenced in the Supreme Court, Kings County, to a controlling indeterminate sentence of 2½ to 7½ years upon his convictions of

the crimes of Criminal Sale of a Controlled Substance 3° and Criminal Possession of a Weapon 2°. On April 22, 1991 he was sentenced in Supreme Court, Kings County, as second violent felony offender, to a controlling indeterminate sentence of 25 years to life upon his convictions of crimes of Murder 2°, Assault 1° and Criminal Possession of a Weapon 2°. The criminal offenses underlying the 1991 convictions/sentencing were committed by the petitioner while participating the DOCCS Temporary Release Program (work release) in connection with his 1987 sentence.

After having been denied discretionary parole release at his initial Parole Board appearance, petitioner reappeared before a Board on July 9, 2014. Following that reappearance a decision was rendered again denying petitioner discretionary parole release and directing that he be held for an additional 24 months. The July 2014 parole denial determination reads as follows:

> "AFTER A REVIEW OF THE RECORD, INTERVIEW, AND DELIBERATION, THE PANEL HAS DETERMINED THAT YOUR RELEASE WOULD BE INCOMPATIBLE WITH THE WELFARE AND SAFETY OF SOCIETY AND WOULD SO DEPRECATE THE SERIOUS NATURE OF THE CRIME AS TO UNDERMINE RESPECT FOR THE LAW. PAROLE IS DENIED.
>
> REQUIRED STATUTORY FACTORS HAVE BEEN CONSIDERED, TOGETHER WITH YOUR INSTITUTIONAL ADJUSTMENT INCLUDING DISCIPLINE AND PROGRAM PARTICIPATION, YOUR RISK AND NEEDS ASSESSMENT, AND YOUR NEEDS FOR SUCCESSFUL RE-ENTRY INTO THE COMMUNITY. YOUR RELEASE PLANS AND ANY LETTERS OF REASONABLE ASSURANCE ARE ALSO NOTED. MORE COMPELLING, HOWEVER, ARE THE FOLLOWING: YOUR SERIOUS OFFENSES OF CSCS 3RD, CPW 3RD, MURDER 2ND, ASSAULT 1ST, AND CPW 2ND DEGREES, TOGETHER WITH YOUR HISTORY OF CRIMINAL CONDUCT WHILE IN THE COMMUNITY, THE INSTANT OFFENSES INVOLVED YOU SELLING AND POSSESSING DRUGS AND HAVING A GUN AND CAUSING THE DEATH OF ANOTHER PERSON BY GUNSHOT.
>
> YOUR POSITIVE PROGRAMMING AND CLEAN DISCIPLINARY RECORD SINCE YOUR LAST BOARD APPEARANCE ARE BOTH NOTED, HOWEVER, NEITHER OF WHICH DIMINISH THE SERIOUS LOSS OF LIFE CAUSED BY YOUR ACTIONS. MORE DISTURBING IS THAT THE

> MURDER WAS COMMITTED WHILE YOU WERE ON A WORK RELEASE PROGRAM FROM THE DRUG-RELATED CONVICTION. THE TERM OF INCARCERATION AND COMMUNITY SUPERVISION, AND OTHER CONTACTS WITH THE LAW HAVE ALL FAILED TO CHANGE YOUR NEGATIVE BEHAVIOR AND THE RESULT IS THAT ANOTHER HUMAN BEING LOST THEIR LIFE. THEREFORE, BASED ON ALL REQUIRED FACTORS IN THE FILE CONSIDERED, DISCRETIONARY RELEASE, AT THIS TIME, IS NOT APPROPRIATE."

The document perfecting petitioner's administrative appeal from the July 2014 parole denial determination was received by the DOCCS Board of Parole Appeals Unit on August 25, 2014. The Appeals Unit, however, failed to issue its findings and recommendation within the four-month time frame set forth in 9 NYCRR §8006.4(c). This proceeding ensued.

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; (ii) performance, if any, as a participant in a temporary release program; (iii) release plans including community resources, employment, education and training and support services available to the inmate; (iv) any deportation order issued by the federal government against the inmate while in the custody of the department [New York State Department of Corrections and Community Supervision] . . . (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 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.

Petitioner first argues that the Parole Board relied upon erroneous information in issuing the July 2014 determination denying him discretionary parole release. In this regard he maintains that the Parole Board was under the mistaken belief that at the time he committed the criminal offenses underlying the 1987 convictions/sentencing a loaded revolver was found in his pants pocket. In paragraphs 17 and 18 of the petition the following assertion is made: "As a factual matter, that statement [is] incorrect and unambiguously contradicted by the police arrest reports and the record of petitioner's plea allocution. As evidenced by the Property clerk's Invoice . . . the gun in question was recovered from a false bottom window sill in the bathroom of the apartment. (The apartment did not belong to the petitioner). In addition, the record of petitioner's plea allocution unequivocally shows the gun charge was resolved by the Court as a Serrano Plea because petitioner denied the gun was his and refused to plead guilty to that

charge . . . As such, it is clear that at no time did petitioner possess a weapon, nor was a gun recovered from his . . . pants pocket.[1]"

Where erroneous information serves as a basis for a parole denial determination such determination must be vacated and a new hearing ordered. *See Smith v. New York State Board of Parole*, 34 AD3d 1156, *Hughes v. New York State Division of Parole*, 21 AD3d 1176 and *Lewis v. Travis*, 9 AD3d 800. In the Parole Board Report (Reappearance July 2014) the following was asserted with respect to the criminal offenses underlying petitioner's 1987 convictions/sentencing:

> "On May 5th, 1986 . . . an undercover officer met face to face with the subject [petitioner]. The undercover officer gave a $20.00 bill to the subject in return for two plastic vials of crack. The undercover officer then left the location and according to a phone call made, officers returned to the location where a plastic bag containing 32 vials of cocaine was recovered from a locked bathroom toilet along with a plastic bag of marijuana. One plastic container of lactose and one plastic vial of cocaine were recovered from inside the subject's right front pants pocket, as well as loaded .357 revolver containing six live rounds and [the] $20.00 buy money."

Notwithstanding the foregoing, the pre-sentence report prepared in connection with the incident clearly indicates that the loaded revolver was not found in petitioner's pants pocket but, rather, recovered ". . . from inside a false bottom window sill along with 12 loose live 357 rounds."

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[1] In *People v. Serrano*, 15 NY2d 304, the Court of Appeals overturned a Murder 2° conviction (based upon a plea) where the defendant's version of the offense underlying his conviction, as brought out during his plea allocution, was " . . . more consonant with the lesser charge of manslaughter in the first degree, that is, a killing in the heat of passion." *Id*. at 307 (citation omitted). According to the *Serrano* court, under such circumstances it was the duty of the sentencing judge " . . . to refuse the plea and order the trial continued or, more appropriately, to advise the defendant that his admission did not necessarily establish guilt of the crime to which he was pleading and to question him further both with regard to his story of the crime and as to the possible disposition of his request to change his plea. Of course, once so advised that his version of the crime is not consistent with the charge to which he is pleading, a defendant might still wish to plead guilty, perhaps to avoid the risk of conviction upon a trial of the more serious crime charge in the indictment, and such a plea could be accepted by the court." *Id*. at 309-310 (citation omitted). In the case at bar petitioner appears to suggest that the plea allocution underlying his 1987 conviction of the crime of Criminal Possession of a Weapon 2° did not include any acknowledgment that the gun was his.

While there was extensive discussion of the facts and circumstances of the criminal offense underlying petitioner's 1991 Murder 2° conviction during the course of the July 9, 2014 Parole Board interview, there was little or no discussion of the facts and circumstance of the criminal offenses underlying his 1987 convictions. In this regard it is noted that the location where the revolver underlying petitioner's 1987 Criminal Possession of a Weapon 2° conviction was found was not discussed at all during the interview. As far as the July 2014 parole denial determination is concerned, the Board simply found that the "INSTANT OFFENSES [1987 convictions of the crimes of Criminal Sale of a Controlled Substance 3° and Criminal Possession of a Weapon 2° and 1991 convictions of the crimes of Murder 2°, Assault 1° and Criminal Possession of a Weapon 2°] INVOLVED YOU SELLING AND POSSESSING DRUGS AND HAVING A GUN AND CAUSING THE DEATH OF ANOTHER PERSON BY GUNSHOT."

Although respondent describes the previously-quoted statement from the Parole Board Report (Reappearance July 2014) as "ambiguous," a straightforward examination of the statement - particularly by an individual unfamiliar with any other version of the incident of May 5, 1986 - might well lead the reader to conclude that loaded revolver was, in fact, recovered from petitioner's pants pocket. Accordingly, at least for the purposes of this Decision and Judgement, the Court will presume that the Parole Board Report includes the factually incorrect statement that a loaded revolved was found in petitioner's pants pocket at the time of the incident underlying his 1987 convictions. The presence of erroneous information in the Parole Board Report/Inmate Status Report, however, does not necessitate the reversal of a subsequent parole denial determination where, as here, there is nothing in the record to suggest that the erroneous information served as a basis for the parole denial determination. *See Sutherland v. Evans*, 82 AD3d 1428 and *Restivo v. New York State Board of Parole*, 70 AD3d 1096. In this regard the Court notes the

Parole Board's understandable focus on the facts and circumstances of the criminal offenses associated with petitioner's 1991 convictions and concludes that the reference in the July 2014 parole denial determination to petitioner "HAVING A GUN AND CAUSING THE DEATH OF ANOTHER BY GUNSHOT" is a reference to the facts and circumstances underlying the 1991 Murder 2° conviction. Given petitioner's actual use of a handgun, causing the death of an innocent bystander, this Court cannot discern any basis to conclude that the specific location where the unused handgun associated with his 1987 Criminal Possession of a Weapon 2° conviction was found (pants pocket v. false bottom window sill) played any role in the July 2014 parole denial determination.[2] Petitioner's argument on this point, is, therefore, rejected.

Petitioner next argues that the Parole Board's determination that his release would be "INCOMPATIBLE WITH THE WELFARE AND SAFETY OF SOCIETY" is arbitrary and unsupported by the record. In this regard he asserts the following in paragraphs 21 and 22 of his petition:

> "21. The Parole Board's determination that petitioner's release would be incompatible with the welfare and safety of society was arbitrary and contradicted by the Division of Parole[']s COMPASS [sic] risk assessment report. There was nothing in the record of petitioner's parole hearing, or the written decision of the Parole Board, to suggest, infer or support the Board's wholly unexplained conclusion that after 27 years in prison and at the age of 48, petitioner is a threat to the welfare and safety of society.
>
> 22. Further, the fact that the Board made no specific finding that petitioner would not be able to live and remain at liberty without violating the law, not only negates any conclusion petitioner is a threat to the welfare and safety of society, but strongly suggest [sic] this unsupported conclusion was solely based on the Board's arbitrary substitution of its own opinion that

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[2] In any event, petitioner's guilty plea with respect to the charges underlying his 1987 Criminal Possession of a Weapon 2° conviction would support the Parole Board's description of the offense as him "HAVING A GUN" even thought the plea allocution may not have included an express admission of guilt. *See Silmon v. Travis*, 95 NY2d 470 and *People v. Miller*, 91 NY2d 372.

petitioner's COMPASS assessment should have been higher because of the instant offenses." (Citation omitted).

The Court first notes that although the Appellate Division, Third Department, has determined that a risk and needs assessment instrument (such as COMPAS) must be utilized in connection with post-September 30, 2011 parole release determinations (*see Linares v. Evans,* 112 AD3d 1056*, Malerba v. Evans,* 109 AD3d 1067, *lv denied* 22 NY3d 858 and *Garfield v. Evans*, 108 AD3d 830), there is nothing in such cases, or in Executive Law §259-c(4), to suggest that the quantified risk assessment determined through utilization of the risk and needs assessment instrument supercedes the independent discretionary authority of the Parole Board to determine, based upon its consideration of the factors set forth in Executive Law §259-i(2)(c)(A), whether or not an inmate should be released to parole supervision. The "risk and need principles" that must be incorporated pursuant to Executive Law §259-c(4), while intended to measure the rehabilitation of a prospective parolee as well as the likelihood that he/she would succeed under community-based parole supervision, serve only to " . . . assist members of the state board of parole in determining which inmates may be released to parole supervision . . ." Executive Law §259-c(4)(emphasis added). Thus, while the Parole Board was required to consider the COMPAS instrument when exercising its discretionary authority to determine whether or not petitioner should be released from DOCCS custody to community-based parole supervision, it was not bound by the quantified results of the COMPAS assessment and was free to grant or deny parole based upon its independent assessment of the factors set forth in Executive Law §259-i(2)(c)(A) including, as here, the nature of the multiple crimes underlying his incarceration as well as the fact that the criminal offense underlying the 1991 Murder 2° conviction was committed by petitioner while participating in the DOCCS Temporary Release Program (work release) in connection with the 1987 sentence. *See*

*Rivera v. New York State Division of Parole,* 119 AD3d 1107 and *Partee v. Evans*, 40 Misc 3d 896, *aff'd* 117 AD3d 1258, *lv denied* 24 NY3d 901.

To the extent petitioner argues, in effect, that the Parole Board focused exclusively/excessively on the nature/circumstances of the multiple crimes underlying his incarceration without adequate consideration of other statutory factors, the Court, for the reasons set forth below, rejects such argument.

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 July 2014) and the transcript of the July 9, 2014 Parole Board interview reveal that the Board had before it information with respect to the appropriate statutory factors, including petitioner's programing record, COMPAS ReEntry Risk Assessment Instrument, sentencing minutes, disciplinary record (clean since 2010), deportation order and family support in addition to the circumstances of the multiple crimes underlying his

incarceration. 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.

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 nature of the crimes underlying petitioner's incarceration, including the fact that the most serious of those crimes (Murder 2°) was committed while he was participating in the DOCCS Temporary Release Program. *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 denied* 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°/1991 conviction), Mr. King had no prior contacts with the law (*id*. at 426) while petitioner was sentenced in 1987 upon his conviction of the crimes of Criminal Sale of a Controlled Substance 3° and Criminal Possession of a Weapon 2° and committed the criminal offenses underlying his 1991 Murder 2° and Criminal Possession of a Weapon 2° convictions while participating in the DOCCS Temporary Release Program (work release) in connection with his 1987 convictions. Petitioner's argument to the contrary notwithstanding, the Court finds that this distinguishing feature meets 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, however, 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 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[3] (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 arguments on this point.

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[3] 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.

Finally, the Court is not persuaded by the argument that the Parole Board's failure to specifically find there was a reasonable probability that, if petitioner was released, he would not live and remain at liberty without violating the law, somehow " . . . negates any conclusion petitioner is a threat to welfare and safety of society . . ." As noted previously, Executive Law §259-i(2)(c)(A) provides, in relevant part, that "[d]iscretionary 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 release, 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 this crime as to undermine respect for the law." The statue then goes on to identify the series of factors that must be considered by the Parole Board in making the parole release decision. In the case at bar the Court has already determined that the relevant statutory factors were, in fact, considered by petitioner's Parole Board. The Board's failure to recite all of the precise statutory language set forth in the first sentence of Executive Law §259-i(2)(c)(A) in support of its conclusion to deny parole does not undermine its determination. *See Silvero v. Dennison*, 28 AD3d 859. *See also Reed v. Evans*, 94 AD3d 1323 and *James v. Chairman of the New York State Division of Parole*, 19 AD3d 857. The Court notes that this is not a case where the Parole Board substituted non-statutory language for that set forth in the first sentence of Executive Law §259-i(2)(c)(A) and, in doing so, arguably imposed a burden on the petitioner to demonstrate that his release would somehow enhance society. *See Hamilton v. New York State Division of Parole*, 119 AD3d 1268, *compare Vaello v. Parole Board Division of State of New York*, 48 AD3d 1018 and *Prout v. Dennison*, 26 AD3d 540.

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:** July 27, 2015 at
Indian Lake, New York.

S. Peter Feldstein
Acting Supreme Court Justice