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[*1]

Matter of Sagaria v New York State Bd. of Parole
2009 NY Slip Op 50627(U) [23 Misc 3d 1107(A)]
Decided on March 3, 2009
Supreme Court, New York County
Rakower, J.
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This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on March 3, 2009

Supreme Court, New York County

<p style="text-align:center">In the Mater of the Application of Dennis Sagaria, Petitioner</p> <p style="text-align:center">against</p> <p style="text-align:center">New York State Board of Parole, and George B. Alexander, Chairman of the New York State Board of Parole, Respondent, For a judgment pursuant to Article 78 of the CPLR.</p>

402760/08

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Eileen A. Rakower, J.

Petitioner, an inmate presently incarcerated by the New York State Department of Correctional Services at Lincoln Correctional Facility, files this Article 78 proceeding to challenge the determination of respondents New York State Division of Parole, named here as the New York State Board of Parole and its Chairman George B. Alexander (Parole), seeking an order from the court vacating

Parole's September 6, 2007 decision denying his release and granting a *de novo* hearing before a different panel of the Parole Board as soon as practicable.

Both petitioner and respondent cite to Executive Law 259- i to recite the [*2] various considerations the parole board considers in deciding whether to release an inmate. Petitioner points to his "impressive institutional record," his "triumph over substance abuse," along with training, work assignments, and other factors, which he feels were disregarded when the board ultimately denied his parole.

Respondent provides the minutes of the interview with petitioner where his institutional record is revealed to petitioner. It demonstrates a number of infractions, which resulted in disciplinary action, while respondent has been incarcerated.

Q:Collectively six tickets. Three Tier II's, three Tier III's. All three Tier III's were drug related; is that right?

A:Correct.

Q:What was the drug?

A:Heroin.

Q:You found that easily in the system?

A:When I first came in, yes.

Petitioner argues here that he was mislabeled a major drug dealer. He urges that he committed the crimes for which he was convicted to support his drug habit. The minutes of his interview reveal that petitioner may have understated what he revealed to the parole board:

Q:I'm asking you to react to that [Mr. Sagaria has been convicted of being a major drug supplier on Staten Island]. Do you agree with that characterization or not?

A:I wasn't a major drug dealer, but I was a drug dealer, yes, sir.

Q:To what degree? If not major, how would you characterize your operation?

A:Mid level. [*3]

Q:Over what time period?

A:I started dealing drugs in 1988.

Q:Until 94?

A:Until 94, yes, sir.

Q:Six years. Where would you get the poison from?

A:Most of it came from the Bronx. Some of it came from Staten Island.

Q:What would you do with it once it left your hands?

A:Once it left my and [sic] hands?

Q:Where would it go?

A:To customers, to buyers.

Q:Street dealers?

A: Yes.

Q: You were a notch above the street dealers?

A: I was also a dealer and I sold to street dealers.

The minutes also reveal that the board credited petitioner with having completed transitional services, orientation, the ASAT and working as a plumber and a porter. The board noted certificates on file for transitional service in March of 2005, Group Industries, November 2004, Group Ministries January 2005. The minutes reveal that the board considered numerous positive letters, including positive statements from the DA, corrections officers, and family. Petitioner noted his recovery, not having used drugs since 1997.

The judicial review of an administrative determination is limited to the grounds [*4] invoked by the agency. (*Lindemann v. American Horse Shows Assn.*, 222 AD2d 248, 250 [1st Dept. 1995]). The reviewing court may not substitute its judgment for that of the agency's determination but must decide if the agency's decision is supported on any reasonable basis. (*Matter of Clancy -Cullen Storage Co. V. Board of Elections of the City of New York*, 98 AD2d 635,636 [1st Dept. 1983]). Once the court finds a rational basis exists for the agency's determination, its review is ended. (*Matter of Sullivan County Harness Racing Association, Inc. V. Glasser*, 30 NY2d 269 [1972]). The court may only declare an agency's determination "arbitrary and capricious" if it finds that there is no rational basis for the determination. (*Matter of Pell v. Board of Education*, 34 NY2d 222, 231 [1974]).

Respondent points out: discretionary release on parole is not an automatic reward for an inmate's good behavior. (*In re Siao-Pao v. Dennison*, 51 AD3d 105 [1st Dept., 2008]). The parole board is not required to give each statutory factor equal weight in determining whether to grant discretionary parole. (*Matter of Motti v. Dennison*, 38 AD3d 1030 [3rd Dept., 2007]). Lastly, "the nature and severity of the crime for which the parole applicant is incarcerated is an appropriate factor to be considered by the Board in making its determination." (*Matter of Sanchez v. Dennison*, 21 AD3d 1249 [3rd Dept., 2005]).

While the parole board did not explicitly commend petitioner for his having overcome his drug addiction, the fact that petitioner had stopped using drugs was made clear during the interview. The board did state that "your institutional programming demonstrates progress and achievement, which is to your credit." The board noted that its decision was after "careful review and deliberation of your record and interview." The interview revealed other considerations which the board had to weigh and balance against the above. Under the circumstances of this case, it cannot be said that the Board of Parole's decision was arbitrary or capricious. Wherefore it is hereby

ORDERED that the petition seeking a hearing before a different panel of the Parole Board is denied.

All other relief requested is denied.

This constitutes the decision and order of the court.

Dated: March 3, 2009 [*5]

EILEEN A. RAKOWER, J.S.C.

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