September 2021

Decision in Art. 78 proceeding - Schrutt, Craig (2012-08-22)

Matter of Schrutt v New York State Div. of Parole & Community Supervision
2012 NY Slip Op 32711(U)
August 22, 2012
Supreme Court, Albany County
Docket Number: 126-12
Judge: George B. Ceresia Jr

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In The Matter of CRAIG SCHRUTT,

Petitioner,

-against-

NEW YORK STATE DIVISION OF PAROLE
AND COMMUNITY SUPERVISION,

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 # 01-12-ST3489 Index No. 126-12

Appearances: Craig Schrutt
Inmate No. 10-B-1419
Petitioner, Pro Se
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DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

The petitioner, an inmate at Watertown Correctional Facility, commenced the instant CPLR Article 78 proceeding to review a determination of respondent dated March 16, 2011 to deny petitioner discretionary release on parole. The petitioner is serving an aggregate term

of two to six years upon convictions of grand larceny-not auto 4th degree, 2 counts of grand larceny-auto 3rd degree, 2 counts of criminal possession of a forged instrument 2nd, scheme to defraud 1st degree, grand larceny-not auto 2nd degree, and reckless endangerment. Among the arguments set forth in the petition, the petitioner alleges that the Parole Board's determination was based upon speculation that the petitioner might re-offend. He maintains that no credit was given for his positive programming and clean disciplinary record. In his view the crimes for which he is incarcerated are relatively minor when compared to the crimes of other inmates who have been released on parole; and do not demonstrate a pattern of lawlessness. He maintains that his criminal history prior to his current offenses is limited, involving a misdemeanor for disorderly conduct. He asserts that the Parole Board was biased against him. He contends that the Parole Board failed to consider the appropriate factors under Executive Law § 259-i, including an exemplary institutional record, excellent institutional adjustment and academic achievements. He maintains that the Parole Board based it's decision upon the seriousness of the crimes for which he is incarcerated, to the exclusion of all other factors.

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

> "Denied 24 months. Next appearance 3/13.
>
> "Despite your receiving an earned eligibility certificate, parole is denied. After a careful review of your record, your personal interview, and due deliberation, it is the determination of this Panel that, if released at this time, there is a reasonable probability that you would not live at liberty without violating the law, and your release at this time is incompatible with the welfare and safety of the community. This decision is based upon the following factors.

> "You appear before this Panel with the serious instant offense of grand larceny auto third two counts, criminal possession of a forged instrument second, two counts, scheme to defraud first, grand larceny not auto second, two counts, scheme to defraud first, grand larceny not auto second, grand larceny not auto fourth, and reckless endangerment second. You collected sales tax from automobile sales and failed to submit the taxes to New York State. You purchased automobiles using checks with insufficient funds in the account. You fraudulently opened a credit card and used it for purchases. You submitted fraudulent lien releases for automobiles. You recklessly poured diesel fuel on the engine of a female victim's car. Rather than a single event, these exhibit lawless over extended period of time. Your record also includes issuing bad checks. Consideration has been given to your receipt of an earned eligibility certificate, any program completion, and any safety behavior, however your release at this time is denied."

Parole Release decisions are discretionary and, if made pursuant to statutory requirements, not reviewable (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 programming, his clean disciplinary record, and his plans upon release, involving living with his fiancé in North Tonawanda, and a full time job with a dry cleaning service. The Board also took note of a number of letters submitted on his behalf. In addition, he was given ample opportunity to make comments in support of his release.

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). 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 MacKenzie v Evans, supra; 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]; Matter of Wise v New York State Division of Parole, 54 AD3d 463 [3rd Dept., 2008]). 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]).

In addition, 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 Tatta v State of New York Division of Parole, 290 AD2d 907 [3rd Dept., 2002], lv denied 98 NY2d 604).

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: August 22, 2012
Troy, New York

George B. Ceresia, Jr.
Supreme Court Justice

Papers Considered:

1. Order To Show Cause dated February 24, 2012, Petition, Supporting Papers and Exhibits
2. Respondent's Answer dated April 26, 2012, Supporting Papers and Exhibits
3. Petitioner's Reply To Answer filed May 9, 2012