September 2021

Decision in Art. 78 proceeding - Spruils, Jesse (2013-03-19)

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In The Matter of the Application of
JESSE SPRUILS, 92-A-2536

Petitioner,

-against-

ANDREA D. EVANS, CHAIRMAN OF THE
NEW YORK STATE DIVISION OF PAROLE,

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-ST3986 Index No. 4939-12

Appearances:

Jesse Spruils
Inmate No. 92-A-2536
Self represented Petitioner
Fishkill Correctional Facility
P.O. Box 1245
Beacon, New York 12508

Eric T. Schneiderman
Attorney General
State of New York
Attorney For Respondent
The Capitol
Albany, New York 12224-0341
(Brian J. O'Donnell, Assistant Attorney General
of Counsel)

DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

The petitioner, an inmate at Fishkill Correctional Facility, has commenced the instant CPLR Article 78 proceeding to review a denial of parole. Petitioner argues that the Parole

Board's decision was arbitrary and capricious, unsupported by the law and facts and the Board failed to consider the factors required by Executive Law Section 259-c(4). Respondent opposes the petition contending that all laws were properly followed; that the petition fails to state a cause of action.

Petitioner was convicted by verdict in 1992 of the crime of Murder 2nd and sentenced to a term of 20 years to life. The crime occurred in 1989 and petitioner was arrested in 1990. The parole denial being challenged arises from petitioner's appearance before the Board on September 13, 2011.

In its decision denying Petitioner parole release, the Board stated:

> Parole is denied Hold 24 months; Next appearance 9-2013
>
> 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 you would not live at liberty without violating the law, your release at this time is incompatible with the welfare and safety of the community, and would so deprecate the seriousness of your crime as to undermine respect for the law.
>
> This decision is based upon the following factors: You stand convicted of the following serious offense of Murder in the 2nd Degree, in which during the course of a conversation with the victim, you pulled out the gun and shot him causing his death.
>
> This was an escalation of your prior criminal behavior, which involved a loaded gun.
>
> These crimes show your tendency toward violence, which is of concern to this panel. You also have a recent Tier III ticket for disobeying a direct order. You need to maintain a clean disciplinary record. Consideration has been given to your program completion, however, your release at this time is denied.
>
> (Both Commissioners concur.)

Petitioner, represented by counsel filed an administrative appeal and perfected that appeal by filing his brief on January 19, 2012. The Appeals Unit affirmed the Board's decision, mailing such decision to petitioner on August 13, 2012. This article 78 petition is verified August 13,

2012 and stamped by the office of the Albany County Combined Courts on August 21, 2012. The Order to Show cause was signed September 10, 2012.

Petitioner asserts that the Parole Board actions were arbitrary, capricious, or irrational, in that the decision is not supported by the law and facts and that the decision of the board lacked consideration of the 2011 amendments to Executive Law 259. The petition does not specify how the decision is not supported by the law and facts but simply incorporates by reference the issues raised in the administrative appeal brief.

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 entire record, see Reed v Evans, 94 AD3d 1323 (3d Dept. 2012). A review of the transcript of the parole interview[1] held September 13, 2011, reveals that petitioner admitted to the shooting of the victim causing his death. The

[1] Transcript of parole interview, Respondent's exhibit E

petitioner admitted that he was selling drugs and the shooting resulted from a turf war with a rival drug dealer. Petitioner further admitted to other drug related crimes committed in Washington D.C. and Baltimore. In addition, petitioner acknowledged to being convicted of possession of a weapon in the Bronx. Discussion was held of petitioner's completion of vocational programs, certificates earned, his current job as a chaplain's clerk, his disciplinary record including the basis for the Tier III ticket, new and old letters of support, groups that would assist his plans for a job and living arrangements upon release. Petitioner submitted a parole plan to the Board. Petitioner was afforded ample time in the hearing to make comments supportive of his release. He expressed remorse for the harm caused the victim and the victim's family.

Petitioner does not dispute that the Parole Board considered the required statutory factors to some extent; rather, his principal contention appears to be that the Parole Board gave excessive weight to the seriousness of his crimes of conviction and insufficient weight to the other required factors However, the Parole Board "is not required to give equal weight to each statutory factor" (Matter of Wan Zhang, 10 AD3d at 829; Matter of Collado v New York State Div. of Parole, 287 AD2d 921 [3d Dept 2001]). While petitioner has attained an impressive record of institutional accomplishments the Parole Board has the discretion to weigh these factors against the gravity of his crime of conviction (see Executive Law § 259-i [former (1)], [2]). "Discretionary release on parole shall not be granted merely as a reward for good conduct" (id. at [2] [c]).

The written decision itself, while brief, 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, 95 AD3d 1613 [3d Dept., 2012]; 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).

The 2011 legislation amended Executive Law Section 259-c was not effective until after the date of petitioner's parole interview. The amendments would place greater emphasis on assessing the degree to which inmates have been rehabilitated, and the probability that they

would be able to remain crime-free if released. Executive Law 259-c Subsection (4) now recites: "[t]he 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 inmates may be released to parole supervision". This amendment was made effective six months after its adoption on March 31, 2011, that is, on October 1, 2011. The amendment does not apply to hearings held prior to its effective date, see Matter of Hamiliton v New York State Div. Of Parole, 36 Misc3d 440 (2012).

In the second change, Executive 259-i (2) (c) was amended to incorporate into one section the eight factors which the Parole Board was to consider in making release determinations. This amendment was effective immediately upon its adoption on March 31, 2011 and thus does apply to petitioner. Under the former law the factors to be considered were listed in different sections of the Executive Law. The amendment did not result in a substantive change in the criteria which the Parole Board should consider in rendering its decision but placed the factors in one section. As a result, the factors for the Board to consider in determining whether Petitioner should be released to parole are the same whether under the former version of Executive Law 259-i or the current one.

In his reply affidavit petitioner contends that his Inmate Status Report is erroneous. Petitioner contends that the report states that he has an outstanding warrant which was recalled. Petitioner argues that the erroneous information entitles him to a new parole hearing before a different board. There is nothing in the record to show that the Board relied upon the fact that the

Inmate Status Report[2] recited there was a warrant outstanding for petitioner at the time of the interview. There is no record basis for concluding that the Parole Board believed that petitioner was subject to an outstanding warrant or that any such misapprehension played any part in the challenged determination. Viewed in the context of the overall administrative record, the error in the Inmate Status Report relied upon by petitioner falls short of demonstrating that the Board's determination should be annulled based upon a misapprehension of fact.

The Court has reviewed and considered petitioner's remaining arguments and contentions and finds them to be without merit.

The Court finds that the determination was not made in violation of lawful procedure, is not affected by an error of law, and is not irrational, arbitrary and capricious, or constitute an abuse of discretion. The Court concludes that the petition must 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

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[2] Respondent's Exhibit C

respecting filing, entry and notice of entry.

ENTER

Dated: March 19, 2013
Troy, New York

George B. Ceresia, Jr.
Supreme Court Justice

Papers Considered:

1. Order To Show Cause dated September 10, 2012
2. Verified Petition dated August 13, 2012
3. Answer Dated November 6, 2012
4. Affirmation of Brian J. O'Donnell, Esq. dated November 6, 2012 with exhibits
5. Reply affidavit by petitioner sworn to November 20, 2012.

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SEALING ORDER

The following documents having been filed by the respondent with the Court for *in camera review* in connection with the above matter, namely, respondent's Exhibit B, Presentence Investigation Report, and respondent's Exhibit D, Confidential Portion of Inmate Status Report, it is hereby

ORDERED, that the foregoing designated documents, including all duplicates and copies thereof, shall be filed as sealed instruments and not made available to any person or public or private agency unless by further order of the Court.

ENTER

Dated: March 19, 2013
Troy, New York

George B. Ceresia, Jr.
Supreme Court Justice