September 2021

Decision in Art. 78 proceeding - Valverde, John (2007-06-08)

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In The Matter of JOHN VALVERDE,

Petitioner,

-against-

ROBERT DENNISON, Chair,
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 # 01-07-ST7599 Index No. 1781-07

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DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

The petitioner, an inmate at Green Haven Correctional Facility, has commenced the instant CPLR Article 78 proceeding to review a determination of respondent dated March 28, 2006 to deny petitioner discretionary release on parole. Petitioner is serving consecutive terms of eight to twenty four years on a conviction of manslaughter in the first degree, and two to six years on conviction of criminal possession of a weapon, second degree. The petitioner, in his attorney-verified petition, points out that he has been denied parole three times. He summarizes his crime in fairly succinct terms:

> "[Petitioner's] girlfriend had been raped, and upon learning about it, he became obsessed with it, and his physical emotional health deteriorated. It was in this fragile emotional state that he lost self-control and killed Joel Schoenfeld, the man who raped his girlfriend and numerous other women."

The petitioner elaborates on the foregoing by indicating that his girlfriend of three years answered a newspaper advertisement that promised opportunities for careers in modeling. The photographer, Joel Schoenfeld, scheduled her for a photo shoot. Because petitioner's girlfriend had no money, Mr. Schoenfeld suggested that she work forty hours as a temporary secretary in his office, in exchange for the preparation of a photograph portfolio. About a week later Mr. Schoenfeld called her for a job assignment, promising her $1,500.00 daily for three separate days of work for a total of $4,500.00. The petitioner drove his girlfriend to Mr. Schoenfeld's studio for the assignment. Four months later the petitioner learned that Mr. Schoenfeld had forcibly raped the young woman that day. The petitioner indicates that he urged his girlfriend to go to the police to press charges, which she refused to do. The

petitioner alleges that he went to the police three different times to file a complaint, but they advised him that any charges would require his girlfriend's cooperation. During these visits he allegedly learned that Joel Schoenfeld was on probation for two separate sex offenses and had a reputation for taking advantage of young woman. The petitioner alleges that he began to deteriorate emotionally. He subsequently sought the advice of his best friend. He informed his friend that he desired to confront Joel Schoenfeld. The friend allegedly advised petitioner that if he were to do this, the petitioner should, by reason of Mr. Schoenfeld's criminal history, bring a gun with him. The friend then gave the petitioner a gun he had in his possession. On January 5, 1991 the petitioner went to Joel Schoenfeld's studio. He asked the receptionist if he could see Mr. Schoenfeld, who then came out to the waiting area. The petitioner asserts that he panicked and stated that he had been referred by a friend to have some photographs taken. The petitioner indicates that he made up a fake telephone number which he gave to Mr. Schoenfeld. Mr. Schoenfeld then went back to his office to call the fake telephone number. Mr. Schoenfeld came back out, appeared to be suspicious of the petitioner, and aggressively questioned the petitioner concerning what he was doing there. At that point the petitioner accused Mr. Schoenfeld of raping his girlfriend, after which they engaged in a heated argument. The argument escalated and the petitioner showed Mr. Schoenfeld his gun. Upon seeing the gun, Mr. Schoenfeld allegedly fell back onto the ground. According to the petitioner, as he made his way toward the door, he shot and killed Mr. Schoenfeld. Petitioner was indicted on charges of murder in the second degree and

criminal possession of a weapon. He went to trial and was found guilty, as noted, of manslaughter in the first degree and criminal possession of a weapon, second degree. He was sentenced on June 11, 1992.

Among the many allegations contained in the petition[1], the petitioner asserts that he has consistently acknowledged that he killed Joel Schoenfeld, and that he is deeply remorseful. He maintains that he has established a truly exemplary record during his incarceration. He points out that he was valedictorian of his class at Mercy College in 1994. He is a summa cum laude master's degree graduate of New York Theological Seminary. He is enrolled in Iona College's Master's Program in Criminal Justice. He earned a legal assistant/paralegal certification from Blackstone Legal Studies, and was accepted at CUNY Law School in 2002 and 2004. He helped create and develop\ the Seminary's Certificate in Ministry Program, in which he has facilitated two classes. He has also performed various roles in the Sing Sing educational program. The petitioner indicates that he has participated in other prison programs including classes in AIDS/HIV prevention and awareness, legal research and law library maintenance, a program in computer repair and a series of courses in general business. The petitioner plans to pursue a career and law. He has been offered employment with the law firm of Burstein & Rabinowitz, P.C.

The petitioner indicates that he has an unblemished disciplinary record. He has

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[1]The Court has not attempted to set forth in this decision each and every argument advanced by the petitioner in the instant proceeding. However all such arguments have been reviewed and considered.

submitted various statements supportive of his release obtained from members of prison staff at the various institutions where he has been incarcerated. He indicates he has been granted outside clearance, to enable him to work in the community on a daily basis. The petitioner has submitted letters of support from a number of individuals, including the late John Cardinal O'Connor, then Archbishop of New York. He plans to reside with his mother in Queens County upon being released.

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

> "After a review of the record and interview, parole is denied. The instant offense, manslaughter first and criminal possession of a weapon second, occurred when you fatally shot a male victim in the head as he was on his knees because you believed that he raped your girlfriend. The Board notes your continued compliance with recommended programming, your achievements thereof and your positive disciplinary performance. We are most concerned about senseless, brutal nature of the instant offense. Your contempt for human life and total indifference for the law leads this panel to determine that your release is inappropriate as it would deprecate the seriousness of the crime and serve to undermine respect for the law. His guidelines are unspecified."

The petitioner argues that the Parole Board's determination constituted an impermissible re-sentencing, as it was an "egregious mis-characterization"of the crime for which he was convicted. Petitioner criticizes the Board for describing the crime as "senseless" and "brutal", and for making the comment with respect to petitioner's "contempt for human life and total indifference to the law". In petitioner's words, the Parole Board's

description of his crime was "strikingly inaccurate", "highly prejudicial" and "contrary to the jury's findings". Petitioner argues that the foregoing remarks are evidence that the Parole Board grossly misconstrued the nature of his crime. The petitioner, in a fairly lengthy argument, points out that he was not convicted of murder in the second degree (see Penal Law § 125.25), but rather was convicted of manslaughter first degree (see Penal Law §125.20). He maintains that under manslaughter first degree he was found to be under the influence of extreme emotional disturbance, which mitigates the severity of his crime. He maintains that the use of the terms "senseless" and "brutal", and the reference to petitioner's "contempt for human life and total indifference to the law" demonstrates that the Parole Board failed to understand the crime for which he was convicted. As a part of this argument, petitioner asserts that the Parole Board never asked him what drove him to commit his crime; and did not inquire concerning petitioner's state of mind at the time he killed his victim[2].

The petitioner further argues that the Parole Board's conclusion that the seriousness of petitioner's crime outweighed all other factors was arbitrary and capricious and an abuse of discretion. He maintains that the Parole Board improperly relied exclusively on the seriousness of his crime in rendering its determination. In his view the Parole Board's decision was presented in conclusory terms and lacked adequate detail.

It is argued that the petitioner satisfies all of the statutory factors under Executive Law

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[2]Petitioner takes this position despite the fact that a review of the parole interview reveals that the Board went into meticulous detail in inquiring concerning the factors which motivated petitioner to commit this crime.

§ 259-i (2) (c) (A). Specifically, he maintains that (1) he has demonstrated that there is a reasonable probability that he will live and remain at liberty without violating the law; (2) that his release is not incompatible with the welfare of society; and (3) his release will not deprecate the seriousness of the crime for which he was convicted or serve to undermine respect for the law (see Executive Law § 259-i [2] [c] [A]).

As stated in Executive Law § 259-i (2) (c) (A):

> "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 law. In making the parole release decision, the guidelines 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 interpersonal relationships 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 []; (v) any statement made to the board by the crime victim or the victim's representative []" (Executive Law §259-i [2] [c] [A]).

"Parole Release decisions are discretionary and, if made pursuant to statutory requirements, not reviewable" (Matter of Sinopoli v New York State Board of Parole, 189 AD2d 960, 960 [3rd Dept., 1993], citing Matter of McKee v. New York State Bd. of Parole,

157 AD2d 944). If the parole board's decision is made in accordance with the statutory requirements, the board's determination is not subject to judicial review (see Ristau v. Hammock, 103 AD2d 944 [3rd Dept., 1984]). 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]). 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 offense, attention was paid to such factors as petitioner's higher education, his institutional programming, his disciplinary record, and his plans upon release. He was given ample opportunity to speak on his own behalf during the parole interview. 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 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 Weir v. New York State Division of Parole, 205 AD2d

906, 907 [3rd Dept., 1994]; Matter of Sinopoli v. New York State Board of Parole, 189 AD2d 960, supra; 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 Farid v Travis, supra; Matter of Moore v New York State Bd. of Parole, 233 AD2d 653 [3rd Dept., 1996]; Matter of Collado v New York State Division of Parole, 287 AD2d 921 [3rd Dept., 2001]). 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).

Petitioner's claims that the determination to deny parole is tantamount to a re-sentencing are conclusory and without merit (see Matter of Bockeno v New York State Parole Board, 227 AD2d 751 [3rd Dept., 1996]; Matter of Crews v New York State Executive

Department Board of Appeals Unit, 281 AD2d 672 [3rd Dept., 2001]; Matter of Evans v Dennison, 13 Misc3d 1236A, [Sup. Ct., Westchester Co., 2006]). Moreover, it is well settled that the Parole Board is vested with the discretion to determine whether release was appropriate notwithstanding the fact that the sentencing court set the minimum term of petitioner's sentence (see Matter of Silmon v Travis, 95 NY2d 470, 476 [2000]; Matter of Cody v Dennison, 33 AD2d 1141, 1142 [3rd Dept., 2006] lv denied 8 NY3d 802 [2007]; Matter of Burress v Dennison, 37 AD3d 930 [3rd Dept., 2007]).

The Court has reviewed the determination of the Parole Board. Contrary to the assertions of the petitioner, the Court is of the view that the decision does not unfairly characterize the very serious crime for which the petitioner was incarcerated. Nor does it suggest that the Parole Board failed to understand that the petitioner was convicted of the crime of manslaughter in the first degree. As the petitioner points out, a person may be found guilty of manslaughter in the first degree when such person causes the death of another person while under the influence of extreme emotional disturbance (see Penal Law § 125.20 [2]). The petitioner, in the Court's view, overlooks the fact that the definition of manslaughter in the first degree includes the element of intent: "A person is guilty of manslaughter in the first degree when: * * * [2] *With intent to cause the death of another person*, he causes the death of such person..." (Penal Law § 125.20 [2], emphasis supplied). Thus, although the jury found that mitigating circumstances were present, it also found that the petitioner intended to cause the death of his victim. In other words, petitioner was not

exonerated of all culpability. Rather, he was found by the jury to be possessed of sufficient *mens rea* during the commission of his crime to satisfy the element of intent. This being the case, the Court finds that the Parole Board did not mis-characterize or misapprehend the charges for which the petitioner was convicted[3].

The Court is keenly aware that it's role in reviewing an administrative determination is not to substitute its judgment for that of the agency, but simply to ensure that the agency determination has a rationale basis and is not arbitrary and capricious (see Matter of Warder v Board of Regents, 53 NY2d 186, 194; Matter of Flacke v Onondaga Landfill Sys., 69 NY2d 355, 363; Akpan v Koch, 75 NY2d 561, 570). While the petitioner asserts that his accomplishments during his incarceration are extraordinary (as many people would agree), this is but one factor for the Parole Board to consider in rendering its decision. As the Appellate Division recently stated, in a situation having strong similarities to the one at bar, the standard of review in such proceedings is whether the Board's decision exhibits "irrationality bordering on propriety" (Matter of Cruz v New York State Division of Parole (___ AD3d ___ [3rd Dept., April 19, 2007], citations omitted)[4].

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[3]The petitioner has cited the case of Matter of Henry v Dennison (___ AD3d ___, [3rd Dept., May 3, 2007]) for the proposition that the Parole Board relied upon incorrect information in rendering its decision. In Matter of Henry, the Parole Board apparently described the inmate's underlying criminal acts, which resulted in a conviction of depraved indifference murder, as intentional. The Appellate Division reversed the parole determination since depraved indifference homicide does not include the element of intent (see Penal Law § 125.25 [2]). The Court finds that Matter of Henry v Dennison (supra) is not applicable to the instant situation.

[4]In Cruz (supra), the Appellate Division found the petitioner's academic and institutional achievements "exemplary", and went on to state that "it would seem that he is a prime candidate

It can easily be seen that a great many people would disagree with the determination of the Parole Board, since the petitioner has done much to improve himself during his incarceration. In fact to many people it would appear that, as in the Cruz case (supra), this petitioner's academic and institutional achievements are "exemplary" and that "it would seem that he is a prime candidate for parole release" (Matte of Cruz v New York State Division of Parole, supra). However it is also true that many other rational minds would reach the same conclusion as the Parole Board. As such, the Court is constrained to find that the determination does not exhibit irrationality bordering on impropriety.

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 finds them to be without merit.

Under the circumstances, 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.

Accordingly, it is

ORDERED and ADJUDGED, that the petition be and hereby is dismissed.

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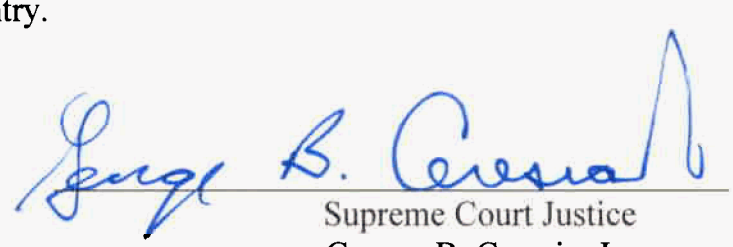
for parole release" (Matter of Cruz v New York State Division of Parole, supra).

This shall constitute the decision, order and judgment of the Court. All papers are returned to the attorney for the respondent who is directed to enter this Decision/Order/Judgment without notice and to serve petitioner with a copy of this Decision/Order with notice of entry.

ENTER

Dated: June 8, 2007
Troy, New York



Supreme Court Justice
George B. Ceresia, Jr.

Papers Considered:

1. Notice of Petition dated February 26, 2007, Petition, Supporting Papers and Exhibits
2. Respondent's Answer dated April 6, 2007, Supporting Papers and Exhibits
3. Affirmation of Kelly L. Munkwitz, Esq., dated April 6, 2007
4. Petitioner's Reply Verified April 18, 2007