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Matter of Williams v Evans

2013 NY Slip Op 31122(U)

May 21, 2013

Supreme Court, Albany County

Docket Number: 644-13

Judge: Joseph C. Teresi

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In the Matter of the Application of

DORPHUS WILLIAMS, 93-A-5937,

Petitioner,

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

DECISION and ORDER
INDEX NO. 644-13
RJI NO. 01-13-ST4440

-against-

ANDREA EVANS, CHAIRWOMAN,
NEW YORK STATE DIVISION OF PAROLE,

Respondent.

Supreme Court, Albany County All Purpose Term, May 3, 2013
Assigned to Justice Joseph C. Teresi

APPEARANCES:

Dorphus Williams, 93-A-5937
Petitioner Pro Se
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P.O. Box 8
Otisville, New York 10963

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Colleen Galligan, Esq.
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TERESI, J.:

After being convicted of Murder in the Second Degree and five counts of Robbery in the First Degree, Petitioner was sentenced on the top count to fifteen years to life in prison.

Petitioner has now reappeared, on June 27, 2012, before the New York State Board of Parole (hereinafter “Board”) for a parole release interview. The Board denied parole. Petitioner commenced this CPLR Article 78 proceeding challenging the denial and the Board answered. Because Petitioner failed to demonstrate that the Board’s determination was irrational boarding on impropriety, his petition is dismissed.

Parole release determinations are discretionary and will only be disturbed upon a showing of “irrationality bordering on impropriety” (Davidson v Evans, 104 AD3d 1046 [3d Dept 2013], quoting Russo v New York State Board of Parole, 50 NY2d 69 [1980]) or a “fail[ure] to comply with the statutory requirements.” (Amen v New York State Div. of Parole, 100 AD3d 1230 [3d Dept 2012]; Rodriguez v Evans, 102 AD3d 1049 [3d Dept 2013]; Executive Law §259-i). This Court’s “role 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.” (Comfort v New York State Div. Of Parole, 68 AD3d 1295, 1296 [3d Dept 2009]). Moreover, “[t]he Board is not required to give each statutory factor equal weight nor articulate every factor in its decision.” (Davis v Evans, 105 AD3d 1305 [3d Dept 2013]; Vigliotti v State Exec. Div. of Parole, 98 AD3d 789, 790 [3d Dept 2012]).

Here, Petitioner did not demonstrate the Board’s failure to consider all of the statutory factors. At his hearing the Board discussed with Petitioner: the seriousness of the instant offense, his institutional disciplinary record, his program accomplishments, his education and his post-release plans. In addition, according to the petition, the record before the Board contained Petitioner’s personal statement, re-commitment letters relative to his post-release plans and a re-

issued Earned Eligibility Certificate. The Board also had before it documentation regarding Petitioner's institutional programming, disciplinary record, release plans, criminal history, sentencing minutes and a "COMPAS ReEntry Risk Assessment" (hereinafter "COMPAS"). On such record, the Board sufficiently considered all of the statutorily relevant information. (Tafari v Evans, 102 AD3d 1053 [3d Dept 2013]).

Nor did Petitioner demonstrate the irrationality of the Board's denial. Contrary to Petitioner's contention, the Third Department has consistently held that "the receipt of an earned eligibility certificate does not preclude the Board from denying parole." (Romer v Dennison, 24 AD3d 866, 867 [3d Dept 2005]; Reed v Evans, 94 AD3d 1323 [3d Dept 2012]; Sanchez v Div. of Parole, 89 AD3d 1305 [3d Dept 2011]). The Board is not required "to give each factor equal weight," including an earned eligibility certificate (Rodriguez v Evans, 82 AD3d 1397 [3d Dept 2011]), and parole is not "granted simply as a reward for good behavior." (Wellman v Dennison, 23 AD3d 974, 975 [3d Dept 2005]). Petitioner did correctly note that his COMPAS's "low" arrest and felony violence risk scores contradict the Board's conclusion that "there is a reasonable probability that you would not live and remain at liberty without violating the law." However, after excluding such reason for denial, the balance of the Board's denial remains uncontested and rational. Petitioner offered no proof to negate the Board's denial's conclusion that Petitioner's "release at this time is incompatible with the welfare and safety of the community" or that "discretionary release is not warranted at this time, as you place your own interests above those of society at large."

Petitioner's contention that the Board's determination was affected by "erroneous information" is similarly unavailing. Petitioner contends that he was not on probation or parole

at the time of his instant offenses. As such, contrary to petitioner's interpretation, his COMPAS assessment did not contain erroneous information when it answered "neither" to the question "[w]as this person on probation or parole at the time of the current offense?" Similarly, no erroneous information affected the denial when one of the commissioners asked Petitioner about his probation status. Such questioning clarified the record, as Petitioner was able to "address and resolve any misconception at the hearing." (Jones v New York State Div. of Parole, 24 AD3d 827, 829 [3d Dept 2005]; Rivera v New York State Div. of Parole, 95 AD3d 1586 [3d Dept 2012]; Sutherland v Evans, 82 AD3d 1428, 1429 [3d Dept 2011]).

Lastly, Petitioner offered no admissible proof or cogent legal arguments to establish that the Board's denial amounted to a re-sentencing (Murray v Evans, 83 AD3d 1320, 1322 [3d Dept 2011]) or was predetermined. (Black v State Bd. of Parole, 54 AD3d 1076, 1077 [3d Dept 2008]).

Accordingly, the petition is dismissed.

This Decision and Order is being returned to the attorneys for the Respondent. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: Albany, New York
May 21, 2013


Joseph C. Teresi, J.S.C.

PAPERS CONSIDERED:

1. Order to Show Cause, dated February 21, 2013; Petition, dated January 28, 2013, with attached Exhibits "A1-A5" - "E1".
2. Answer, dated April 16, 2013, with attached Exhibits A-Q; Affirmation of Colleen Galligan, dated April 17, 2013,
3. Traverse of Dorphus Williams, dated April 30, 2013, with attache unnumbered exhibit.