September 2021

Decision in Art. 78 proceeding - Williams, Joseph (2007-09-25)

[*1]

Matter of Williams v Dennison
2007 NY Slip Op 51801(U) [17 Misc 3d 1102(A)]
Decided on September 25, 2007
Supreme Court, Franklin County
Feldstein, J.
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Decided on September 25, 2007

Supreme Court, Franklin County

In the Matter of the Application of Joseph Williams, Petitioner, For a Judgment Pursuant to Article 78 Of the Civil Practice Law and Rules

against

Robert Dennison, Chairman, New York State Board of Parole, Respondent.

2007-0192

S. Peter Feldstein, J.

This proceeding pursuant to Article 78 of the CPLR was originated by the petition of Joseph Williams, verified on January 16, 2007, and stamped as filed in the Franklin County Clerk's Office on February 2, 2007. Petitioner, who is an inmate at Upstate Correctional Facility, is challenging a May 2005, determination denying him parole and directing that he be held for an additional 24 months. The Court issued an Order to Show Cause on February 6, 2007. The Court has received and reviewed respondent's Answer, verified on March 23, 2007, together with his Letter Memorandum of that date. Petitioner submitted a letter dated May 22, 2007, advising that he did not wish to submit a Reply and that he would rely on his original argument that the hold is excessive and that the Parole Board "failed to take into consideration certain statutory requirements, namely those mentioned on pg. 5."

Petitioner was sentenced in Cayuga County Court on February 16, 1995, as a second felony offender, to two consecutive indeterminate terms of 3 and ½ to 7 years each for his conviction on two counts of promoting prison contraband in the first degree. On October 20, 1999, petitioner was sentenced in Orleans County Court, as a second felony offender, to an indeterminate term of 1 and ½ to 3 years for his conviction of promoting prison contraband in the first degree with the sentence to run consecutively to any previously imposed.

Petitioner appeared before the Parole Board on May 10, 2005. The Parole Board denied, for a second time, petitioner's release and held him for 24 months. Petitioner appealed the denial and the decision was affirmed with the final determination being mailed to petitioner on October 23, 2006. This proceeding ensued.

Petitioner in this proceeding alleges that the determination was arbitrary and capricious; in violation of Executive Law §259-i(2)(c) and 9 NYCRR 8002.3, not supported by substantial evidence, and improperly influenced by former Governor Pataki's executive [*2]policy that parole should be eliminated for violent felons. Petitioner states that he has served more than two-thirds of his sentence and this is unfair, unreasonable and excessive; that the guidelines are unspecified; that the Parole Board only cursorily reviewed all other factors except for his crime of commitment; that his program accomplishments including a vocational certificate in carpentry were not fully considered; and that he feels he has been re-sentenced and re-punished.

Respondent contends that its action herein was done in accordance with law and was not arbitrary and capricious; that the Parole Board is not required to equally weigh all factors or to articulate which factors it considered; that the Parole Board was vested with discretion whether to release petitioner notwithstanding he had served his minimum period of imprisonment; that the Inmate Status Report and Release Decision Notice sets forth the petitioner's guideline range to be 18 to 30 months; and that there is nothing to indicate that the Parole Board's decision is the result of a policy to deny parole to violent felons.

The Parole Board's reasons for denial are as follows:

> "Parole is denied for the following reasons: After a careful review of your record and this interview, it is the determination of this panel that if released at this time, there is a reasonable probability the you would not live and remain 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 on the following factors: your instant offense of promoting prison contraband, 3 separate offenses, resulted in aggregate sentences of 8 ½ to 17 years. You have made on (sic) comment on these crimes during the last two inmate status reports. Your criminal history commenced when you were 17 years old and includes multiple misdemeanor convictions, including menacing and C. P. W.. You have a prior prison sentence for robbery 2nd. We note that your disciplinary record has resulted in your being in S.H.U. since 1998 and you have not participated in any programming since 1997, except cell study. You have failed to benefit from past parole and correctional influences and your disciplinary history as well as your disregard of the laws of this state and your disdain for lawful authority of any sort, render you a poor candidate for discretionary release at this time."

Executive Law §259-i(2)(c)(A), which sets forth the requirements for one to be released on parole and the factors to be considered, provides, in part as follows:

"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, [*3]employment, education and training and support services available to the inmate; (iv) any deportation order issued by the federal government against the inmate while in the custody of the department of correctional services and any recommendation regarding deportation made by the commissioner of the department of correctional services pursuant to section one hundred forty-seven of the correction law; and (v) any statement made to the board by the crime victim or the victim's representative, where the crime victim is deceased or is mentally or physically incapacitated."

As Executive Law §259-i(2)(c)(A) clearly provides that release on parole is discretionary. As long as the Board of Parole's decisions are made in accordance with the statutory requirements, judicial intervention is necessitated only upon a "showing of irrationality bordering on impropriety." *See, Matter of Silmon v. Travis,* 95 NY2d 470, 476, quoting *Matter of Russo v. New York State Board of Parole,* 50 NY2d 69, 77.

Initially this Court notes that the Inmate Status Report and the Release Decision Notice set petitioner's guideline range to be 18 to 30 months. Thus, petitioner's allegation the guidelines are unspecified is without merit.

There is also no merit to petitioner's claim that since he has served more than two-thirds of his sentence, the denial is unfair, unreasonable, excessive, and constitutes a re-sentencing. Regardless of the fact petitioner has served more than the minimum, the Board of Parole is vested with discretion to determine if release is appropriate under the circumstances. *See, Matter of Burress v. Dennison*, 37 AD3d 930.

With respect to the factors that must be considered, the Board of Parole is not required to enumerate or accord equal weight to each of the statutory factors, or to discuss each factor it considered. *See, Matter of Farid v. Travis*, 239 AD2d 629. The decision of the Board of Parole establishes that the petitioner's criminal history, instant offense, institutional programming, disciplinary record while incarcerated, and plans upon release were considered.

Finally, there is no showing that the determination was predetermined in deference to an alleged executive policy requiring denial of parole to violent felons. *See, Matter of Mojica v. Travis*, 34 AD3d 1155.

It is, therefore, the decision of the Court and it is hereby

ADJUDGED, that the petition herein is dismissed.

Dated: September 25 , 2007 at

Indian Lake, New York._____

S. Peter Feldstein

Acting Supreme Court Justice

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