September 2021

Decision in Art. 78 proceeding - Williams, Rudolph (2017-09-06)

Matter of Williams v New York State Bd. of Parole
2017 NY Slip Op 31989(U)
September 6, 2017
Supreme Court, St. Lawrence County
Docket Number: 149043
Judge: S. Peter Feldstein
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STATE OF NEW YORK
SUPREME COURT **COUNTY OF ST. LAWRENCE**

In the Matter of the Application of
RUDOLPH WILLIAMS,#75-B-0971,
Petitioner,

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

DECISION AND JUDGMENT
RJI #44-1-2016-0733.25
INDEX # 149043

-against-

NEW YORK STATE BOARD OF PAROLE,
Respondent.

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the unsworn Petition (labeled as "Statement of the Case") of Rudolph Williams, supported by the Petitioner's Affidavit in Support of Order to Show Cause, sworn to on December 6, 2016. Both of these documents were filed in the St. Lawrence County Clerk's Office on December 15, 2016. Petitioner, who is an inmate at the Gouverneur Correctional Facility, is challenging the denial of parole in May of 2016.

The Court previously issued an Order to Show Cause on December 20, 2016. It was discovered that the petitioner was not provided with a copy of the Order to Show Cause and the Court issued an Amended Order to Show Cause on February 15, 2017. The Court received and reviewed respondent's Answer and Return verified on May 5, 2017, including confidential Exhibits B, C and I. In response thereto and in further support of the petition, the Court reviewed the Reply received on May 22, 2017.

On June 19, 1975, following his conviction after trial of one count of Murder in the First Degree, the Supreme Court, Kings County sentenced petitioner to an indeterminate term of incarceration of twenty (20) years to life. The petitioner re-appeared before the Parole Board on May 18, 2016. Following that appearance, Petitioner was denied

discretionary parole release and it was directed that he be held for an additional 20 months. The parole denial determination reads as follows:

> "After a review of the record and interview, the panel has determined that if released at this time, there is a reasonable probability that you would not live and remain at liberty without again violating the law and your release would be incompatible with the welfare of society and would so deprecate the serious nature of the crime as to undermine respect for the law. The Panel has considered your institutional adjustment, including discipline and program participation. Required statutory factors have been considered, including your risk to society, rehabilitation efforts, and your needs for successful reentry into the community. Your release plans have also been considered, as well as your Correction Offender Management Profiling Assessment Sanction, risk and needs assessment, and case plan.
>
> You are serving time for the serious offense of murder, in which you, acting in concert, according to records lured the victim to a predetermined location, dragged the victim from the vehicle, demanded money, after which the victim gave $7 and attempted to flee. He was dragged into an alley and repeatedly stabbed to death. Your criminal history dates back to approximately early 1970s and includes youthful offender burglary relate (*sic*) offenses and an offense involving larcenous related behavior. The instant offense is an escalation of your criminal history.
>
> Due consideration was given to your satisfactory programming and improving discipline, and letters of support, including Osborne Association and Fortune Society. Maintain your disciplinary conduct. This Panel notes community opposition to your release on file. This Panel remains concerned about the violent and senseless loss of life of an innocent victim in the instant offense and your willingness to place your own self interest above those of society and the law. Accordingly, discretionary release is not to (*sic*) warranted. Parole is denied." Resp. Ex. E.

An appeal of the Parole Board's determination was filed by the petitioner on November 2, 2016. Thereafter, the Board of Parole Appeals Unit upheld the determination on November 22, 2016.

Petitioner challenges the denial of parole release alleging that the Parole Board's determination was arbitrary and capricious, as well as irrational bordering on impropriety. The petitioner argues that the Parole Board failed to consider any of the other criteria pursuant to Executive Law §259-i, including the COMPAS risk assessment, and instead focused solely on the instant offense. The petitioner argues that the Parole Board must give the inmate guidance in adjusting his future behavior and that the Parole Board failed to do so. The petitioner asserts that while there is no constitutional right to parole, that there is a liberty interest created by the expectation of early release from prison. The petitioner further argues that he is unable to change the underlying offense for which he was sentenced, but by the Parole Board failing to consider anything other than the instant offense, it creates a situation for which the petitioner will never be released. Similarly, the petitioner argues that the Parole Board is relying upon the same criteria the trial judge used in sentencing the petitioner, which the petitioner argues collateral estoppel prohibits. Additionally, the petitioner alleges that the failure to be granted parole is tantamount to a second prosecution. The petitioner further asserts that the 20 month hold is excessive in light of the Parole Board's failure to indicate what, if any, further programming the petitioner needs for future appearances and the successive parole denials is tantamount to a resentencing. In addition, the petitioner argues that the Parole Board failed to comply with the Executive Law amendments of 2011 and similarly failed to consider the petitioner's young age at the time of the instant offense.

Preliminarily, the respondent argues that inasmuch as the petitioner failed to raise his age or the 2011 Executive Law amendments in his administrative appeal, such arguments are waived in this matter. "It is a basic tenant of administrative law that one who objects to the actions of an administrative agency must exhaust available

administrative appeals prior to seeking judicial relief." *See, Matter of Smith v. Vann*, 16 Misc.3d 1132(A) *citing Watergate II Apartments v. Buffalo Sewer Authority*, 46 N.Y.2d 52.

Further, respondent argues that the petition should be dismissed in its entirety insofar as the Parole Board is afforded great discretion in determining parole release provided that the Board considers the relevant factors as described in Executive Law §259-i(c)(A). Respondent argues that there is no requirement that the Parole Board give equal weight to each factor nor does an inmate's exemplary institutional record compel parole release. Respondent further asserts that the denial of parole is not akin to double jeopardy and there is no "right" to discretionary parole release. The respondent argues that the petitioner's maximum sentence was life and therefore, the time between parole board appearances is not excessive. Finally, the respondent asserts that there is a presumption that the Parole Board will comply with the statutory guidelines and the petitioner has not met the burden of proving that the Parole Board's decision was an abuse of discretion, arbitrary and capricious, or irrational.

Executive Law §259-i(c)(A), as amended by L 2011, ch 62, part C, subpart A, §§38-f and 38-f-1, effective March 31, 2011, provides in relevant 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 procedures 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 interactions with staff and inmates; ... (iii) release plans including community resources, employment, education and training and support services available to the inmate; ... (vii) the seriousness of the offense with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court, the district attorney, the attorney for the inmate, the presentence

> probation report as well as consideration of any mitigating and aggravating factors, and activities following arrest prior to confinement; and (viii) prior criminal record, including the nature and pattern of offenses, adjustment to any previous probation or parole supervision and institutional confinement."

Discretionary parole release determinations are statutorily deemed to be judicial functions which are not reviewable if done in accordance with law (Executive Law §259-i(5)) unless there had been a showing of irrationality bordering on impropriety. *See Silmon v. Travis*, 95 NY2d 470; *Hamilton v. New York State Division of Parole*, 119 AD3d 1268; *Vasquez v. Dennison*, 28 AD3d 908 and *Webb v. Travis*, 26 AD3d 614. Unless the Petitioner makes a "convincing demonstration to the contrary," the Court must presume that the New York State Board of Parole acted properly in accordance with statutory requirements. *See Jackson v. Evans*, 118 AD3d 701, *Nankervis v. Dennison*, 30 AD3d 521 and *Zane v. New York State Division of Parole*, 231 AD2d 848.

A Parole Board need not assign equal weight to each statutory factor it is required to consider in connection with a discretionary parole determination, nor is it required to expressly discuss each of those factors in its written decision. *See Montane v. Evans*, 116 AD3d 197; *see also Valentino v Evans*, 92 AD3d 1054 and *Martin v. New York State Division of Parole*, 47 AD3d 1152. As noted by the Appellate Division, Third Department, the role of a court reviewing a parole denial determination

> ". . . 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. Nor could we effectively review the Board's weighing process, given that it is not required to state each factor that it considers, weigh each factor equally or grant parole as a reward for exemplary institutional behavior (internal citations omitted)." *Comfort v. New York State Division of Parole*, 68 AD3d 1295, 1296.

In the case at bar, reviews of the Parole Board Report and transcript of Petitioner's May 18, 2016 Parole Board appearance reveal that the Board had before it information with

respect to the appropriate statutory factors, including Petitioner's institutional behavioral history, vocational and therapeutic programming records. It was noted that the COMPAS ReEntry Risk Assessment Instrument score was relatively low other than the probability of substance abuse after re-entry, high history of violence and low family support. The Board took note of the fact that the petitioner had been on work release in 1993-94 which was terminated. It was also noted that the petitioner had a long history of Tier II and III tickets until 2014.

In view of the foregoing, the Court finds no basis to conclude that the Parole Board failed to consider the relevant statutory factors. *See Pearl v. New York State Division of Parole*, 25 AD3d 1058 and *Zhang v. Travis*, 10 AD3d 828. Since the requisite statutory factors were considered, and given the narrow scope of judicial review of the discretionary parole denial determinations, the Court finds no basis to conclude that the denial determination in this case was affected by irrationality bordering on impropriety as a result of the emphasis placed by the Board on the nature of the crime underlying Petitioner's incarceration, particularly inasmuch as despite eye-witnesses indicating that the petitioner was an active participant in the instant offense, the petitioner still denies his actual culpability. In addition, it was noted that the petitioner's explanation as to why he was removed from the work release program in 1994 was unbelievable. *See Neal v. Stanford,* 131 AD3d 1320 and *Confoy v. New York State Division of Parole*, 173 AD2d 1014.

While the petitioner asserts that the Parole Board's determination of a 20 month hold was excessive and tantamount to a re-sentence, the argument is without merit. *See Shark v. New York State Division of Parole*, 110 AD3d 1134, 1135, *lv dismissed* 23 NY3d 933; *see also Smith v. New York State Division of Parole*, 81 AD3d 1026.

As relates to the petitioner's argument that the Parole Board is collaterally estopped from denying parole on the same criteria used by the trial court to determine sentencing,

such argument is without merit. "Collateral estoppel, or issue preclusion, precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party, whether or not the tribunals or causes of action are the same. The doctrine applies if the issue in the second action is identical to an issue which was raised, necessarily decided and material in the first action, and the plaintiff had a full and fair opportunity to litigate the issue in the earlier action." *Corvetti v. Town of Lake Pleasant*, 146 A.D.3d 1118, 1120–21. Clearly, the sentencing court and the Parole Board are not the same parties and collateral estoppel does not apply herein. The remaining assertions by the petitioner need not be addressed herein.

Based upon all of the above, it is, therefore, the decision of the Court and it is hereby **ADJUDGED**, that the petition is dismissed.

Dated: September 6, 2017
Indian Lake, New York

S. Peter Feldstein
Acting Justice, Supreme Court