October 2021

Decision in Art. 78 proceedings - O'Connor, Raymond (2021-09-29)

To commence the 30-day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

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In the Matter of the Application of

RAYMOND O'CONNOR,

Petitioner,

-against-

TINA STANFORD,

Respondent.

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DECISION & ORDER

Index No. 54/2021

ACKER, J.S.C.

The following papers, numbered 1 to 21, were considered on Petitioner's application pursuant to CPLR Article 78 seeking to challenge the Parole Board's denial of release to parole supervision:

Order to Show Cause-Verified Petition-Exhibits A-C-Affidavit in Support of Order to Show Cause 1-6
Answer and Return-Exhibits 1-12[1] 7-19
Verified Reply-Exhibit 1[2] 20-21

Petitioner commenced the instant proceeding seeking an Order annulling the June 23, 2020 Decision of the Parole Board which denied his release, as well as the November 9, 2020

[1] The Court also reviewed, *in camera*, the confidential documents submitted by Respondent as Exhibits 1 and 12 (entire exhibits) and portions of Exhibits 3 and 10.

[2] Petitioner submitted a Reply dated March 18, 2021 in which he indicated that Respondent had failed to submit a timely Answer pursuant to the Order to Show Cause. By Letter dated April 12, 2021, Petitioner then objected to Respondent's Answer and Return, dated March 22, 2021, as being untimely. The Court's April 22, 2021 letter (annexed to Petitioner's Reply), advised that Respondent had been granted an extension of time to submit her Answer and Petitioner's time to respond thereto was extended to May 17, 2021. Petitioner thereafter submitted this Verified Reply which was considered on his application.

Appeal determination affirming the original decision. He further seeks a *de novo* interview within thirty (30) days before no commissioner that has participated in any of his prior interviews or administrative appeals and that he be refunded his filing fee.

Petitioner is currently incarcerated at Otisville Correctional Facility, serving an indeterminate sentence of 20 years to life as a result of pleading guilty to two counts of Murder in the Second Degree. Petitioner states that, on October 12, 1981, he began to senselessly punch and kick his former girlfriend, Julia Kauffman, then tied her hands and left her to die in a secluded area where they had been arguing. At the time Petitioner appeared at his June 23, 2020 parole board interview, he had served approximately 39 years in prison and was 59 years old. This was his twelfth appearance before the parole board.

The instant application was brought as a result of the Parole Board's June 23, 2020 parole release denial. Petitioner timely filed an administrative appeal thereafter, and the denial was affirmed on November 9, 2020. Petitioner's Affidavit in Support indicates that his Petition is based upon the following grounds: (1) Respondent's decision relied solely on the instant offense; (2) Respondent resentenced Petitioner; (3) the Decision was set forth in conclusory terms and (4) Respondent failed to adhere to its own regulations.

It is well settled that judicial review of a determination of the Parole Board is narrowly circumscribed. *Campbell v. Stanford*, 173 AD3d 1012, 1015 [2d Dept. 2019], *leave to appeal dismissed*, 35 NY3d 963 [2020]. A Parole Board determination to deny early release may only be set aside where it evinces "irrationality bordering on impropriety." *Id.* Although the Parole Board is required to consider the relevant statutory factors as identified in Executive Law §259–i(2)(c)(A), it is not required to address each factor in its decision or accord all the factors equal weight. *Id.* "Whether the Parole Board considered the proper factors and followed the proper

guidelines should be assessed based on the written determination evaluated in the context of the parole interview transcript." *Id.*

New York Executive Law §259-i(2)(c)(A) provides that:

> [d]iscretionary 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.

Further, pursuant to New York Executive Law §259-i(2)(c)(A)(i)-(viii), and as relevant to the circumstances herein, the Parole Board is required to consider the following in making a parole decision: the inmate's institutional record including program goals and accomplishments, academic achievements, vocational education, training or work assignments, therapy and interactions with staff and inmates; release plans including community resources, employment, education and training and support services available to the inmate, the seriousness of the offense with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court and the district attorney and the pre-sentence probation report.

"If parole is not granted upon such review, the inmate shall be informed in writing within two weeks of such appearance of the factors and reasons for such denial of parole. Such reasons shall be given in detail and not in conclusory terms." Executive Law §259-i(2)(a).

Petitioner's June 23, 2020 Interview and Respondent's Decision

The transcript of Petitioner's parole interview is annexed to the Petition as Exhibit B and to the Answer and Return as Exhibit 4 (hereinafter referred to as "Interview Transcript"). Respondent's Decision denying parole is contained at pages 39-41 of the Interview Transcript (hereinafter referred to as "Decision").[3]

[3] Respondent also provides a separate "Parole Board Release Decision Notice" as Exhibit 5 that contains virtually

In reviewing the Respondent's Decision in the context of the Interview Transcript, the Court finds that Petitioner has demonstrated that the Board's determination to deny him release evinces irrationality bordering on impropriety. This is most clearly evidenced by the fact that the Board's denial of parole is based almost exclusively on the serious nature of Petitioner's crime.

The Decision opens with the details of Petitioner's brutal murder of Julia Kaufman in the woods of his hometown when he was 20 years old. It then refers to his criminal history, which included striking another female victim with a wrench.[4] Notably, the majority of the Board's decision addresses Petitioner's low COMPAS scores, his lack of misbehavior reports since 2010, as well as the positive aspects of his parole packet. This includes his lengthy personal statement and history, numerous certificates of achievement, therapeutic programs, long-term sobriety, recovery work, devotion to 12 step program, letters of support from facility staff, his mother, family, friends and professionals, as well as letters from reentry service providers. Nevertheless, after its review, the Board determined that

> [w]hile this panel is mindful of your length of time served and positive efforts under confinement, release shall not be granted merely as a reward for good conduct and efficient performance of duties, but only after consideration as to whether your release would be compatible with the community which you harmed and to which you would return, and that your release would not so deprecate your offense as to undermine respect for the law. It is the opinion of this Panel that you do not meet these important thresholds. As such, parole is denied. You are encouraged to maintain your positive attitude, sobriety and good institutional record going forward.

Although the Board is not required to address each factor in its decision or to give all factors equal weight, "the Board may not deny an inmate parole based solely on the seriousness of the offense [citations omitted]." *Ferrante v. Stanford*, 172 AD3d 31, 37 [2d Dept. 2019].

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the same content as the transcript but is dated June 29, 2020.

[4] The record indicates that Petitioner received youthful offender treatment for this assault, with a sentence of 60 days and five years probation.

Indeed, "where the Parole Board denies release to parole solely on the basis of the seriousness of the offense, in the absence of any aggravating circumstance, it acts irrationally." *Huntley v. Evans*, 77 AD3d 945, 947 [2d Dept. 2010].

In the instant matter, the Decision references Petitioner's long list of accomplishments, his contrition regarding the death of his victim and the other positive factors that the Board considered. Yet, despite these factors, it determined in conclusory fashion that Petitioner did not meet the "important thresholds" regarding the welfare of the community and whether his release would so deprecate his offense as to undermine respect for the law. Petitioner states in the Petition that "[i]t is understood that the weight of the instance [*sic*] offense in this case is heavy: an innocent life was brutally taken. However, this underlying crime will never change and Mr. O'Connor shows by his transformation that he has changed." Petition, ¶65. Given the overwhelmingly positive information contained in the Decision, the only conclusion that can be reached is that "the Parole Board's determination to deny parole release to the petitioner appears to have been solely based on the seriousness of the crimes he committed." *Rivera v. Stanford*, 172 AD3d 872, 874 [2d Dept. 2019]. Such analysis, or lack thereof, is incompatible with the Parole Board's duty. *Id*; *see also Ramirez v. Evans*, 118 AD3d 707 [2d Dept. 2014].

While the Board makes a reference to "official opposition" to Petitioner's release in the Decision,[5] a review of this opposition demonstrates that it can no longer be a basis upon which to deny Petitioner's release.[6] The Sentencing Judge's opposition letter dates from 20 years ago, when Petitioner was up for parole for the first time. The Judge notes that he reduced the

[5] The Decision also references "community opposition," however Respondent has not provided the Court with any such documentation.

[6] Justice Seidell's June 26, 2001 letter was provided to the Court for *in camera* review. The record also references statements made by the Judge in the sentencing minutes, however neither party provided a copy of same to the Court. Although there are also two letters of opposition from the Suffolk District Attorney's Office, the most recent letter is from 2003.

minimum sentence to 20 years because Petitioner plead guilty and spared the victim's family the trauma of a murder trial. Significantly, the Interview Transcript, the Petition and Justice Seidell's letter all indicate that the Judge stated that it was his intention that Petitioner should not be released until he was older than the Judge was at the time of the sentencing. It is uncontested that Justice Seidell was 55 years old at that time and that Petitioner is now 59. Accordingly, the Parole Board's reliance on "official opposition," without acknowledging that Petitioner is now past the age "threshold" stated by the Sentencing Judge, cannot serve as a basis to deny Petitioner parole. Similarly, as the focus of Justice Seidell's letter was the nature of Petitioner's crime and his lack of remorse at sentencing, the Parole Board's reliance thereon almost 40 years later further emphasizes that the seriousness of Petitioner's crime was the only basis upon which the Board denied parole release.

"While the seriousness of the underlying offense remains acutely relevant in determining whether the petitioner should be released on parole, the record supports the petitioner's contention that the Parole Board failed to take other relevant statutory factors into account." *Mitchell v. New York State Div. of Parole*, 58 AD3d 742, 743 [2d Dept. 2009]. As such, "notwithstanding the seriousness of the underlying offense, the Parole Board's 'determination to deny the petitioner release on parole evinced irrationality bordering on impropriety' [citations omitted]." *Coleman v. New York State Dep't of Corr. & Cmty. Supervision*, 157 AD3d 672, 673 [2d Dept. 2018].

The Court further finds that the Decision should be vacated because the Decision fails to provide the requisite detail for the Board's denial. Executive Law §259-i(a)(2) requires that the reasons for denial "shall be given in detail and not in conclusory terms." In addition, 9 NYCRR §8002.3(b) requires that the Decision "shall, in factually individualized and non-conclusory

terms, address how the applicable parole decision-making principles and factors listed in 8002.2 were considered in the individual's case." Respondent failed to do so in the instant matter.

Although the Decision herein is lengthy and contains information about the factors that the Board considered, the reasons for its denial are not set out with sufficient detail to allow for intelligent appellate review. *See e.g. Robinson v. New York State Bd. of Parole,* 162 AD3d 1450, 1451 [3d Dept. 2018]. Further, the "Board summarily listed petitioner's institutional achievements, and then denied parole with no further analysis of them, in violation of the Executive Law's requirement that the reasons for denial not be given in 'conclusory terms.'" *Rossakis v. New York State Bd. of Parole*, 146 AD3d 22, 28 [1st Dept. 2016].

The record reflects that Petitioner has worked in "outside clearance" for thirteen years and has successfully served his time in medium security facilities since 1997. Therefore, the Parole Board's conclusion that his release would not be compatible with the welfare of society is unsupported by the record. The Board seemed troubled by the fact that Petitioner will be released to live in the community where his crime occurred 40 years ago. The Board questioned Petitioner about his release plans (pp. 29-30) and referenced his release plan to live with his housebound mother in Deer Park in its decision (p. 40) but it did not identify any potential adverse effect his release may have on that community. Such a "terse and conclusory" determination, without record support does not explain the reasons for the denial in detail as required by the Executive Law. *Rivera, supra* at 874.

The instant case cannot be considered in a vacuum. This was Petitioner's twelfth appearance before the Parole Board and he has served 39 years in prison, which is 19 years past his minimum sentence of 20 years to life. As such, the Board's decision must necessarily

provide sufficient detail as to why, given all of the positive factors detailed, they determined in conclusory fashion that Petitioner did not "meet" the statutory thresholds.

Finally, the Petition includes a request that Petitioner be refunded his filing fee from Respondent. *See* Petitioner's WHEREFORE paragraphs. Notably, Respondent does not address this in her Answer and Return, but Petitioner repeats the request in the conclusion of his Reply. "As the record does reflect that petitioner has paid a filing fee of $305, and he has requested reimbursement thereof, we grant petitioner's request for that amount." *Clark v. Annucci*, 192 AD3d 1317 [3d Dept. 2021].

The Court has considered the additional contentions of the parties not specifically addressed herein. To the extent any relief requested by either party was not addressed by the Court, it is hereby denied. Accordingly, it is hereby

ORDERED that the Petition is granted and the June 23, 2020 determination is annulled; and it is hereby

ORDERED that the matter is remitted to Respondent for a *de novo* parole release interview and review which complies with all applicable statutes and regulations and before a panel of the Board consisting of members who were not involved in the June 23, 2020 interview or in the subsequent appellate review; and it is further

ORDERED that said interview is to be conducted within forty-five (45) days of the date of this Court's Decision and Order, and a decision is to be issued within fifteen (15) days of the date of such hearing;[7] and it is further

ORDERED that Respondent shall reimburse Petitioner his $305.00 filing fee within 45 days of the date of this Decision and Order.

[7] According to the Board's Decision, Petitioner's next appearance date is scheduled for December 2021. As such, Respondent should be well prepared to proceed under the timelines ordered herein.

The foregoing constitutes the Decision and Order of the Court.

Dated: Poughkeepsie, New York
September 29, 2021

CHRISTI J. ACKER, J.S.C.

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