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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In the Matter of BEHROOZ KANANI,

Petitioner,

-against-

**DECISION AND
ORDER/JUDGMENT**

Index No.: 904273-18

RJI No.: 01-18-ST9680

Tina M. Stanford, Chair of the
New York State Parole Board,

Respondent.

(Supreme Court, Albany County, Special Term)

(Justice Kimberly A. O'Connor, Presiding)

APPEARANCES: KATHY MANLEY, ESQ.
Attorney for Petitioner
26 Dinmore Road
Selkirk, New York 12158

BARBARA D. UNDERWOOD
Attorney General of the State of New York
Attorney for Respondent
(Helena O. Pederson, Esq., Assistant
Attorney General, of Counsel)
The Capitol
Albany, New York 12224

O'CONNOR, J.:

Petitioner Behrooz Kanani ("petitioner"), an inmate in the care and custody of respondent New York State Department of Corrections and Community Supervision ("DOCCS") and presently incarcerated at Otisville Correctional Facility, commenced this CPLR Article 78 proceeding to vacate a decision of the New York State Board of Parole ("Parole Board," or "Board") denying his application for discretionary parole release. Respondent Tina M. Stanford,

ATTORNEY GENERAL
LITIGATION BUREAU

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Chair of the New York State Parole Board ("respondent), has answered the petition and opposes the requested relief. Petitioner has not replied to the opposition.

Petitioner is serving an aggregate, indeterminate term of twenty-five (25) to fifty (50) years imprisonment following his conviction, by jury verdict, of twelve counts of sodomy in the first degree. The instant convictions involved petitioner, on twelve separate occasions between June 1987 and April 1989, sexually abusing and sodomizing his two young daughters. The victims were ages eight and ten at the time.

On December 5, 2017, petitioner appeared before the Parole Board for a parole interview. Following the interview and a review of his institutional record, the Parole Board denied petitioner's application for parole release and ordered him held for a reappearance in twenty-four (24) months. In its decision denying parole, the Parole Board stated:

Careful review of the record, this interview, and deliberation led the Panel to conclude that there is a reasonable probability that if released at this time, you would not live and remain at liberty without again violating the law. Parole is denied.

Your instant offense of sodomy first, in which you sexually abused and sodomized two minor victims. Your criminal history reflects prior unlawful behavior. This repeated unlawful behavior is a concern for this Panel.

Institutional and case plan, programming, indicate that you have completed part of your recommended programs. Take this time to complete Phase II and Phase III and all other recommended programs.

Disciplinary record reflects past sanctions. The Panel has considered your COMPAS risk score. However, you showed no empathy for the victims. You wavered upon whether to take responsibility or not after so many years. You appeared more concerned with your plight and your future. You never mentioned any damages you may have caused your victims. This Panel had to nudge you to acknowledge your victims. Take this time to receive therapeutic counseling to gain insight into your crime and behavior.

Sentencing minutes have been considered, including your risk to the community, rehabilitation efforts, and your need for successful community reentry.

Petitioner administratively appealed the Parole Board's decision, filing a brief on April 20, 2018 with the Parole Board's Appeals Unit. On June 1, 2018, the Board's Appeals Unit mailed its statement of findings and recommendation, together with its final determination affirming the Parole Board's decision to petitioner and his counsel. This proceeding followed.

Petitioner contends that the Parole Board's decision was arbitrary and capricious and so irrational as to constitute an abuse of discretion "because the . . . Board improperly based its decision . . . only on the severity of the offense (and the prior criminal history)" and "ignored [p]etitioner's exemplary institutional record." Petitioner also asserts that the Board failed to provide detailed reasons for its denial of parole. Moreover, petitioner submits that his due process rights under the federal and state constitutions were violated. Respondent, in opposition, asserts that the Parole Board properly considered all statutorily-required factors and that the Board's decision denying petitioner parole release was rational, reasonable, and made in accordance with applicable statutes, including Executive Law §§ 259-i and 259-c.

The Court begins by noting that "parole release decisions are discretionary and will not be disturbed so long as the Board complied with the statutory requirements set forth in Executive Law § 259-i" (*Matter of Beodeker v. Stanford*, 164 A.D.3d 1555, 1555 [3d Dep't 2018]; *Matter of Franza v. Stanford*, 155 A.D.3d 1291, 1291 [3d Dep't 2017]; see *Matter of Robinson v. New York State Bd. of Parole*, 162 A.D.3d 1450, 1450 [3d Dep't 2018]). When reviewing a discretionary parole release determination, the Court's "role is not to assess whether the Board gave proper weight to the relevant factors . . . 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" (*Matter of Comfort v. New York State Div. of Parole*, 68 A.D.3d 1295, 1296 [3d Dep't 2009]; see *Matter of Valderrama v. Travis*, 19 A.D.3d 904, 905 [3d Dep't 2005]). Rather, the Court must determine

“only whether the Board followed the statutory guidelines and rendered a determination that is supported, and not contradicted, by the facts in the record” (*Matter of Comfort v. New York State Div. of Parole*, 68 A.D.3d at 1296).

Evaluating the Parole Board’s written decision in the context of the parole hearing, the Court finds that the Parole Board appropriately considered and applied the required statutory guidelines and factors in making its decision, and that its determination denying petitioner parole release is supported by the record (*see Matter of Hamilton v. New York State Div. of Parole*, 119 A.D.3d 1268, 1272-1273 [3d Dep’t 2014]). A review of the transcript of petitioner’s parole interview reveals that in addition to discussing the circumstances of the instant offenses and his prior criminal history, the Board discussed with petitioner his institutional programming, post-release plans, including his proposed residence and employment, and the goals set forth in his case plan, confirming that petitioner “[had] accomplished some of those.” The Board also discussed the fact that petitioner’s last disciplinary action was in 2003 and that Petitioner’s risk assessment was “low across the board.” In addition, the Board noted petitioner’s ineligibility for an EEC, indicated that it had reached out to the judge, District Attorney, and defense counsel for an official statement, but did not hear back, and addressed his Phase II and Phase III programming wait list status.

Furthermore, at the time of petitioner’s interview, the Board had, for its review and consideration, a copy of petitioner’s sentencing minutes, his Correctional Offender Management Profiling for Alternative Sanction (“COMPAS”) Re-entry Risk Assessment, and his case plan. The Board also had for its review petitioner’s institutional record, which included, among other things, his pre-sentence investigation report (“PSIR”) and parole board report (“PBR”). The PSIR contains, among other things, a description of the present offenses; petitioner’s statement; his

social history, including his family background, education and employment history, and information about his physical and mental health; an evaluative summary; and a psychological evaluation. The PBR sets forth, among other things, information about petitioner's present offense; his statement; his post-release plans; supervision and investigation concerns; and a summary/evaluation. In addition, the PBR indicates if any official statements have been made, if an inmate is eligible for an earned eligibility certificate, if the inmate has any mental health or medical issues, and includes recommended special conditions, among other things.

Moreover, during his parole interview, petitioner was given the opportunity to talk about his programming and case plan, including his vocational assignment, educational accomplishments, and volunteer work with a religious program; to address his post-release plans to reside with a friend and proposed employment in a luncheonette, coffee shop, or supermarket, and to speak to about his responsibility for the crimes. He also had an opportunity to respond to questions and statements made by the Boards and was able to make comments supportive of his release.

While petitioner claims the Parole Board improperly based its decision solely on the seriousness of his crime and prior criminal history and ignored his "exemplary" institutional record, the Board was required to consider the serious nature of his offenses (*see* Executive Law § 259-i[2][c][A][vii]); "and was entitled to give greater weight to the serious nature of the crime[s] than to the other statutory factors" (*Matter of Williams v. New York State Div. of Parole*, 114 A.D.3d 992, 992 [3d Dep't 2014]; *Matter of Davidson v. Evans*, 104 A.D.3d 1046, 1046 [3d Dep't 2013]; *Matter of Rodriguez v. Bd. of Parole*, 100 A.D.3d 1179, 1180 [3d Dep't 2012]). Furthermore, since the Board's decision was sufficiently detailed to inform the petitioner of the reasons for denying him parole release, it satisfies the criteria set forth in Executive Law § 259-

i(2)(a)(i) (*see Matter of Burress v. Evans*, 107 A.D.3d 1216, 1216 [3d Dep't 2013]; *Matter of Murray v. Evans*, 83 A.D.3d 1320, 1321 [3d Dep't 2011]; *Matter of Siao-Pao v. Dennison*, 11 N.Y.3d 777 [2008]), and no further detail was necessary or required (*see Matter of Davis v. Travis*, 292 A.D.2d 742 [3d Dep't 2002]).

Moreover, it is clear from a reading of the Board's decision that petitioner's lack of remorse and insight into his offenses were the bases for the Board's departure from his "low" COMPAS risk score. The Board's failure to parrot the regulatory language or to be more artful in its explanation for its departure does not demonstrate a failure to comply with 9 NYCRR § 8002.2(a) and/or § 8002.3(b). Finally, the Court is not persuaded that petitioner's due process rights were violated since "Executive Law § 259-i does not create an entitlement to release on parole and therefore does not create interests entitled to due process protection" (*Matter of Freeman v. New York State Div. of Parole*, 21 A.D.3d 1174, 1175 [3d Dep't 2005])[internal quotation marks and citation omitted], citing *Barna v. Travis*, 239 F.3d 169, 170-171 [2d Cir. 2001]; *see Matter of Russo v. New York State Bd. of Parole*, 50 N.Y.2d 69 [1980]; *Franza v. Stanford*, 2018 WL 914782, *10 [SDNY, Feb. 14, 2018, No. 16-CV-7635 (KMK)].

For these reasons, the Court finds that the denial of parole release challenged herein was not arbitrary and capricious, or irrational bordering on impropriety. Therefore, judicial interference is unwarranted (*see Matter of Silmon v. Travis*, 95 N.Y.2d 470, 476 [2000]; *Matter of Russo v. New York State Div. of Parole*, 50 N.Y.2d 69, 77 [1980]).

Any remaining arguments have been considered and found to be lacking in merit or need not be addressed in light of the foregoing determination.

Accordingly, it is hereby

ORDERED AND ADJUDGED, that the petition is denied.

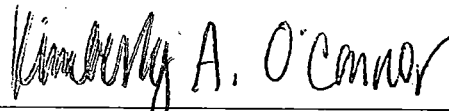
The Court observes that certain documents of a confidential nature relating to the petitioner were submitted as part of the record. The Court, by separate order, is sealing all documents submitted for *in camera* review.

This memorandum constitutes the Decision and Order/Judgment of the Court. The original Decision and Order/Judgment is being returned to the Attorney General. A copy of this Decision and Order/Judgment together with all other papers are being forwarded to the County Clerk for filing. The signing of this Decision and Order/Judgment and delivery of the copy of the same to the County Clerk shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provisions of that rule with respect to filing, entry, and notice of entry of the original Decision and Order/Judgment.

SO ORDERED AND ADJUDGED.

ENTER.

Dated: November 8, 2018
Albany, New York



HON. KIMBERLY A. O'CONNOR
Acting Supreme Court Justice

Papers Considered:

1. Notice of Petition, dated July 2, 2018; Petition, dated July 2, 2018; Exhibits A-E; and
2. Answer, dated and verified July 27, 2018, with Exhibits A-L annexed; Memorandum of Law in Support of Respondents' Answer, dated July 27, 2018.

