

Fordham Law School

## FLASH: The Fordham Law Archive of Scholarship and History

---

NYS Supreme Court Decisions in Art. 78  
Proceedings

Court Litigation Documents

---

November 2021

### Decision in Art. 78 proceedings - Soule, Deborah (2018-09-06)

Follow this and additional works at: <https://ir.lawnet.fordham.edu/pdd>

---

#### Recommended Citation

"Decision in Art. 78 proceedings - Soule, Deborah (2018-09-06)" (2021). Parole Information Project  
<https://ir.lawnet.fordham.edu/pdd/349>

This Parole Document is brought to you for free and open access by the Court Litigation Documents at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in NYS Supreme Court Decisions in Art. 78 Proceedings by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

---

IN THE MATTER OF THE APPLICATION OF  
**DEBORAH SOULE**, 96-G-0391

Petitioner,  
-vs-

Index No.  
I-2018-807952

**TINA M. STANFORD**, CHAIRWOMAN,  
NEW YORK STATE BOARD OF PAROLE.

Respondent.

---

Joshua F. Dubs, Esq.  
for Petitioner

Barbara D. Underwood, Attorney General  
of the State of New York  
By: Timothy J. Flynn  
Assistant Attorney General  
for Respondent

**DECISION AND ORDER**

BOLLER, J.

Petitioner seeks relief pursuant to Article 78 of the Civil Practice Law and Rules vacating the determination made by respondent denying petitioner release on parole.

An Order to Show Cause was granted by this Court, directing respondent to show cause why the relief requested in the petition should not be granted. Respondent, through their attorney, Barbara D. Underwood, New York State Attorney General, Timothy J. Flynn, Assistant Attorney General, of Counsel, opposes the petition.

Petitioner claims that respondent's decision denying her release on parole was arbitrary and capricious in that the board's decision was based solely upon petitioner's criminal history and its failure to follow the provisions of Executive law §259-i(2)(c)(A).

Regarding petitioner's claim that the board relied only upon petitioner's criminal history in making its decision, the parole board is "entitled to place greater emphasis on the serious nature of the crime over the other factors." Matter of Vigliotti v. State of New York Executive Div. Of Parole, 98 A.D. 3d 789.

When making its decision the parole board must consider risk and needs principles as required by Executive Law §§259-c(4) and the eight factors listed in Executive law 259-i(2)(c)(A).

When issuing its written decision the "Board is not required to specifically set forth each statutory factor it considered in making its decision nor must it accord each factor equal weight." Matter of Leede A. De Lagarde II v. New York State Division of Parole, 23 A.D. 3d 876.

Upon review of the record it is clear that in making its decision the Board considered the following factors: petitioner's COMPAS instrument; instant offense; criminal history; institutional record; letters in support of petitioners release; sentencing minutes; and petitioner's release plans regarding both her residence and possible employment.

It has been well settled that a parole board's decisions are discretionary and if made in accordance with statutory requirements, are not subject to judicial review. Matter of Zane v. Travis, 231 AD 2d 848. See also Executive Law section 259-i(5).

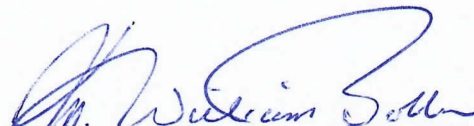
This Court has reviewed the entire record submitted by both parties in support of their respective positions. The Court has further fully examined the arguments set forth by petitioner and the basis upon which each of her arguments is premised. Based upon that review, the Court

finds that the New York State Parole Board's actions and decision herein were in all respects made in accordance with the statutory requirements. The Court finds that petitioner has failed to meet her burden to demonstrate convincingly that the Parole Board failed to act in accordance with the statutory requirements.

Further, a full review of the prior proceedings herein fails to demonstrate any evidence which would indicate that the respondent acted in an arbitrary and capricious manner in relation to any of the issues presented herein. The record demonstrates that the Parole Board acted completely within the bounds of the statute and regulations which govern it as they apply to the proceedings conducted in relation to this petitioner. There is no showing that the decision of the Parole Board exhibited "irrationality bordering on impropriety" Russo v. New York State Parole Board, 50 NY2d 69.

Accordingly, upon the record herein, a review of all the relevant factors and after full consideration of the arguments presented by the parties, the Court finds that the petition herein must be and hereby is DISMISSED.

SO ORDERED.

  
M. WILLIAM BOLLER  
A.J.S.C.

Dated: September 6, 2018  
Buffalo, New York