November 2021

Decision in Art. 78 proceeding - DiLeonardo, Paul (2018-05-29)

SUPREME COURT - STATE OF NEW YORK
DUTCHESS COUNTY

Present:

Hon. JAMES V. BRANDS

Justice.

SUPREME COURT: DUTCHESS COUNTY

x

In the Matter of the Application of
PAUL DILEONARDO,

Petitioner,

-against-

TINA M. STANFORD, Chair of the New York State Parole Board,

Respondent.

x

DECISION AND ORDER
Index No: 2018-50332
DIN# 04-A-3109
ORI#NY013015J

The following papers were read and considered on this Article 78 petition.

NYSCEF Doc. No. 1-34

Background Facts:

Following a bench trial, petitioner was convicted of Murder in the Second Degree that stemmed from an incident that occurred on June 18, 2002. Petitioner learned that his girlfriend discovered that he was dating another woman. On the date of the incident, Petitioner drove from work to his girlfriend's house, where he agreed to help his girlfriend drop off her three-year old daughter to her caretaker. He retrieved a knife from the kitchen before they departed to the caretaker's house. His girlfriend exited the vehicle to drop her child off with the caretaker and, as she returned to the vehicle, petitioner "lost it" and stabbed her 141 times with the knife and left her at the scene with fatal wounds.

Petitioner's defense of extreme emotional disturbance was rejected at trial. During the sentencing phase, the court ordered a psychological evaluation of petitioner to be considered in connection with determining the appropriate sentence. Petitioner was sentenced to a term of 15 years to life.

At issue is the Parole Board Release Interview dated May 23, 2017 which concluded with a denial of parole release. Said determination was affirmed on appeal.

Petitioner filed the instant Article 78 petition challenging the foregoing determinations. He contends that the review board failed to consider the requisite factors set forth in Executive Law 259-i. In that regard, petitioner claims that the review board excessively weighed the factor of the severity of the petitioner's crime without adequate consideration to the petitioner's positive institutional history, progressing maturity, and remorse. He further contends that the determinations were arbitrary and in violation of the 2011 Amendments to the parole regulations in that petitioner alleges that the determination was not an objective "evidence based" assessment. In support of the instant application, counsel cites the recent decisions rendered in the *Matter of Kellogg v New York State Bd. of Parole*, 159 A.D.3d 439 [1st Dept. 2018] and *Matter of Butler v NYS Board of Parole,* Sup Ct. Dutchess County, Index No. 2703/2017.

Decision:

The proper standard of review for parole board interviews is whether the decision is irrational so as to border impropriety (*see Russo v NYS Board of Parole*, 427 N.Y.S.2d 982 [1980]; *Cruz v Travis*, 273 AD2d 648 [3rd Dept. 2000]).

Executive Law §259-i[2][c] requires the consideration of several statutory factors, including the inmate's institution record and seriousness of the offense. (*Id.*). Executive Law §259-c[4] was amended in 2011 to implement a more objective assessment of the statutory factors by the Board through the adoption of the COMPAS (Correctional Offender Management Profiling for Alternative Sanction) assessment tool. The parole board may exercise its discretion in determining that the severity of the crimes outweighs the inmate's achievements while confined, and doing so does not render the denial of parole irrational or improper. (*Matter of Kirkpatrick v. Travis*, 5 A.D.3d 385 [2nd Dept. 2004], *People ex rel. Yates v Walters,* 111 A.D.2d 839 [2nd Dept. 1985]). The Board has the discretion to "place a greater emphasis on the gravity of [the] crime" when weighing the statutory factors (*Matter of Perea v Stanford*, 149 A.D.3d 1392 [3d Dept. 2017]; *see also Matter of Kirkpatrick v. Travis*, supra.). A Board has discretion to determine whether to grant parole release upon due consideration of the statutory factors, and such determination is not subject to judicial reviw absent "a showing of irrationality bordering on impropriety" (*Matter of Russo v NYS Bd. of Parole*, 50 N.Y.2d 69, 77 [1980]).

The record reflects the Board considered the COMPAS Risk and Needs Assessment instrument in conjunction with the statutory factors including the petitioner's institutional record, seriousness of the criminal offense, disciplinary record, and considerations for the successful re-enty into the community. The Board acknowledged petitioner's accomplishments as set forth on the COMPAS report. The Board properly balanced same against the interests of public safety. In that regard, the Board noted petitioner stabbed his victim 141 times in a "fit of rage" (Tr.[1] at page 6), the trial court found that "the evidence did not support the...claim of extreme emotional disturbance" (Tr. at page 20), and the Board recognized that petitioner has not sought the type of

[1] Referencing the transcript ("Tr.") of the Parole Board Interview held on 3/23/2017 filed as NYSCEF Doc. No. 4.

psychiatric intervention as contemplated by the sentencing judge for petitioner who has been classified as 'mental health level 6'. (Tr. at page 21-22). The Board remained concerns about petitioner's "potential for losing it" (Tr. at page 26). The Board weighed "petitioner's demonstrated capacity for extreme and disproportionate violence in response to seemingly minor emotional challenges", in this instance learning that his two girlfriends knew of each other prompted him to stab one of his girlfriends a total of 141 times. (Respondent's Answer ¶9).

In sum, the record before this court demonstrates that the Board's denial of parole was amply supported by the evidence before the Board and was made in accordance with statutory requirements. Absent any showing that the Board's determination was so irrationally based that it borders on impropriety, the Board determination is not subject to judicial scrutiny (*see generally Matter of Ganci v Hammock*, 99 A.D.2d 546 [2nd Dept. 1984], *citing* Executive Law 259-i[5], *Matter of Bacon v Hammock*, 96 A.D.2d 557 [2nd Dept. 1983], *Matter of Delman v NYS Bd. of Parole*, 93 A.D.2d 888 [2nd Dept. 1983]).

In so holding this court distinguishes the factual circumstances in this matter from those presented in the petitioner's cited cases (*see Matter of Kellogg v New York State Bd. of Parole*, 159 A.D.3d 439 [1st Dept. 2018]; *Matter of Butler v NYS Board of Parole,* [Supreme Court, Dutchess County Index No. 2703/2017]).

In *Matter of Kellogg*, the parole board failed to appreciate that petitioner was convicted of second-degree murder based on strict vicarious liability that stems from a burglary, which does not require a showing of intent. Instead, the Board mis-characterized the conviction as one of *intentional* murder by giving weight to the fact that "they [the Board] did not see where [she had] admitted to being such a bad person" (*Matter of Kellogg*, 159 A.D.3d at 440) and emphasizing that "petitioner had failed to admit responsibility for the crimes she had been found guilty of committing" (*id.* at 441). In contrast, the record in the instant matter is devoid of any such mis-characterization of the conviction.

In *Matter of Butler,* the court held that the "Board's failure to articulate in its written decision any facts other than the recitation of petitioner's crimes of conviction and prior criminal record require this court to remand the matter" [for a denovo determination]. *(Matter of Butler v NYS Board of Parole,* supra. at 4). In contrast, the Board's written decision in connection with the instant matter cited several factors considered, including "heinous nature" of the petitioner's conduct, the severity of the crime, the lack of remorse stated as petitioner having "exempted himself from the moment of the crime", concerns over public safety, concerns of petitioner's mental health and lack of mental health intervention prior to the requested parole release, while also considering petitioner's accomplishments including "institutional adjustment; an Associate's Degree; vocational and behavioral reports, documents of support and of opposition and the low COMPAS scores". (Tr. at p. 24-26).

Based on the foregoing, it is hereby

ORDERED that the petitioner's application is denied and this matter is dismissed.

The foregoing constitutes the decision and order of this court.

Dated: May 29, 2018
Poughkeepsie, New York

ENTER:

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Pursuant to 22 NYCRR 671.5, please be advised that you have the right to appeal, or to apply for permission to appeal, this order to the Appellate Division, Second Department, 45 Monroe Place, Brooklyn, New York, 11201. Upon proof of your financial inability to retain counsel and pay the cost and expenses of the appeal, you have the right to apply to the appellate court for assignment of counsel and leave to prosecute the appeal as a poor person. CPLR Section 5513 provides that an appeal may be taken, or motion for permission to appeal may be made, within thirty (30) days after the entry and service of any order or judgment from which the appeal is taken, or sought to be taken, and written notice of its entry.

When submitting motion papers to Judge Brands' Chambers, please do not submit any copies. Submit only the original papers.