November 2021

Decision in Art. 78 proceeding - Bouton, James (2019-12-05)

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In The Matter of the Application of

JAMES BOUTON,

Petitioner,

-against-

DECISION/ORDER/JUDGMENT

TINA M. STANFORD, CHAIR OF THE
NEW YORK STATE PAROLE BOARD,

Respondent,

For A Judgment Pursuant to Article 78
of the Civil Practice Law and Rules.

Supreme Court, Albany County, Article 78 Term
Hon. Andrew G. Ceresia, Supreme Court Justice
Index No. 905326-19 RJI No. 01-19-ST0529

Appearances:

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Ceresia, J.:

Petitioner commenced the instant CPLR Article 78 proceeding to challenge respondent's decision denying him parole release. Respondent opposes.

It is well-established that "parole release decisions are discretionary and will not be disturbed as long as the Board complied with the statutory requirements of Executive Law

§ 259-i" (Matter of Delrosario v Evans, 121 AD3d 1152, 1152 [2014]; see Matter of Rivers v Evans, 119 AD3d 1188, 1188 [2014]). The Board must consider the relevant statutory factors (see Executive Law § 259-i [2] [c] [A]; Matter of Parmes v Travis, 17 AD3d 885, 886 [2005]). However, "[t]he Board need not enumerate, give equal weight or explicitly discuss every factor considered" (Matter of Montane v Evans, 116 AD3d 197, 203 [2014], appeal dismissed 24 NY3d 1052 [2014] [internal quotation marks and citation omitted]; see Matter of Leung v Evans, 120 AD3d 1478, 1479 [2014]).

Here, the record reveals that the Board considered the pertinent statutory factors and followed the appropriate guidelines in denying petitioner's request for parole release. That is, "'the Board properly considered petitioner's criminal history, as well as the nature of his crimes, his prison disciplinary record, his institutional accomplishments and his postrelease plans'" (Matter of McCaskell v Evans, 108 AD3d 926, 927 [2013], quoting Matter of Davis v Evans, 105 AD3d 1305, 1306 [2013]). Thereafter, the Board rendered a decision denying petitioner's request for parole release, noting in particular the gravity of petitioner's crimes of conviction as well as his lengthy history of drug abuse while in prison.

With respect to the gravity of the crimes, while petitioner argues that it was his cousin and not he who brutally stabbed three elderly men during the course of a burglary, the Board is entitled to place emphasis on the senseless and violent nature of the crimes of conviction even when the inmate did not personally engage in that conduct (see Matter of Sanchez v Dennison, 21 AD3d 1249, 1250 [2005]).

As for petitioner's history of drug abuse, petitioner argues that his record reflects his recent success in achieving and maintaining sobriety, and he also relies upon the indication in the COMPAS risk and needs assessment instrument that he is a low risk for reentry substance abuse.

However, the Board took note of these achievements as well as the COMPAS instrument – which constitutes only one factor for the Board's consideration (see Matter of Rivera v New York State Div. of Parole, 119 AD3d 1107, 1109 [2014]) – but also expressed concern for petitioner's much lengthier prior history of numerous drug offenses over the course of decades of incarceration, including as recently as 2015.

Under these circumstances, it cannot be said that the Board's decision evinces "'irrationality bordering on impropriety'" (see Matter of Molinar v New York State Div. of Parole, 119 AD3d 1214, 1216 [2014], quoting Matter of Russo v New York State Bd. of Parole, 50 NY2d 69, 77 [1980]; see Mercado v Evans, 120 AD3d 1521, 1522 [2014]).

Nevertheless, petitioner asserts that the Board's determination should be overturned because an inmate's likelihood of re-offense is "the key factor" for the Board to consider, and the record herein, according to petitioner, does not support a likelihood of re-offense. However, contrary to this assertion, the likelihood of re-offense is only part of the statutory framework required to be considered by the Board (see Executive Law § 259-i [2] [c] [A]; Matter of Karimzada v New York State Board of Parole, 176 AD3d 1555, 1556 [2019]). Here, the Board did, indeed, consider the entire statutory scheme. In so doing, the Board acknowledged that petitioner had been scored as a low risk for recidivism, but went on to find that petitioner's release would so deprecate the seriousness of the crime as to undermine respect for the law (see id.). Contrary to petitioner's contention that this was a mere parroting of statutory language, the Board supported this finding by emphasizing the particularly heinous and brutal nature of the crimes.

Petitioner also argues that his young age at the time of the crime should have been

considered by the Board. The Board did, however, discuss during the hearing petitioner's age and the ways in which his youth affected his decision-making at that time, but ultimately placed greater emphasis on other factors, as it was entitled to do (see Matter of Allen v Stanford, 161 AD3d 1503, 1505 [2018]).

Finally, petitioner's counsel cites to numerous other cases where inmates were ultimately released to parole and not thereafter reincarcerated. These other cases have no bearing on the propriety of respondent's determination in this case. "There is no entitlement to parole based upon comparison with the particulars of other applicants. Rather, each case is sui generis, and the Board has full authority in each instance to give the various factors a unique weighted value" (Matter of Phillips v Dennison, 41 AD3d 17, 22 [2007], lv dismissed 9 NY3d 956 [2007]).

Therefore, it is hereby

ORDERED and **ADJUDGED** that the petition is dismissed and the relief requested therein is in all respects denied.

This constitutes the Decision/Order/Judgment of the Court. The original Decision/Order/Judgment is being returned to the Attorney General. A copy of this Decision/Order/Judgment and all other original papers are being delivered to the Albany County Clerk's Office. The signing of this Decision/Order/Judgment shall not constitute entry or filing under CPLR § 2220. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry, and notice of entry.

ENTER.

Dated: December 5, 2019
Albany, New York

Andrew G. Ceresia
Supreme Court Justice

01/06/2020

Papers Considered:

1) Notice of Petition, dated August 15, 2019; Verified Petition, with annexed exhibits;

2) Verified Answer, dated September 9, 2019, with annexed exhibits; Memorandum of Law.