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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**

-----X

In the Matter of the Application of

DECISION & ORDER

RONALD CLARK,

Index No. 2019-52535

Petitioner,

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

Respondent.

-----X

ACKER, J.S.C.

The following papers were considered on Petitioner's application pursuant to CPLR Article 78 for judicial review of the denial of his release to parole supervision:

Notice of Petition-Petition-Exhibits A-K.....	1-14
Answer and Return-Exhibits 1-12	15-27
Reply Affirmation of Kathy Manley, Esq.-Exhibit A.....	28-29 ¹

Petitioner commenced the instant proceeding seeking an Order (1) vacating the determination of the Board of Parole dated October 9, 2018 which denied Petitioner parole release and (2) remitting the matter to the Board of Parole with a panel of members who did not sit on his October 19, 2018 Board for a *de novo* parole release interview with a direction that they not deny release based solely on the seriousness of the offense.

¹ The Court also heard oral argument on December 10, 2019.

After a trial, the Petitioner was convicted of two counts of Rape in the First Degree, seven counts of Sodomy in the First Degree, one count of Sexual Abuse in the First Degree, one count of Assault in the Second Degree, two counts of Unlawful Imprisonment in the First Degree, one count of Assault in the Third Degree and one count of Criminal Possession of a Weapon. He is currently serving an aggregate sentence of 25 to 30 years incarceration after having been sentenced in 1993.

Petitioner first appeared before the Parole Board in October, 2016, at which time his application for release was denied. He was directed to be held an additional two years before reconsideration. The instant application was brought as a result of the Parole Board's October 9, 2018 denial of parole release. Petitioner timely filed an administrative appeal thereafter, and the denial was affirmed on May 10, 2019.

At the time of his first appearance before the Parole Board, the Defendant had been incarcerated for 27 years. In the instant application, he alleges that the Parole Board committed material errors of fact and law by basing its determination solely on the seriousness of the offense. Petitioner asserted his innocence in his 2018 appearance before the Parole Board. Notably, during his 2016 Parole Board interview, he acknowledged his involvement in the 1991 rape of the victim and expressed remorse for the crime.

New York Executive Law §259-i(2)(a) provides:

[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.

Judicial review of a determination of a Parole Board is narrowly circumscribed. *Campbell v. Stanford*, 173 AD3d 1012, 1015 [2d Dept. 2019]; *Coleman v. New York State Dep't of Corr. & Cmty. Supervision*, 157 AD3d 672 [2d Dept. 2018]. A determination of the Parole Board, “if made after consideration of the statutory factors, is not subject to judicial review absent a showing of irrationality bordering on impropriety.” *LeGeros v. New York State Bd. of Parole*, 139 AD3d 1068, 1069 [2d Dept. 2016], *citing, inter alia*, Executive Law §259-i(2)(c)(A) and *Matter of Silmon v Travis*, 95 NY2d 470, 476 [2000]; see also *Jackson v. Evans*, 118 AD3d 701, 702 [2d Dept. 2014] (“Absent a convincing demonstration to the contrary, the Board is presumed to have acted properly in accordance with statutory requirements, and judicial intervention is warranted only where there is a showing of irrationality bordering on impropriety” [citations omitted]”). While Respondent Board is required to consider the relevant statutory factors, it is not required to address each factor in its decision or accord all of the factors equal weight. *Coleman, supra*. Whether Respondent Board considered the proper factors and followed the proper guidelines are questions that should be assessed based on the written determination evaluated in the context of the parole hearing transcript. *Jackson v. Evans, supra, citing Matter of Siao-Pao v Dennison*, 11 NY3d 777, 778 [2008].

A review of the 2018 parole interview transcript indicates that the Board appropriately considered the relevant statutory factors. However, there are some differences between the determinations of the 2016 Board and the 2018 Board. The Respondent 2018 Board’s reference to the “extensive number of disciplinary infractions” must be contrasted with the 2016 Board’s finding that Petitioner has only a “minimal disciplinary record.” Further, the 2016 Board did not deviate from the Petitioner’s low COMPAS risk and needs assessment, while Respondent Board

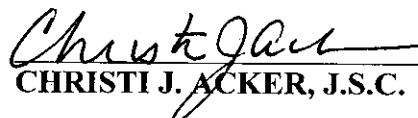
While these discrepancies bear noting, it seems clear to this Court that the Respondent Board's decision largely focused on the "two different stories" that Petitioner provided to the 2016 and 2018 Parole Boards as to his culpability in the underlying offenses. Petitioner has provided an explanation for why he now professes his innocence and his explanation appears reasonable. Nevertheless, the fact remains that Petitioner presented two diametrically opposed narratives in his only two appearances before the Parole Board. Such a conflict bears directly on the Petitioner's credibility and the Board's assessment of him in considering whether his release is incompatible with the welfare of society. *See Silmon v. Travis*, 95 NY2d 470, 477 (2000). In light of the foregoing, and given the narrow scope of judicial review of the Parole Board's discretionary determination, the Court finds that Petitioner failed to sustain his burden of demonstrating that the challenged determination was affected by irrationality bordering on impropriety. To be sure, Petitioner has presented many compelling reasons as to why he should be granted parole. However, the standard of review is not whether the Court agrees with the decision of the Parole Board, but whether the decision was arbitrary and capricious. Indeed, "[d]iscretionary release may not be solely granted as a reward for exemplary conduct." *Campbell, supra*, at 1016.

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 denied and the proceeding is dismissed.

The foregoing constitutes the Decision and Order of the Court.

Dated: Poughkeepsie, New York
February 5, 2020


CHRISTI J. ACKER, J.S.C.

To: Alfred O'Connor, Esq.
New York State Defenders Associates
Via NYSCEF

Elizabeth Gavin, Esq.
Attorney General of the State of New York
Via NYSCEF