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November 2021

### Decision in Art. 78 proceedings - Hasty, Miles (2021-07-29)

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At the term of the Supreme Court of the State of New York, held in and for the County of Dutchess, at 10 Market Street, Poughkeepsie, 12601 on July 29, 2021.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

-----X  
In the matter of the Application of  
MILES HASTY,

Petitioner

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*-against-*

NEW YORK STATE DEPARTMENT OF CORRECTIONS  
AND COMMUNITY SUPERVISION,  
ANTHONY J. ANNUCCI, ACTING COMMISSIONER, and  
TINA M. STANFORD, CHAIRWOMAN, BOARD OF PAROLE,  
Respondents,

DECISION AND ORDER  
(Motion Sequence 1)

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

-----X  
Greenwald, J.

The following papers numbered 1-3 were considered by the Court in deciding Petitioner's Article 78 Petition:

<u>Papers</u>	<u>Numbered</u>
Notice of Petition/Affirmation of Jerome S. Fortinsky, Esq./ Exhibits 1-16	1
Answer by Elizabeth A. Gavin, Esq./Exhibits 2-11	2
Reply Memorandum of Law	3

RELEVANT BACKGROUND

Petitioner makes the instant application to appeal the affirmance of the New York State Parole Board (the "Board") decision dated January 30, 2020, which is identified as Appeal Control Number 02-088-20 B ("Appeals Unit Decision"). Petitioner argues that the Board's decision on

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the appeal was arbitrary, capricious, and so irrational that it borders on impropriety. Petitioner contends that the Board failed to properly weigh the factors as required by statute, failed to sufficiently justify or explain its departure from the COMPAS report, used conclusory terms in its decision, relied on an inaccurate record in forming its decision and argues that the Commissioner(s) bias also improperly influenced the decision. Petitioner argues that these factors were the basis for the denial of the appeal and as such this Court should vacate the Board's denial of parole and order Respondents to hold a de novo parole interview before a new panel of Commissioners based on a contemporary record.

Respondents argue the board's decision was rational and based on the statutory factors. Respondents contend that the Board's decision satisfied the criteria set out in Executive Law § 259-i(2)(a) and was sufficiently detailed so as to inform the inmate of the reasons for the denial of parole, and it was not based on an erroneous record. Respondents state that the decision was not conclusory but clearly stated the basis for its decision, explaining why the Board departed from the Petitioner's COMPAS report, as well as the other factors that impacted the decision. Respondents declare that the language of the decision although not the precise statutory language is only semantically different from the statute. Respondents argue further that its consideration of the district attorney's recommendation and weight given to all the statutory factors are proper, and within its discretion and the ultimate determination has a rational basis, thus the petition should be dismissed.

#### DISCUSSION

Courts may only overturn administrative action where it is taken without sound basis in reason or regard to the facts. When the determination is supported by a rational basis the Court will sustain the determination even if the Court would conclude that it would have reached a different result than the one reached by the agency. *See, Matter of Wooley v New York State Dept. of Correctional Services*, 15 N.Y. 3d 275, 280 (2010). The standard of judicial review in an Article 78 proceeding is to scrutinize the record and determine whether the decision of the administrative agency is supported by substantial evidence and not arbitrary and capricious. *See, Matter of Garofolo v Rosa*, 26 Misc. 3d 969, 974 (Kings County Sup. Ct. 2009).

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It is well settled that the Petitioner must make a convincing showing that the Board considered and relied on erroneous information, record or criminal history in rendering its determination for the Court to intervene. See, People ex rel. Thomas v Supt. Arthur Kill Correctional Facility, 124 AD2d 848, 848-49 [2d Dept 1986] and Abrams v New York State Bd. of Parole, 88 AD2d 951 [2d Dept 1982].

Petitioner's arguments lack merit. Petitioner asserts that the Board was biased because it referenced Petitioner's offense as murder instead of manslaughter in the dialogue but admits that the Board properly stated the offense in the decision. Petitioner also states that the Board relied upon a 2003 letter submitted from a prior district attorney in opposition to Petitioner's release or any dismissed charges against Petitioner. The mention of these documents or facts does not forfeit the basis stated by the Board for its determination, nor does it make a convincing showing that the determination was made with strong reliance of such information or that the Board was biased.

The Court of Appeals has ruled that the Board is required to detail the reasons for a denial of discretionary release, but the Board need not expressly discuss each of these guidelines in its determination. See, Matter of Hamilton v New York State Div. of Parole, 119 A.D.3d 1268, 1270 (3<sup>rd</sup> Dept. 2014). Thus, Petitioner's claim that the determination is written in conclusory terms, is erroneous as there is sufficient detail to determine the basis of the denial. Nonetheless, Petitioner fails to demonstrate in the record or decision, that the Board abused its discretion, nor did Petitioner give a sufficient basis with proof that warrants vacating the Board's determination. Petitioner admits that the determination is devoid of mischaracterizations of the offense. Petitioner fails to demonstrate proof that any dismissed charge had any weight in the determination nor that the denial is based on the opposition to Petitioner's release. Instead, the decision states that the basis for Petitioner's parole release denial was based on cumulative things, not just the instant offense. In light of Petitioner's accomplishments during his incarceration, Petitioner has a lengthy criminal history that includes multiple violent crimes. Violence was a higher score on Petitioner's COMPAS report, and of concern to the Board. The Board indicated that there was still some introspection needed by Petitioner to understand the causes of his behavior. The Board considered, Petitioner's previous parole release, and Petitioner's failure to adhere to the terms of parole, as the instant offense was committed on Petitioner's previous parole release. The Board perceived that Petitioner would be challenged to follow the rules of parole, and as such parole release was denied.

Parole release decisions are discretionary and, if made pursuant to statutory requirements,

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are not reviewable. If the parole board's decision is made in accordance with the statutory requirements, the board's determination is not subject to judicial review. Only a showing of irrationality bordering on impropriety on the part of the Parole Board has been found to necessitate judicial intervention. In the absence of the above, there is no basis upon which to disturb the discretionary determination made by the Parole Board. *See, Matter of Partee v Evans*, 40 Misc.3d 896, 899 (Sup. Ct. 2013), *aff'd, Matter of*, 117 A.D.3d 1258 (3<sup>rd</sup> Dept. 2014). Here, Respondents have demonstrated that the determination was made on a rational basis. Petitioner has not demonstrated that the determination was arbitrary, capricious or bordering on impropriety, and such the petition is **denied**.

Accordingly, it is hereby,

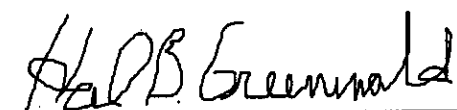
ORDERED, that Petitioner's Article 78 Petition is denied.

Any relief not specifically granted herein is denied.

The foregoing constitutes the decision and order of this Court.

Dated: July 29, 2021  
Poughkeepsie, New York

ENTER:



Hon. Hal B. Greenwald, J.S.C.

CPLR Section 5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

**When submitting motion papers to the Honorable Hal B. Greenwald's Chambers, please do not submit any copies. Please submit only the original papers.**