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### Decision in Art. 78 proceedings - Hill, George (11-17-2020)

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<b>Hill v New York State Bd. of Parole</b>
2020 NY Slip Op 33830(U)
November 17, 2020
Supreme Court, New York County
Docket Number: 100121/20
Judge: Joan A. Madden
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**SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY**

**PRESENT:                JOAN A. MADDEN**

**PART   11**

*Justice*

**GEORGE HILL,**

**Index No. 100121/20**

**Motion seq 001**

**Petitioner,**

**-against -**

**NEW YORK STATE BOARD OF PAROLE,**

**Respondent.**

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Respondent New York State Board of Parole (“respondent” or “Board”) moves to reargue and renew the court’s decision, order and judgment dated October 23, 2020 (“original decision”), to the extent of seeking additional time to conduct a de novo parole interview directed by the original decision. Petitioner George Hill (“petitioner” or “Mr. Hill”) opposes the motion, which is denied for the reasons below.

In this Article 78 proceeding, petitioner, who at the time, was incarcerated for more than 27 years, sought to vacate the determination of the Board dated January 22, 2019, denying Mr. Hill parole release for the sixth time. While the proceeding was pending, Mr. Hill appeared before the Board for a seventh time, and on April 14, 2020, he was again denied parole. Thereafter, respondent cross moved to dismiss the proceeding as moot.

In the original decision, which was efiled on October 23, 2020, the court denied the cross motion and granted the petition to the extent of directing that petitioner be provided with a new parole interview before a new Board within 30 days of efilings of the original decision, and that petitioner be provided with the parole case record, including any

letters in opposition to petitioner's parole release, within ten days of e-filing of the original decision.

Respondent now moves for reargument of the original decision to the extent it directed the Board to conduct a new interview within 30 days of e-filing of the original decision<sup>1</sup>, and requests that the original decision be modified to direct that the interview be conducted within 60 days from the date of the original decision.

At the outset, the court notes that respondent incorrectly e-filed the motion as a "cross motion" under the same sequence number as the Article 78 proceeding. In addition, respondent did not move by order to show cause, or seek a stay of the November 23, 2020 deadline set by the court but, instead, moved by notice of motion, which respondent made returnable in the motion support office on November 20, 2020, the last weekday before the November 23, 2020 deadline set by the court for petitioner's parole interview.

Putting aside these procedural defects, with respect to the merits of respondent's motion, the court notes that "[a] motion for reargument is addressed to the discretion of the court, and is intended to give a party an opportunity to demonstrate that the court overlooked or misapprehended the relevant facts, or misapplied a controlling principle of law. Foley v. Roche, 68 AD2d 558, 567 (1st Dept 1979 ). As for a motion to renew, such a motion "is intended to bring to the court's attention new facts or additional evidence which, although in existence at the time the original motion was made, were unknown to the movant and were, therefore not brought to the court's attention." Tishman Constr. Corp. of

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<sup>1</sup> Respondent provides proof that it complied with the court's order to provide community opposition letters within 10 days of e-filing of the original decision.

New York v. City of New York, 280 AD2d 374, 376 (1st Dept 2001) (internal citations omitted).

Here, for the reasons set forth below, there is no basis for granting reargument as the court did not overlook or misapprehend any factual or legal issues, and renewal is not appropriately granted as respondent points to no new facts and relies on vague and unsubstantiated assertions to support its request for an extension of time for the new parole interview.

In this connection, respondent asserts that additional time is needed as “all parole interviews require preparing the case file, updating several records, assigning available panel members who did not participate in the prior interview, giving those panel members adequate time to review the inmate’s files such that any new interview is intelligent, and actually conducting the interview.” Notably, respondent submits no evidentiary support for these general assertions but relies on affirmation of counsel who states that the facts are based on “conversations and correspondence” with counsel for the Board. Moreover, in opposition, petitioner provides email correspondence to support petitioner’s position that he has taken the needed steps for the new parole hearing have occurred.<sup>2</sup>

Respondent also contends, again without evidentiary support, that “current circumstances due to the COVID-19 pandemic have resulted in delays in this process.

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<sup>2</sup> This evidence shows that on October 28, 2020, petitioner Mr. Hill met with his Offender Rehabilitation Coordinator (“ORC”) and an updated COMPAS assessment was administered; that on November 2, 2020, Mr. Hill met again with his ORC and an updated case plan was created and placed in his parole file. Mr. Hill was also told that his proposed residence remained approved by DOCCS. Then, on October 30, 2020, Supervising Offender Rehabilitation Coordinator (“SORC”) Carysma Smith emailed petitioner’s counsel Mr. Hill’s case file and letters of opposition, which was later supplemented with a missing letter from the Brooklyn District Attorney’s Office. On November 13, 2020, petitioner’s counsel emailed SORC Smith Mr. Hill’s updated parole advocacy letter.

Many DOCCS facilities and branches have been working with alternative staff scheduling such that record gathering is complicated, mandatory solicitation of updated public statements takes longer, not all panel members are available, and physically transferring the necessary files to the assigned panel members is slowed... .”

In response, petitioner argues that the pandemic “should drive [the Board] to conduct a prompt interview, especially as we enter the third wave of the pandemic.” In support of this argument, petitioner points to evidence that as of November 13, 2020, the DOCCS reported that 1554 staff, 1689 incarcerated people, and 113 parolees got COVID-19. Five staff members, 18 incarcerated people, and four parolees have died.

In the absence of evidentiary support for respondent’s argument that the pandemic has delayed the date of the court ordered parole interview and given the increasing number of COVID-19 cases in the DOCCS facilities, the pandemic does not provide a sufficient basis for delaying petitioner’s new parole interview. See e.g. Voii v. Stanford, Index No. 50485/2020 (Sup. Ct. Dutchess Co. May 13, 2020) (Acker, J.)(denying respondent Board’s request for a 60 days, as opposed to 30 days, to hold parole interview in light of the COVID-19 pandemic and petitioner’s age (59)). In this connection, it is significant that respondents’ submission lacks affidavits or other proof regarding the assertion of the unavailability of panel members, other staff and difficulty in gathering and transporting necessary files.

With regard to respondent’s assertion that an extension of time is needed as “petitioner has not yet submitted an updated statement or release plan despite the passage of seven months and significant development in the novel COVID 19 pandemic,” as noted by petitioner, on November 13, 2020, counsel for petitioner submitted an updated parole

advocacy packet, supplementing the 147-page packet submitted prior to Mr. Hill's April 14, 2020 interview. Moreover, respondent provides no factual basis for its position that it needs additional time to obtain a new statement from the crime victim. In this regard, respondent does not detail the steps, if any, it has taken to obtain such statement.

Next, while there are cases directing that a parole hearing be held in 60 days, the case law does not hold that this is a required time period or that 30 days is an insufficient time to schedule a new parole hearing, and that two cases cited by respondent are not to the contrary. Thus, in Rossakis v. New York State Board of Parole, 146 AD3d 22, 23 (1<sup>st</sup> Dept 2016), the First Department upheld the trial court's judgment that the Parole Board's denial of parole release was irrational but vacated that part of the judgment "which directed how the Board was to weigh statutory factors." Although after modifying the trial court's judgment, the First Department directed a new parole hearing be held within 60 days of the issuance of its decision, the timing of the hearing was not a basis for its holding. In Kellogg v. New York State Board of Parole, 159 AD3d 439 (1<sup>st</sup> Dept 2018), the First Department modified the trial court's decision directing the parole release of petitioner within 30 days of the judgment, finding that the proper remedy was a new parole hearing within 60 days; however, the amount of time for the hearing was not at issue.

And, other courts have ordered a new parole hearing within 30 days. See e.g. Ely v. New York State Board of Parole, Index No. 100407/2016 (Sup Ct NY Co. 2017)((Jaffe, J.); Rabenbauer v. New York State Dept. of Corrections and Community Supervision, 46 Misc3d 603 (Sup. Ct. Sullivan Co. 2014); Thwaites v. New York State Bd. of Parole, 34 Misc3d 694 (Sup Ct. Orange Co. 2011).

Based on the foregoing, in the absence of adequate support and considering that petitioner has now been incarcerated for more than 28 years, and as this will be his eighth appearance before the Board, it is

ORDERED that respondent's motion which seeks an extension of time to conduct petitioner's parole interview is denied.

DATED: November 17, 2020

  
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J.S.C.  
**HON. JOAN A. MADDEN**  
J.S.C.

Check One:  FINAL DISPOSITION  NON-FINAL DISPOSITION