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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

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In the Matter of the Application of

MICHAEL FERNANDEZ,

Petitioner,

DECISION, ORDER AND JUDGMENT

Index No. 2022-51294

-against-

NEW YORK STATE BOARD OF PAROLE,

Respondent.

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HAYES, M.G., Acting Supreme Court Justice

The Court read and considered the following documents upon
this petition:

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In this Article 78 proceeding, petitioner Michael Fernandez requests a judgment declaring the respondent's New York State Board of Parole's ("Board") determination, dated July 5, 2021, unlawful and directing a *de novo* parole hearing before a panel of Commissioners, excluding those who conducted the challenged interview.

By way of background, on June 15, 1998, petitioner pled guilty to Murder in the Second Degree, a violation of Penal Law §125.25. On February 3, 1999, the sentencing court directed that

the petitioner serve an indeterminate term of imprisonment, with a minimum of Twenty (20) years and a maximum of his natural life.

On January 6, 1997, petitioner and his co-defendant Carlos Cajigas went to the home of James and Kathleen Martyn in Pelham Manor, Westchester County, New York with the intent to burglarize the home. The Martyns owned a horse stable where Mr. Cajigas worked. Prior to going to the home, petitioner and Mr. Cajigas met in their neighborhood. Petitioner retrieved his gun from his basement, got into the passenger side of the vehicle and provided the gun to Mr. Cajigas. As they were driving to the Martyns' residence, they stopped at Home Depot wherein Mr. Cajigas purchased a linoleum knife. The petitioner and Mr. Cajigas proceeded to the Pelham Manor home of the Martyns, parking a block away from the home. The pair forced their way into the house, petitioner stood lookout while Mr. Cajigas confronted Mrs. Martyn. The confrontation between Mr. Cajigas and Mrs. Martyn led to her death from a gunshot and stabbing. This murder occurred in the presence of the Martyns' seventeen (17) month old child. After petitioner and Mr. Cajigas fled the scene, petitioner disposed of the knife in a drain and attempted to hide the gun in the home of a friend. The petitioner and co-defendant were apprehended two weeks after the murder.

Petitioner appeared for a *de novo* parole board release interview on June 15, 2021. The Board denied discretionary

release and ordered petitioner to be held for Twenty-Four (24) months. Petitioner's appeal was received on November 8, 2021. The final appeal determination was mailed to petitioner and his counsel on January 25, 2022.

The verified petition now before this Court alleges that: (1) the Board's decision was conclusory and lacked detail; (2) the Board failed to comply with the 2011 amendments and completely discounted petitioner's low COMPAS score; (3) the Board relied almost entirely on the instant offense; (4) the letter from the District Attorney was outdated; (5) the Board displayed bias during the interview and relied on erroneous information; (6) the presentence investigation report and letter from the District Attorney contained unproven accusations; and, (7) petitioner's due process rights were violated.

The Board's release decisions are discretionary, and if made in accordance with statutory requirements, they are not subject to judicial review (see *Matter of Banks v. Stanford*, 159 AD3d 134 [2nd Dept 2018]). The petitioner bears the heavy burden of proving that this Court must intervene. Judicial intervention is only appropriate in rare instances when the Board has acted in a manner that demonstrates a showing of irrationality bordering on impropriety (see *Silmon v. Travis*, 95 NY2d 470 [2000]). Accordingly, a court may only review a parole board's denial of parole when such a denial is arbitrary and capricious (*id.*).

Initially, the Court would note that many of the issues raised in this proceeding were also raised and addressed by the Appeals Unit in its decision.

Here, the submission before this Court discloses that the Board rendered its determination after considering the full record, including the petitioner's hearing testimony, institutional background, criminal history and release plans. The Board was plainly aware of the petitioner's institutional and educational achievements, including program completions. The importance of these achievements was not diminished by the Board. Rather, the Board found that they were outweighed by the serious and brutal nature of the crime committed by the petitioner.

The record indicates that the Board acted in accordance with the statutory requirements, and therefore, there is no basis to disturb its determination in this Article 78 proceeding (see *Matter of Silmon v. Travis*, 266 AD2d 296 [2nd Dept 1999] affirmed by 95 NY2d 470). The Court will now briefly address the additional allegations made by the petitioner.

As to petitioner's contention that the Board failed to comply with the 2011 amendments and discounted petitioner's low COMPAS risk scores, the Board stated that:

"In considering your release we also reviewed the COMPAS risk and needs assessment which presents you as a low risk to offend and unlikely to need re-entry services upon release. We discussed with you your case plan goals and your plans for release...

This panel is concerned with your continued

inconsistent account of the instant offense and limited culpability. Information provided indicated Kathleen Martyn was violently murdered, and you said you stood at the door and kept watch. Your actions as well as your course of conduct before, during and after the murder of Kathleen Martyn are of concern to this panel...

After weighing the statutory factors this panel concludes that your release at this time would so deprec[i]ate the serious nature of the crime as to undermine respect for the law."

Additionally, the record before the Court establishes that the Board did not deny parole to the petitioner solely on the basis of the seriousness of his offense (*compare Huntley v. Evans*, 77 AD3d 945 [2nd Dept 2010]). While the Board examined the nature of the crime committed, it also looked at the petitioner's record while incarcerated, his accomplishments while incarcerated, plans for release including employment and living arrangements as well as his criminal history.

Petitioner maintains that the Board improperly examined a Twenty (20) year old letter from the Office of the Westchester County District attorney. This contention is without merit. Executive Law §259-i(2)(c)(A)(vii) provides the Board may consider:

"...recommendations of the sentencing court, the district attorney, the attorney for the inmate, the pre-sentence probation report as well as consideration of any mitigating and aggravating factors, and activities following arrest prior to confinement..."

The petitioner's allegation of bias on the part of the Board, particularly Commissioner Segarra, are not supported by the record (*see Matter of Hernandez v McSherry*, 271 AD2d 777 [3rd

Dept 2000])). Petitioner has "failed to offer proof that the outcome of this case flowed from the alleged bias" (id.).

Turning to petitioner's argument that the Board relied upon erroneous information in denying his request for parole release, the Court notes that the Board was entitled to rely on the information contained in the presentence investigation report, and petitioner is foreclosed from challenging the accuracy of that report here, inasmuch as he failed to raise such a challenge before the sentencing court (see *Matter of Carter v Evans*, 81 AD3d 1031 [3rd Dept 2011]).

Petitioner's remaining contentions are without merit and do not warrant discussion.

Accordingly, the petitioner has failed to establish that the Board's determination evinced irrationality bordering on impropriety (see *Goldberg v. New York State Bd. of Parole*, 103 AD3d 634 [2nd Dept 2013]).

It is therefore:

ORDERED, that the petition is dismissed.

This constitutes the Decision, Order and Judgment of the Court.

Dated: June 22, 2022
Poughkeepsie, New York



HON. MICHAEL G. HAYES, AJSC