Decision in Art. 78 proceeding - Cruz, Juan (2022-06-21)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

Present:

Hon. Maria G. Rosa, Justice

JUAN CRUZ,

Petitioner,

DECISION AND ORDER

-against-

Index No. 2022-51005

TINA M. STANFORD, Chairwoman,
NYS Board of Parole,

Respondent.

The following papers were read on this Article 78 petition:

NOTICE OF PETITION
VERIFIED PETITION
AFFIRMATION IN SUPPORT
EXHIBITS 1 - 9
MEMORANDUM OF LAW IN SUPPORT

ANSWER AND RETURN
EXHIBITS 1 - 11

MEMORANDUM OF LAW IN REPLY

Petitioner brings this CPLR Article 78 proceeding challenging a determination of the Board of Parole (the "Board") denying his request for parole release. In 2004, Petitioner pled guilty to Murder in the Second Degree. He was sentenced to 15 years to life. His conviction stems from a shooting in which Petitioner aimed a gun at the victim who was sitting in his vehicle. The victim was shot in the head and later died. Petitioner was 16 years old at the time of the shooting.

Petitioner appeared before the Board for a parole release interview on January 5, 2021. The interview was a *de novo* hearing following expungement of a disciplinary infraction resulting from a faulty positive drug test reading. Following the interview, the Board issued a written decision denying parole and ordered that Petitioner be held for 24 months with a reappearance set for November 2022. The Board determined that "if released at this time there is a reasonable probability that [Petitioner] would not live and remain at liberty without again violating the law and that [Petitioner's] release is incompatible with the welfare and safety of the community." Petitioner's

administrative appeal was denied. At the time of his last interview, Petitioner was 33 years old and had been incarcerated for approximately 17 years.

Pursuant to Executive Law §259-i(2)(c), the New York State Board of Parole is required to consider a number of statutory factors in determining whether an inmate should be released to parole (*see Matter of Miller v New York State Div. of Parole*, 72 AD3d 690 [2d Dept 2010]). The parole board must also consider whether "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 the law" (9 NYCRR 8002.1). A parole board is not required to give equal weight to each statutory factor, nor is it required specifically to articulate every factor considered (*see Matter of Huntley v Evans,* 77 AD3d 945 [2d Dept 2010]). It is further permitted to place a greater emphasis on the gravity of offense committed (*see Matter of Serrano v Alexander*, 70 AD3d 1099, 1100 [3d Dept 2010]). However, in the absence of aggravating circumstances, a parole board may not deny release solely on the basis of the seriousness of the offense (*see Huntley v Evans*, 77 AD3d at 947; *King v New York State Div. of Parole*, 190 AD2d 423 [1st Dept 1993]). Moreover, while the board need not consider each guideline separately and has broad discretion to consider the importance of each factor, the board must still consider the guidelines (*see* Executive Law §259–i[2][a]). Finally, the board must inform the inmate in writing of the factors and reasons for denial of parole and "[s]uch reasons shall be given in detail and not in conclusory terms" (Executive Law §259-i[2][a]); *Malone v Evans*, 83 AD3d 719 [2d Dept 2011]). A determination by a parole board whether or not to grant parole is discretionary, and if made in accordance with the relevant statutory factors, is not subject to judicial review absent "a showing of irrationality bordering on impropriety" (*Matter of Russo v New York State Bd. of Parole*, 50 NY2d 69, 77 (1980).

Executive Law §259-c(4) was amended in 2011 to require the Board to establish new procedures to use in making parole determinations. The statutory amendment was intended to have parole boards focus on an applicant's rehabilitation and future rather than giving undue weight to the crime of conviction and the inmate's pre-incarceration behavior. To assist the members of the board in taking this approach when making parole determinations, the amendment required the establishment of written guidelines incorporating risk and needs principles to measure an inmate's rehabilitation and likelihood of success upon release (*see Ramirez v Evans*, 118 AD3d 707 [2d Dept 2014]). In response, the Board of Parole adopted the COMPAS (Correctional Offender Management Profiling for Alternative Sanction) assessment tool. A COMPAS assessment was prepared in connection with Petitioner's January 5, 2021 appearance before the Parole Board.

Petitioner contends that the Board (1) failed to meaningfully consider all relevant statutory facts; (2) failed to provide an individualized explanation for denying parole; (3) failed to consider Petitioner's youth; and (4) unlawfully re-sentenced Petitioner.

Contrary to Petitioner's contentions, the record before the Court demonstrates that the Board properly considered the statutory factors and provided a detailed explanation for denying parole. The Board considered not only the seriousness of the offense, but also considered that Petitioner had

admittedly, until recent years, been a high ranking member of a gang called "the Bloods", had a considerable disciplinary history, including receiving one Tier II and two Tier III infractions since his hearing in November 2018, for assault on an inmate, gang activity, and smuggling, and had high COMPAS scores for felony violence and prison misbehavior and a probable score for substance abuse.

Similarly, the Board did not fail to consider Petitioner's youth and its attendant characteristics in relationship to the commission of the crime at issue.

> It is true that a juvenile homicide offender has a substantive constitutional right not to be punished with life imprisonment for a crime reflect[ing] transient immaturity, and that children who commit even heinous crimes are capable of change. Thus, for an individual convicted as a juvenile, a constitutional sentence guarantees, at some point, a meaningful opportunity to obtain release (*Campbell v Stanford*, 173 AD3d 1012, 1015 [2d Dept 2019] [internal quotations and citations omitted]).

The interview transcript indicates that the Petitioner's youth at the time of the crime was explored at length and the Board took into account that prior to the crime at issue Petitioner's mother had died from cancer a few years prior; that Petitioner had previously suffered a brain aneurysm and had undergone surgery for same; and that he was homeless. The Board's decision makes clear that while it considered Petitioner's youth, the Board permissibly placed greater weight on other factors, including those discussed above (*see Campbell v Stanford*, 173 AD3d 1012, 1016 [2d Dept 2019], *lv dismissed* 35 NY3d 963 [2020]; *see also Allen v Stanford*, 161 AD3d 1503, 1504-1505 [3d Dept 2018], lv denied 32 NY3d 903 [2018]).

Petitioner's contention that the denial of parole release amounted to an improper resentencing is likewise without merit. This court does not have the authority to make a *de novo* determination as to the propriety of granting Petitioner parole release. Its function is limited to reviewing whether the Board had a rational basis for its decision. Here, the record before the Court demonstrates that the Board fulfilled its obligation to determine the propriety of release after considering the relevant factors and its determination was not based on "irrationality bordering on impropriety" (*Matter of Stanley v New York State Div. of Parole*, 92 AD3d 948 [2d Dept 2012]; *see also Matter of LeGeros v New York State Div. of Parole*, 139 AD3d 1068 [2d Dept 2016]). Thus, the Board's denial of parole release did not amount to a resentencing (*see Mullins v New York State Bd. of Parole*, 136 AD3d 1141 [3d Dept 2016]). Based upon the foregoing, it is hereby

ORDERED that the petition is denied.

The foregoing constitutes the decision and order of the Court.

Dated: June 21, 2022
Poughkeepsie, New York

ENTER:

MARIA G. ROSA, J.S.C.

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Pursuant to CPLR §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.

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