Decision in Art. 78 proceeding - Karimzada, Mohammed (2022-05-03)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

Present:

Hon. Maria G. Rosa, Justice

MOHAMMED KARIMZADA

Petitioner,

DECISION AND ORDER

-against-

Index No. 2022-50877

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

Respondent.

The following papers were read on this Article 78 petition:

NOTICE OF PETITION
PETITION
EXHIBITS A - E

ANSWER AND RETURN
EXHIBITS 1 - 15

REPLY AFFIRMATION

Petitioner brings this CPLR Article 78 proceeding challenging a determination of the Board of Parole (the "Board") denying his request for parole release. Petitioner was convicted of two counts of Rape in the First Degree, Sexual Abuse in the First Degree, Assault in the Second Degree, and Unlawful Imprisonment in the First Degree. He was sentenced to an aggregate sentence of 16 1/3 to 40 years.

His convictions stem from a series of violent rapes committed in the 1990s. Petitioner was first convicted in 1998 of two counts of Rape in the First Degree. The first rape occurred in December 1996 and the second rape occurred in May 1997. The victim of the 1997 rape was 17 years old. Petitioner was on probation at the time of the 1996 rape and was out on bail at the time of the 1997 rape. Both sexual assaults followed a similar *modus operandi* in which Petitioner met women at nightclubs, offered them a ride, brought them to an isolated location, where he brutalized, choked and raped them. In 1998, Petitioner was sentenced to a term of 8-16 years on each count to be served concurrently. A DNA sample obtained from Petitioner following his conviction and confinement matched a previously unsolved rape that occurred in August 1994. The *modus operandi*

for this rape was the same as that of the two previous rapes. In 2005, Petitioner was convicted after trial and received a controlling sentence of 8 1/3 years to 25 years, which was to run consecutively to the 1998 sentence. At the time of the 1994 rape, Petitioner was out on bail following charges of sexual abuse. Petitioner was 21 years old when his earliest known rape was perpetrated and 25 years old at the time of his 1998 conviction.

Petitioner appeared before the Board for his sixth parole release interview on November 2, 2021. Following the interview, the Board issued a written decision dated November 15, 2021 denying parole and ordered Petitioner held for 24 months. Petitioner's administrative appeal was denied and this proceeding followed. At the time of his last interview, Petitioner was 49 years old and had been incarcerated for approximately 24 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 NYS 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* Exec. 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" (Exec. 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 NYS Bd. of Parole*, 50 NY2d 69, 77 [1980]).

Executive Law §259-c(4) was amended in 2011 to require 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 November 2, 2021 appearance before the Board.

At the conclusion of the hearing, the Board issued a decision denying parole. The decision states that the Board found discretionary release not warranted stating that "if released at this time there is a reasonable probability that you would not live and remain at liberty without again violating the law, and that your release would be incompatible with the welfare of society."

Contrary to Petitioner's contention, the Board did not deny release solely on the basis of the seriousness of the offenses committed and the Board appropriately deviated from the Petitioner's COMPAS scores. There is no dispute that the Petitioner has acclimated to incarceration, availed himself of available educational programs, capably performed assignments, and attended the programming available to him. Similarly it is undisputed that Petitioner has not had a disciplinary report since 2007. However, "[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" (*Ferrante v Stanford*, 172 AD3d 31, 37 [2d Dept 2019]). Here, the record before the Court demonstrates that the Board considered, not only the serious nature of Petitioner's repeat offenses, but also considered that Petitioner committed the 1994 rape while on probation, and committed the 1997 rape while out on bail for having committed the 1996 rape. The Board reasoned that given Petitioner's repeated conduct and poor history while on community supervision, that there was a low probability that he would remain at liberty without violating the law. The Board also considered the Sentencing Minutes and Pre-sentencing report, which included a statement from one of the victims and the tremendous suffering she has endured as a result of Petitioner's actions, as well as official opposition from the Queens County District Attorney's Office.

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's 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]). Based upon the foregoing, it is hereby

ORDERED that the petition is denied.

The foregoing constitutes the decision and order of the Court.

Dated: May 3, 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.

Kathly Manley, Attorney at Law
26 Dinmore Road
Selkirk, NY 12158

Office of the Attorney General
1 Civic Center Plaza, Suite 401
Poughkeepsie, NY 12601