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### Decision in Art. 78 proceeding - Strawitch, Carl (2022-08-24)

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STATE OF NEW YORK COUNTY OF ORLEANS  
SUPREME COURT

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**In the Matter of the Application of  
CARL A. STRAWITCH,**

**Petitioner ,**

**Index No.: E22-00343**

**-vs-**

**TINA M. STANFORD, CHAIRWOMAN,  
NEW YORK STATE BOARD OF PAROLE,**

**Respondent.**

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Attorney for Respondent

HON. SANFORD A. CHURCH, Justice Presiding

**DECISION AND JUDGMENT**

Petitioner in this Article 78 proceeding challenges his most recent denial of release to parole. He was convicted of Murder in the Second Degree

and Burglary in the First Degree in 1994 and sentenced to concurrent sentences of twenty-five-years-to-life on the murder charge and five-to-fifteen years on the burglary charge. He challenges his November 19, 2021 parole denial. For the reasons stated below, his petition is denied and dismissed.

After a personal interview and review of the case record, the Parole Board issued its reasons for denial. The reasons included the case record reflecting that petitioner “brutally [killed] his neighbor’s daughter” when he “strangled her and sexually abused the victim.” He then “drove the body to a nearby park and buried her in a shallow grave.”

The reasons also included consideration of petitioner’s “case plan and an assessment of [his] risk and needs for success on parole.” The decision specifically noted “a high score in the category of substance abuse” in his COMPAS. The panel noted “low scores in the other COMPAS categories” but concluded that “these low scores do not dismiss the deviant and violent actions” that led to his convictions.

The panel also considered petitioner’s “release plans, educational achievements, multiple letters of support and certificate of achievements.” The decision also noted petitioner’s clean disciplinary record and positive

programming. Finally, the Parole Board commended petitioner for his “personal growth and productive use of time.”

The Parole Board noted, however, that “parole shall not be granted merely as a reward for good conduct or efficient performance of duties while confined.” The “extreme violent nature” of the crimes led the panel to conclude that petitioner’s actions “were heinous and a total disregard for human life.” After considering community and official input, the panel concluded that “release would be incompatible with the welfare of society and would so deprecate the seriousness of [petitioner’s] crime as to undermine respect for the law.”

Represented by counsel, petitioner filed an administrative appeal of the 2020 parole denial. Counsel submitted a twenty-five page brief arguing four basic issues: 1) the decision did not explain “how it considered the parole decision making factors”; 2) the decision did not detail the reasons for denial; 3) the Board violated regulatory and statutory requirements by not explaining “departure from the COMPAS assessment”; and 4) the Board relied on improper “penal philosophy” and nonexistent “community opposition.” Eleven exhibits were submitted with the brief.

Parole's Appeals Unit issued a seven page Findings & Recommendation concluding that the parole denial should be affirmed. The denial was affirmed November 19, 2021. Petitioner makes the same four basic arguments in this proceeding as he did in his administrative appeal.

To the extent petitioner raises issues that were not raised in his administrative appeal, any such arguments are not properly before the Court. See, e.g., In Re Espinal v. Annucci, 173 A.D.3d 1850 (4<sup>th</sup> Dept. 2019); In Re Peterson v. Stanford, 151 A.D.3d 1960 (4<sup>th</sup> Dept. 2017).

“[P]arole release decisions are discretionary and will not be disturbed so long as the Board complied with the statutory requirements enumerated in Executive Law section 259-i.” In Re Jones v. NYS Dept. of Corrections and Community Supervision, 151 A.D.3d 1622 (4<sup>th</sup> Dept. 2017). In reaching their decision, the Board is not required to give equal weight to each statutory factor. The Board may, for example, “place greater emphasis on the severity of the crimes than on the other statutory factors.” In Re Jones, supra (citations omitted); see also In Re James v. NYS Board of Parole, 136 A.D.3d 1089 (3<sup>rd</sup> Dept. 2016); In Re Delacruz v. Annucci, 122 A.D.3d 1413 (4<sup>th</sup> Dept. 2014).

The Board denied petitioner parole release, so it was required to inform him in writing of the factors and reasons for their decision. See 9 NYCRR section 8002.3(b). 9 NYCRR section 8002.2 lists eight factors that the Board shall consider in making a parole release determination. The record establishes that the Board considered and addressed the relevant factors in petitioner's potential parole release. While the Board's written determination could be more detailed, it "is not merely 'conclusory' and so does not violate Executive Law section 259-i(2)(a)(i)." In Re Siao-Pao v. Dennison, 11 N.Y.3d 777 (2008); In Re Johnson v. NYS Div. of Parole, 65 A.D.3d 838 (4<sup>th</sup> Dept. 2009); In Re Kozlowski v. NYS Board of Parole, 108 A.D.3d 435 (1<sup>st</sup> Dept. 2013); In Re Miller v. NYS Div. of Parole, 72 A.D.3d 690 (2<sup>nd</sup> Dept 2010).

9 NYCRR section 8002.2(a) provides that the Board shall be guided by risk and needs principles in making release determinations. The record shows that the Board did consider petitioner's COMPAS risk assessment when it acknowledged the low scores and the reference to substance abuse problems. The Board was, nevertheless, entitled to deny release by placing significant weight on the nature of petitioner's heinous violent murder of his victim. Release on parole need not be granted as a reward for good conduct or

efficient performance of duties while confined. See, e.g., In Re Robles v. Fischer, 117 A.D.3d 1558 (4<sup>th</sup> Dept. 2014).

While the factors enumerated in Executive Law §259-i must be considered, the Parole Board is not required to “enumerate, give equal weight or explicitly discuss every factor considered and is entitled...to place a greater emphasis on the gravity of petitioner’s crime.” In Re Montane v. Evans, 116 A.D.3d 197 (3<sup>rd</sup> Dept. 2014); King v. NYS Div. of Parole, 83 N.Y.2d 788 (1994).

Petitioner’s objection to “undisclosed” community opposition is likewise without merit. Pursuant to NY Executive Law §259-i(2)(c)(B) community members are expressly permitted to submit opposition to an inmate’s parole without fear of identifying information being released. The Parole Board may consider community opposition and must maintain confidentiality regarding the source of opposition. In Re Applewhite v. NYS Board of Parole, 167 A.D.3d 1380 (3<sup>rd</sup> Dept. 2018); In Re Campbell v. Stanford, 173 A.D.3d 1012 (2<sup>nd</sup> Dept. 2019).

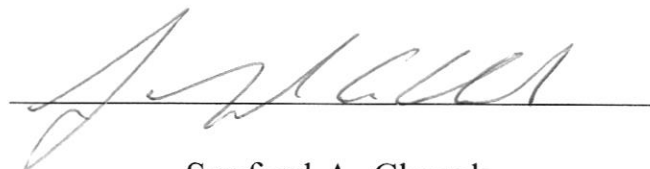
More specifically, the Board’s determination to deny parole release does not exhibit irrationality bordering on impropriety. See In Re Olmosperez v. Evans, 114 A.D.3d 1077 (3<sup>rd</sup> Dept. 2014), aff’d, 26 N.Y.3d

1014 (2015). The petition will therefore be denied and dismissed.

Respondent's counsel to submit the appropriate order or judgment.

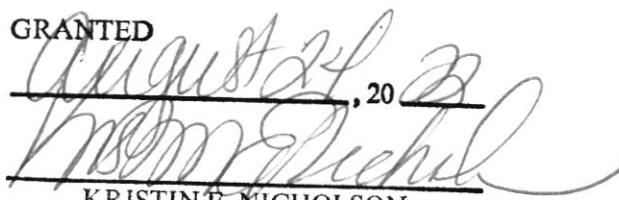
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DATED: August 24, 2022



Sanford A. Church  
Acting Supreme Court Justice

GRANTED



KRISTINE E. NICHOLSON  
Chief Clerk