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Article 78 Litigation Documents

Decision in Art. 78 proceeding - FUSL000151 (2021-04-01)

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STATE OF NEW YORK
SUPREME COURT COUNTY OF [redacted]

Application of

[redacted]

Petitioner,

DECISION AND ORDER/JUDGMENT

For a Judgment Pursuant to New York CPLR Article 78

-against-

Index No [redacted]
RJI No.: [redacted]

JOHN MORLEY, MD, and
NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION,

Respondents.

(Supreme Court, [redacted] County, Special Term)

(Justice Kimberly A. O'Connor, Presiding)

APPEARANCES: PHILLIPS LYTLE LLP
Attorneys for Petitioner
(David H. Kernan, Esq., of Counsel)
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Buffalo, New York 14203

HON. LETITIA JAMES
Attorney General of the State of New York
Attorney for Respondents
(Chris Liberati-Conant, Assistant Attorney General, of Counsel)
The Capitol
Albany, New York 12224-0341

O'CONNOR, J.:

Petitioner [redacted] ("petitioner"), an inmate in the care and custody of respondent New York State Department of Corrections and Community Supervision ("DOCCS") and presently incarcerated at [redacted] Correctional Facility, commenced this CLPR Article 78

proceeding to challenge the failure of respondents John Morley, MD ("Dr. Morely") and DOCCS (collectively "respondents") to provide any explanation for their refusal to certify that he has met the medical criteria required by statute to seek medical parole. By this proceeding, petitioner seeks a judgment of the Court: (1) ordering respondents to provide some reasonable explanation of their decision to deny petitioner's application for medical parole certification on April █, 2020; and (2) ordering that respondent's explanation address, to a reasonable degree of specificity, the evidence concerning petitioner's deteriorating medical condition as set forth in his application for medical parole certification, dated December █, 2019. Respondents answered the petition, oppose the requested relief, and assert, among other objections in point of law, that their determination denying petitioner's request for medical parole certification was reached in full compliance with all statutory and regulatory requirements as well as DOCCS' rules and regulations. Oral argument was held on November █ 2020. This matter has been fully briefed and is ready for disposition.

Petitioner was convicted, by guilty plea, of attempted burglary in the second degree. He was sentenced to an indeterminate term of twelve years to life imprisonment in April 2013 (*see* Pet., ¶ 6). In May 2016, he was diagnosed with systemic amyloidosis and multiple myeloma, and has been taking various drugs in chemotherapy beginning in June 2016 and continuing through the present (*id.*, ¶ 7). According to petitioner's oncologist, systemic amyloidosis has degraded a number of petitioner's organ systems, including his heart, and "[w]hile his treatment is controlling many of his other organ systems, it is only keeping his cardiac amyloidosis at bay[ ] and . . . will not last forever (*id.*, Ex. 1). Petitioner's oncologist has further indicated that "this is considered a terminal illness" (*id.*).

In June 2017 and October 2018, petitioner applied for medical parole certification. By letters, dated June █ 2017 and October █ 2018 respectively, from DOCCS' then Deputy Commissioner/Chief Medical Officer, Carl J. Koenigsmann, MD, petitioner was informed that his

"medical information ha[d] been received and reviewed," and that he had not been deemed an appropriate candidate for medical parole (*see* Pet., Ex. 1). On December ██ 2019, petitioner submitted a third application for medical parole certification. In a letter to petitioner's counsel, dated April █, 2020, Dr. Morley, DOCC's Deputy Commissioner/Chief Medical Officer, notified petitioner that his "medical information has been received and reviewed," and "[i]t has been deemed that [he] is not an appropriate candidate for [m]edical [p]arole" (*id.*, Ex. 2). This proceeding followed.

As relevant here, "[a]n inmate may be certified to the [Parole] Board for medical parole based upon a terminal illness if it is determined by the Commissioner of Corrections and Community Supervision or his or her designee that the inmate 'is suffering from such terminal condition, disease or syndrome and that the inmate is so debilitated or incapacitated as to create a reasonable probability that he or she is physically or cognitively incapable of presenting any danger to society'" (*Matter of McDonnell v. Annucci*, 189 A.D.3d 1871, 1872 [3d Dep't 2020], quoting Executive Law § 259–r[2][b]; *see Matter of Ifill v. Wright*, 94 A.D.3d 1259, 1260 [3d Dep't 2012]). "Similarly, an inmate may be certified to the Board for release on medical parole based upon a significant debilitating illness if it is determined that the inmate 'is suffering from such condition, disease or syndrome and that the inmate is so debilitated or incapacitated as to create a reasonable probability that he or she is physically or cognitively incapable of presenting any danger to society'" (*id.*, quoting Executive Law § 259–s[2][b]; *see Matter of Ifill v. Wright*, 94 A.D.3d at 1260). Notably, "the decision by the Commissioner [or his or her designee] as to whether an inmate should be certified to the Board for his or her eligibility for medical parole release is discretionary and, as with parole decisions, it will not be disturbed where there is compliance with the statutory requirements" (*Matter of Ifill v. Wright*, 94 A.D.3d at 1260; *see* Executive Law § 259-r[3]; § 259-s[3]). In other words, there would have to be a showing of

irrationality bordering on impropriety before judicial intervention is warranted (*see Matter of McDonnell v. Annucci*, 189 A.D.3d at 1873; *Matter of Ifill v. Wright*, 94 A.D.3d at 1261).

Petitioner argues that it is impossible to determine whether respondents' refusal to certify him for medical parole exhibits "irrationality bordering on impropriety" without some reasonable explanation as to why he is not an appropriate candidate for medical parole. This Court agrees. "[A] reviewing court, in dealing with a determination . . . which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency" (*Matter of Montauk Imp., Inc. v. Proccacino*, 41 N.Y.2d 913, 913 [1977][internal quotation marked and citation omitted]). To that end, "[a] court cannot surmise or speculate as to how or why an agency reached a particular conclusion" (*id.* at 914). And "'[f]ailure of the agency to set forth an adequate statement of the factual basis for [its] determination forecloses the possibility of fair judicial review and deprives the petitioner of his [or her] statutory right to such review" (*id.*; *accord Matter of Bierenbaum v. Goord*, 13 A.D.3d 945, 946 [3d Dep't 2004]).

According to respondents, "the medical parole record reveals that, although petitioner suffers from a terminal condition, he nevertheless completes his activities of daily living (ADLs) without assistance" (Resp't Mem. of Law at 3). Respondents submit that because "petitioner remains mobile and able to care for himself, [Dr. Morley's] determination that he is not 'so debilitated or incapacitated as to create a reasonable probability that [petitioner] is physically or cognitively incapable of presenting any danger to society'[ ] is rational" (*id.* at 3-4). While it may very well be the case that petitioner was not deemed an appropriate candidate for medical parole by Dr. Morley based on the fact that he can manage his ADLs without assistance, such fact was not set forth as the reason for denying petitioner's certification in the April ██ 2020 letter. Indeed, there is no statement whatsoever of the factual basis for Dr. Morley's determination. Further, this Court cannot speculate or surmise as to the reason petitioner's application for medical parole

certification was denied. Because Dr. Morley did not state his reason or set forth any factual basis for denying petitioner's medical parole certification, the Court is unable to assess whether that denial was rational (*see Matter of Bierenbaum v. Goord*, 13 A.D.3d at 946).

Accordingly, it is hereby

ORDERED AND ADJUDGED, that the petition is granted to the extent that it is

ORDERED AND ADJUGED, that respondents shall, **within thirty (30) days of the date of this Decision and Order/Judgment**, explain, in reasonable detail, the basis for their determination that petitioner is not an appropriate candidate for medical parole; and it is further

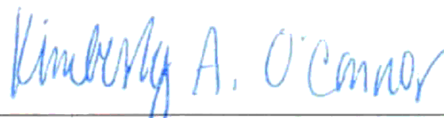
ORDERED AND AJUDGED, that the petition is otherwise denied.

As a final note, certain documents of a confidential nature were submitted as part of the record for *in camera* review. Therefore, the Court, by separate order, is sealing those documents.

This memorandum constitutes the Decision and Order/Judgment of the Court. The original Decision and Order/Judgment is being uploaded to the NYSCEF system for filing and entry by the Albany County Clerk. The signing of this Decision and Order/Judgment and uploading to the NYSCEF system shall not constitute filing, entry, service, or notice of entry under CPLR 2220 and § 202.5-b(h)(2) of the Uniform Rules for the New York State Trial Courts. Counsel is not relieved from the applicable provisions of those Rules with respect to filing, entry, service, and notice of entry of the original Decision and Order/Judgment.

SO ORDERED AND ADJUDGED.

ENTER.



Dated: April 1, 2021
Albany, New York

HON. KIMBERLY A. O'CONNOR
Acting Supreme Court Justice

Papers Considered:

1. Notice of Petition, dated August 20, 2020; Verified Petition, dated August 20, 2020, with Exhibits 1 & 2 annexed; Petitioner's Memorandum of Law in Support of Article 78 Petition, dated August 20, 2020; *and*
2. Answer, dated and verified October 22, 2020, with Exhibits 1-4 annexed; Respondents' Memorandum of Law, dated October 22, 2020.