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Article 78 Litigation Documents

Decision in Art. 78 proceeding - Macedonio, Carl (2022-08-16)

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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
CARL A. MACEDONIO,

Petitioner, DECISION, ORDER AND JUDGMENT
Index No. 2022-51884

-against-

TINA M. STANFORD, Chairwoman, New
York State Board of Parole,

Respondent,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules.

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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, the petitioner requests a
judgment reversing the respondent's decision of August 27, 2021
which denied respondent parole. Petitioner seeks an Order
granting his release on parole, or, in the alternative directing

a de novo parole hearing.

By way of background, petitioner was convicted of crimes arising out of two separate criminal transactions committed seven days apart. Petitioner was first convicted in January of 1972 of Rape in the First Degree and Rape in the Third Degree. In 1973, the Appellate Division, Second Department reversed the Judgment of the lower Court and ordered a new trial (see *People v Macedonio*, 42 AD2d 864 [2nd Dept 1973]). Upon retrial in April of 1974, petitioner was found guilty of Rape in the First Degree and was sentenced to a term of 8-25 years, to run consecutive with the second crime.

This conviction involved the rape of a fifteen-year-old female. The victim was walking home at approximately 1:30-2:00 p.m. on a wooded trail near Miller's Pond in Smithtown, New York. The petitioner began to follow the victim, ran up behind her, forced her to the ground and sexually assaulted her. After the rape, petitioner proceeded back to a pool hall and then a friend drove him to New York City to purchase a couple hundred dollars worth of heroin.

In June of 1972, petitioner was convicted of Murder, Manslaughter in the First Degree and Rape in the First Degree. Petitioner was sentenced to a term of 25 years to life for the murder conviction, 8 1/3-25 years on both the manslaughter and

the rape convictions. The sentence ran concurrent, but consecutive with the first crime. In 1977, the Court of Appeals reversed the order of the Appellate Division affirming the Judgment of the lower Court, and ordered a new trial. In May of 1978, petitioner was convicted of the same crimes and received the same sentence.

This conviction involved a nineteen-year-old victim at a location in the same vicinity as the first conviction. Petitioner was waiting for a friend, at approximately 7:30-8:00 a.m., to pick him up to go buy drugs. Petitioner once again noticed the victim walking in the area, came from behind her and dragged her into the woods. Petitioner was holding his victim down and began raping her. When she started to scream, petitioner cut her throat and killed her. After finishing the rape, petitioner re-clothed his victim, covered her in leaves and left.

Petitioner was denied parole in September of 2020. An Administrative Appeal of the decision was taken and the Appeals Unit affirmed the decision on March 12, 2021. On May 19, 2021, petitioner filed an Article 78 proceeding. However, on June 4, 2021, the Board granted petitioner a *de novo* parole hearing, thereby making the Article 78 proceeding moot. On August 17, 2021, petitioner appeared for his *de novo* parole hearing. The

Board issued a decision denying petitioner's request for parole release on August 27, 2021. On December 27, 2021, petitioner filed an administrative appeal. The Appeals Unit affirmed the Board's denial of parole on March 30, 2022. Petitioner has now brought this Article 78 proceeding, alleging: (1) the Board failed to give fair consideration to the statutory factors and denied release solely on the seriousness of the offenses for which the petitioner was convicted; (2) the Board's Decision was unsupported by the record; and, (3) the Board considered improper community opposition.

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 each issue raised in this proceeding was also raised and addressed by the Appeals Unit in its decision of March 30, 2022.

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 crimes 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).

Contrary to the petitioner's claim that the Board failed to make required findings of fact or provide detail as to why his release would be incompatible with society's welfare and safety, the Court finds that the Board set forth in adequate detail the reasons for its denial of his request for release (see *Matter of Burress v Evans*, 107 AD3d 1216 [3rd Dept 2013]). Further, 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, his low COMPAS scores, plans for release as well as his criminal history.

The respondent noted:

"The Panel has weighed and considered the results of your COMPAS Risk Assessment and the low scores indicated therein. The Panel does not depart from your favorable low scores. However, said scores fail to outweigh the depravity of the IO or mitigate the atrocious type of death nor lessen the horrific long-term impact upon the small Smithtown Community, upon the devastated families of both the murdered and surviving victim and upon society."

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]).

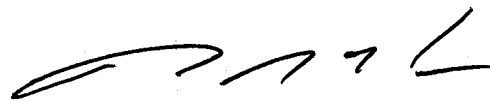
Petitioner's remaining contention concerning the respondent's alleged improper consideration of community opposition based upon its alleged staleness and conveyance of penal philosophy, is without merit.

It is therefore:

ORDERED, that the Petition is dismissed.

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

Dated: August 15, 2022
Poughkeepsie, New York



HON. MICHAEL G. HAYES, AJSC