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To commence the 30-day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

In the Matter of the Application of

JARVIS CAMPBELL,

Petitioner,

DECISION AND ORDER

-against-

Index No.: 2022-53197

THE NEW YORK STATE BOARD OF PAROLE,

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

Respondent.

ACKER, J.S.C.

The Court considered the following on Petitioner's application pursuant to CPLR Article 78 challenging Respondent's denial of his release to parole supervision:

Notice of Petition-Verified Petition-Affirmation of Isaac B. Zaur, Esq.- Exhibits 1-4.....NYSCEF Doc. #s 1-7
Answer and Return-Exhibits 1-13^1.....NYSCEF Doc. #s 12-27
Memorandum of Law in Reply.....NYSCEF Doc. #30

Petitioner Jarvis Campbell ("Petitioner") commenced the instant proceeding seeking an Order annulling the Parole Board's January 26, 2022 decision denying his release to parole supervision and directing Respondents to hold a de novo parole interview.

At the time of Petitioner's appearance before the Parole Board, he was incarcerated at Fishkill Correctional Facility, serving a sentence of 21 years to life as a result of three separate

^1 The Court also reviewed, in camera, the confidential documents submitted by Respondents as Exhibit 1 (entire exhibit) and portions of Exhibits 3 and 10.

convictions, to wit: (1) Murder in the Second Degree, for which he was sentenced to a term of 21 years to life; (2) Possession of Prison Contraband in the First Degree, with a sentence of 2-4 years, running concurrently with his prior sentence; and (3) Robbery in the 3rd Degree, to which he was sentenced as a third felony offender to a term of 3-6 years, which ran concurrently with his prior sentences.

Petitioner's murder conviction arises from an incident that occurred on November 13, 2000. According to Petitioner, after his brother was assaulted and robbed, he went to find the individuals who were involved in the attack. He approached a group and, when they ran, he shot in their direction, hitting Demetrius Wright. He saw Wright fall and he continued to shoot in the direction of the men that he believed had attacked his brother. Mr. Wright, who was not involved in the attack, died as a result of his injuries.

Thereafter, on April 4, 2001, Petitioner entered a clothing store, pulled a gun and pointed it at an employee. He also stole merchandise from the store. He was arrested in May 2001 for this crime and, while incarcerated at Rikers, was found to be in possession of a razor blade. He was ultimately convicted for promoting prison contraband. Petitioner's prior criminal history includes a Youthful Offender adjudication, as well as other adult convictions for which he served prison sentences. At the time he shot Mr. Wright, Petitioner was on probation.

The instant application was brought as a result of the Parole Board's January 26, 2022 decision denying Petitioner discretionary release and imposing an 18-month hold. Petitioner timely filed an administrative appeal and the Appeals Unit affirmed the Board's Decision on July 25, 2022. This was Petitioner's first appearance before the Parole Board after having served approximately 21 years in prison.

Petitioner asserts the Board's decision was improper for the following reasons: (1) the Board incorrectly disregarded Petitioner's COMPAS scores; (2) the Board arbitrarily focused on the nature of Petitioner's underlying offenses; (3) the Board arbitrarily focused on the nature of Petitioner's disciplinary record; (4) Petitioner was denied access to portions of the Parole file which were considered by the Board; (5) the Board based its denial on inaccurate information regarding his conviction and ignored his attempt to correct the record; (6) the Board incorrectly relied upon an offense for which Petitioner had been adjudicated a youthful offender; (7) the Board failed to adequately recognize Petitioner's many accomplishments while incarcerated and (8) the Board failed to explain their denial in detail.

Petitioner's January 26, 2022 Interview and Decision

The transcript of Petitioner's parole interview is annexed to the Affirmation of Isaac B. Zaur as Exhibit 2 and to the Answer and Return as Exhibit 4 (hereinafter referred to as "Interview Transcript"). The Parole Board's Decision denying parole is contained at pages 28-29 of the Interview Transcript (hereinafter referred to as "Decision").²

Judicial review of a determination of the Parole Board is narrowly circumscribed. *Matter of Campbell v. Stanford*, 173 AD3d 1012, 1015 [2d Dept. 2019], *leave to appeal dismissed*, 35 NY3d 963 [2020]. A Parole Board determination to deny early release may only be set aside where it evinces "irrationality bordering on impropriety." *Id.* Although the Parole Board is required to consider the relevant statutory factors as identified in Executive Law §259-i(2)(c)(A), it is not required to address each factor in its decision or accord all the factors equal weight. *Id.* "Whether the Parole Board considered the proper factors and followed the proper

² Respondent also provides a separate "Parole Board Release Decision Notice" as Exhibit 5 that contains virtually the same content as the transcript but is dated January 31, 2022.

guidelines should be assessed based on the written determination evaluated in the context of the parole interview transcript.” *Id.*

New York Executive Law §259-i(2)(c)(A) provides that:

[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.

New York Executive Law §259-i(2)(c)(A)(i)-(viii) lists a number of factors that the Parole Board is required to consider in making a parole decision. As relevant to the instant matter the factors that the Board must consider include Petitioner’s institutional record including program goals and accomplishments, academic achievements, vocational education, training or work assignments, therapy and interactions with staff and incarcerated individuals, release plans including community resources, employment, education and training and support services available to the inmate, the seriousness of the offense with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court, the pre-sentence probation report, as well as consideration of any mitigating and aggravating factors, and activities following arrest prior to confinement and Petitioner’s prior criminal record, including the nature and pattern of offenses, adjustment to any previous probation or parole supervision and institutional confinement.

“If parole is not granted upon such review, the inmate shall be informed in writing within two weeks of such appearance of the factors and reasons for such denial of parole. Such reasons shall be given in detail and not in conclusory terms.” Executive Law §259-i(2)(a).

Discussion

As indicated above, Petitioner sets forth a number of reasons why he believes that the Parole Board's Decision should be annulled. However, the Court finds Petitioner's allegation that the Board based its decision on inaccurate information most significant. The Board's Decision begins with a statement that Petitioner's offenses involved him "shooting his victim multiple times." Although Petitioner fired at a group of individuals multiple times, the victim was only shot once. The Decision then states that Petitioner "pled [guilty] to Murder Second." The interview transcript demonstrates that Petitioner told the Board that he had gone to trial after a commissioner incorrectly stated that he had pled guilty. Despite this correction, and another reference in the Interview that Petitioner went to trial, the Decision incorrectly indicates that Petitioner pled guilty.

Respondent concedes that these statements by the Board were made in error but maintains that they do not rise to a level where they affected the Board's Decision and, thus, should be deemed "harmless." Nevertheless, such a determination would require this Court to engage in speculation as to the impact of the inaccurate information upon the Board. Indeed, the Board thought these "facts" were important enough to mention in the Decision. As a result, the Court cannot disregard these misstatements as harmless.

Accordingly, because the record demonstrates that the Parole Board placed emphasis upon erroneous information in denying Petitioner's request for parole release, the January 2022 Decision is annulled and Petitioner is granted a *de novo* interview. See *Comfort v. New York State Bd. of Parole*, 101 AD3d 1450, 1451 [3d Dept. 2012]; see also *Lewis v. Travis*, 9 AD3d 800, 801 [3d Dept. 2004]; cf. *Applewhite v. New York State Bd. of Parole*, 167 AD3d 1380, 1383

[3d Dept. 2018] (affirming the dismissal of the petition, *inter alia*, because “there is no indication that [the Parole Board’s] denial of parole release relied on any incorrect or inappropriate information”).

It bears note that the Court does not opine on the import of the misstatements. Instead, the Court finds that Petitioner is entitled to a Parole Decision that is based upon accurate and complete information. Given this finding, the Court does not reach the other issues that Petitioner raised in his Petition.

Accordingly, it is hereby

ORDERED that the Petition is granted to the extent that the January 2022 parole determination is annulled; and it is further

ORDERED that the matter is remitted for a *de novo* parole release interview and review which complies with all applicable statutes and regulations; and it is further

ORDERED that said interview is to be conducted within forty-five (45) days of the date of this Court’s Decision and Order, and a decision is to be issued within fifteen (15) days of the date of such hearing.

The foregoing constitutes the Decision and Order of the Court.

Dated: Poughkeepsie, New York
March 8, 2023


CHRISTI J. ACKER, J.S.C.

To: All Counsel via NYSCEF