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Decision in Art. 78 proceeding - Clancy, Peter (2023-06-26)

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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**

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In the Matter of

DECISION & ORDER

PETER CLANCY,

Index No. 2023-50416

Petitioner,

-against-

Tina M. Stanford, Chair of the
New York State Board of Parole,

Respondent.

-----X

ACKER, J.S.C.

The Court considered the following papers on the application of Petitioner Peter Clancy (“Petitioner”) pursuant to CPLR Article 78 challenging Respondent’s denial of his release to parole supervision:

- Notice of Petition-Verified Petition-Exhibits A-E.....NYSCEF Doc. #s 1-7
- Answer and Return-Exhibits 1-12¹.....NYSCEF Doc. #s 11-26
- Reply Affirmation.....NYSCEF Doc. #27

Petitioner commenced the instant proceeding seeking an Order vacating May 10, 2022 Decision of the Parole Board which denied his release. He further seeks a *de novo* interview before Commissioners that did not sit on the May 2022 Board.

Petitioner is currently incarcerated at Woodbourne Correctional Facility, serving an indeterminate sentence of 20 years to life upon his guilty plea in 2004 to Murder in the Second

¹ The Court also reviewed, *in camera*, the confidential documents submitted by Respondents as Exhibits 2 and 12 (entire exhibits) and portions of Exhibits 3 and 10.

Degree, Burglary in the first degree and Aggravated Criminal Contempt. On September 9, 2002, Petitioner stabbed his estranged wife to death in their marital home, in front of two of their children. He remained at the scene and ultimately pled guilty. He was sentenced to an aggregate sentence of 20 years to life.

The instant application was brought as a result of the Parole Board's May 10, 2022 parole release denial. Petitioner timely filed an administrative appeal and the denial was affirmed on February 1, 2023. This was Petitioner's second appearance before the Parole Board.

Petitioner maintains that the Board's Decision should be vacated and a *de novo* interview be ordered for the following reasons: (1) the Board based its decision on the circumstances of the offense; (2) the reasons given for the denial were not supported by the record and (3) there was not an adequate explanation for disregarding Petitioner's low COMPAS risk scores.

It is well settled that judicial review of a determination of the Parole Board is narrowly circumscribed. *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 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.

Further, pursuant to New York Executive Law §259-i(2)(c)(A)(i)-(viii), and as relevant to the circumstances herein, the Parole Board is required to consider the following in making a parole decision: the inmate's institutional record including program goals and accomplishments, academic achievements, therapy and interactions with staff and inmates; release plans including community resources, employment, education and training and support services available to the inmate, any current or prior statement made to the board by the crime victim or the victim's representative, the seriousness of the offense with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court and the district attorney, the pre-sentence probation report as well as consideration of any mitigating and aggravating factors, and activities following arrest prior to 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).

Petitioner's May 10, 2022 Interview and Respondent's Decision

The transcript of Petitioner's parole interview is annexed to the Petition as Exhibit A and to the Answer and Return as Exhibit 4 (hereinafter referred to as "Interview Transcript"). The Board's Decision denying parole is contained at pages 37-39 of the Interview Transcript (hereinafter referred to as "Decision").²

In reviewing the Decision in the context of the Interview Transcript, for the reasons stated herein, the Court finds that Petitioner has demonstrated that the Board's determination to

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 May 23, 2022.

deny him release evinces irrationality bordering on impropriety. “While the seriousness of the underlying offense remains acutely relevant in determining whether the petitioner should be released on parole, the record supports the petitioner’s contention that the Parole Board failed to take other relevant statutory factors into account.” *Mitchell v. New York State Div. of Parole*, 58 AD3d 742, 743 [2d Dept. 2009].

Here, each of the reasons the Board proffered in its Decision for denying parole center on the seriousness of the underlying offense. In fact, the Decision commences with a statement that “the Panel is led to conclude that if released at this time [*sic*] would so deprecate the serious nature of the crime as to undermine respect for the law.”

First, the Board acknowledged Petitioner’s low COMPAS scores,³ but found that these scores “fail to outweigh the depravity of the instant offense, or mitigate the atrocious demonstration of anger and rage, nor lessen the long term impact upon your family and specifically your children.”

The Board next determined that Petitioner’s

stated remorse is self-serving. Given your life’s professional and academic accomplishment, you are mindful of the benefit of remorseful sentiment. However, the Panel concurs said statements appeared less than genuine. During the interview, in response to questions specifically about you, you would pivot to discuss your helping and volunteer efforts for others. This was a deliberate and repeated method whereby you evaded discussing your rage and your anger toward your victims.

While the Board couched this statement as indicia of lack of remorse, its focus remains on the seriousness of the underlying offense. In any event, as discussed below, the Board’s conclusion as to Petitioner’s lack of remorse is not supported by the record.

³ A review of the COMPAS Risk Assessment annexed to the Petition as Exhibit B confirms that Petitioner received the lowest possible score (“1”) in all 12 categories.

The Board was also “persuaded against” Petitioner’s release by the “strong language” featured throughout “official opposition” to his release and the sentencing minutes.⁴ The Board concluded that Petitioner was “symbolic of the vicious death” of his wife and encouraged him to “take time to deeply consider [his] behavior pre, during and post the instant offense identifying all [his] victims and the depth of the harm [he] caused.”

The Interview Transcript reveals further instances of the Board’s attention on the underlying crime, to wit: Petitioner’s relationship with his estranged wife, the events which lead to the murder, Petitioner’s state of mind, his failure to seek psychiatric help before the crime and the fact that the murder was witnessed by two of his children, when the other two children were also present in the house. The Board also questioned Petitioner extensively about why he speaks about helping others but not about what caused him to go from “0-100” when he killed his wife.

While the Decision of the Board states that it considered the required statutory factors, it does so in a conclusory manner. For example, the Decision “notes” that Petitioner had “amassed” two Tier II infractions both for contraband⁵ in 2009 and 2009, for which he served keeplock. Yet the Board fails to acknowledge that these were the only disciplinary infractions that Petitioner received during his nearly 20 year incarceration. The Board fleetingly mentions that Petitioner had completed all required programming, including Aggression Replacement Training and had obtained his Masters in Professional Studies in June 2019 with a 3.98 GPA.

Based upon the foregoing, the Court finds that the Board’s “determination to deny parole release to the petitioner appears to have been solely based on the seriousness of the crimes he

⁴ The only official opposition to Petitioner’s release in the record is a 2021 letter from the Westchester County District Attorney’s Office which exclusively spoke of the nature of the crime and its impact on the victim’s family. Similarly, the sentencing minutes detailed the nature of Petitioner’s crime, victim impact statements and letters and Petitioner’s own statement.

⁵ The Petition explains that these two tickets were for the re-use of a single postage stamp and for trying to send letters to two men who had been transferred.

committed. We find such analysis, or lack thereof, to be incompatible with the Parole Board's duty." *Rivera v. Stanford*, 172 AD3d 872, 874 [2d Dept. 2019]. In making this determination, the Court is persuaded by the analysis of the First Department in *Matter of Rossakis v. New York State Bd. of Parole*, 146 AD3d 22, 27 [1st Dept. 2016], a case where the facts closely mirror the instant case. There, the petitioner had also been incarcerated for 20 years for the murder of her husband and had similarly obtained educational degrees and successfully completed all required programs. She also scored the best scores possible on her COMPAS evaluation. The First Department held that "[b]ased on the record before us, we conclude that the motion court correctly determined that the Board acted with an irrationality bordering on impropriety in denying petitioner parole. The Board focused exclusively on the seriousness of petitioner's conviction and the decedent's family's victim impact statements...without giving genuine consideration to petitioner's remorse, institutional achievements, release plan, and her lack of any prior violent criminal history." *Id.* at 27.

As such, "notwithstanding the seriousness of the underlying offense, the Parole Board's 'determination to deny the petitioner release on parole evinced irrationality bordering on impropriety' [citations omitted]." *Matter of Coleman v. New York State Dep't of Corr. & Cmty. Supervision*, 157 AD3d 672, 673 [2d Dept. 2018]; *see also Matter of Ferrante v. Stanford*, 172 AD3d 31, 37 [2d Dept. 2019] ("the Board may not deny an inmate parole based solely on the seriousness of the offense."); *see also Matter of Perfetto v. Evans*, 112 AD3d 640, 641 [2d Dept. 2013] ("Although the written determination of the New York State Board of Parole (hereinafter the Parole Board) mentioned the petitioner's institutional record, it is clear that the Parole Board denied the petitioner's request to be released on parole solely on the basis of the seriousness of the offense."); *Matter of Ramirez v. Evans*, 118 AD3d 707 [2d Dept. 2014].

There is another basis to vacate the Board's decision; the record does not support the Board's finding that Petitioner's remorse was "self-serving" and "less than genuine." While an incarcerated individual's remorse and insight into the offense are relevant considerations for the Board (*Matter of Payne v. Stanford*, 173 AD3d 1577, 1578 [3d Dept. 2019]), these factors are largely relevant in assessing whether that individual presents a danger to the community, which was not an issue raised by the Board here.

Contrary to the Board's conclusion, the record contains extensive evidence as to the depth of Petitioner's remorse. During the Interview, the Commissioner noted that Petitioner looked distraught and Petitioner responded that

the shame and the distress that I cause on anyone who comes into my life in any way and knowing that I'm the person who committed such a monstrous act that night, with such terrible consequences for not just my wife and our kids but her mother, her sister, a lot of people who loved her, my own family who loved her, she was like a sister to my sisters, like a big sister to my youngest brother Pat, and I did all of that. Transcript, p. 12.

He further stated that

I was a failure and because I failed as a person I ruined all of these lives. I don't think I've ever underestimated the impact I've had on all of these victims, starting with Debbie, and the terror she must have experienced that night and our children in the room and the other children in the bed and everyone since then, her mother, her sister, everyone. I caused so much damage there is nothing I could ever do to even begin to mitigate that damage. Transcript, p. 16.

In addition to Petitioner's own testimony and personal statement, the record also contains numerous letters of support that speak to the level of Petitioner's remorse. A letter from Father Paul Tolve states that he has known Petitioner for 19 years and described him as "one of the most sincere and repentant detainees who I have ever counseled in my 23 years as a chaplain and priest."⁶ Archbishop Anthony Biondi of the Holy Orthodox Catholic and Apostolic Church of

⁶ Fr. Tolve further notes that in the early days of his incarceration Petitioner "suffered from depression and deep remorse over his actions and the consequences of them on all levels."

America has been in contact with Petitioner since he entered the correctional system and stated that Petitioner has shown “great remorse” in his conversations. Petitioner’s defense attorney, Andrew Rubin, also submitted a letter in which he noted that the first time he met Petitioner and continuing throughout his representation, Petitioner “expressed enormous, sincere remorse for his crime, the death of his wife and the effect that his acts had on his children and [his wife’s] family.”

Perhaps most significant, and seemingly ignored by the Board, is the fact that Petitioner has re-established relationships with his wife’s mother, Joan DiNapoli, and two of his children, Peter and James, all of whom submitted letters in support of his release. In a September 15, 2021 letter, Mrs. DiNapoli stated that when she spoke to Petitioner on the phone in 2008 “[h]e was so remorseful for what he had done, it broke my heart.”⁷

Other than appearing to be dissatisfied with the manner in which Petitioner answered their questions during the Interview, the record before the Board fails to demonstrate that Petitioner had limited remorse and/or insight into his crime. *C.f. Pulliam v. Bd. of Parole - Dep’t of Corr. & Cmty. Supervision*, 197 AD3d 1495, 1496 [3d Dept. 2021] (“Although petitioner expressed remorse at the parole hearing, he stated that six months prior to the hearing he was not even sure that he had committed the crime and he did not offer an explanation as to why he did it.”). In this case, Petitioner pled guilty to the crime, has consistently spoken about his remorse and described the impetus behind why he killed his wife. After reviewing the record, the Court finds that the Board’s determination that Petitioner’s remorse is self-serving and less than genuine evinces irrationality bordering on impropriety. *Matter of Coleman, supra*.

⁷ Mrs. DiNapoli also submitted a letter to the Westchester County District Attorney dated February 4, 2022 wherein she asked the District Attorney not oppose Petitioner’s release and expressed disappointment that the District Attorney’s office had sent a letter opposing his parole at his first appearance in November, 2021.

This Court does not intend to diminish the fact that Petitioner brutally killed his wife in the presence of their young children. As the Petitioner himself acknowledged in the Interview, what he did went "beyond major league" horror. Nevertheless, it is this Court's responsibility to ensure that Petitioner's application for parole release be appropriately evaluated pursuant to all applicable laws and regulations.

The Court has considered the additional contentions of the parties not specifically addressed herein. To the extent any relief requested by either party was not addressed by the Court, it is hereby denied. Accordingly, it is hereby

ORDERED that the Petition is granted and the May 10, 2022 determination is annulled; and it is hereby

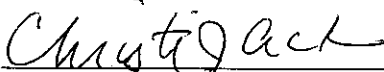
ORDERED that the matter is remitted to Respondent for a *de novo* parole release interview and review which complies with all applicable statutes and regulations; and it is further

ORDERED that the *de novo* interview shall be held before a panel consisting of members who were not involved in the May 10, 2022 interview; 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
June 26, 2023



CHRISTI J. ACKER, J.S.C.

To: All Counsel via NYSCEF