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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

NON-MONEY JUDGMENT

In the Matter of the Application of

JUDGMENT

KEVIN CORNISH,

Index No. EF001510-2023

Petitioner,

-against-

DARRYL C. TOWNS, CHAIRMAN OF THE
NEW YORK STATE BOARD OF PAROLE,

Respondent.

McElduff, A.J.S.C.

The Court reviewed the following submissions on Petitioner's application pursuant to CPLR Article 78 to vacate the New York State Board of Parole's (the "Board's") denial of parole dated March 2, 2022 and return the matter to the Board for a hearing *de novo*:

1. Notice of Petition, Petition, Memorandum of Law, together with Exhibits 1-9, filed on March 6, 2023 and as amended on March 9, 2023;
2. Answer, together with Exhibits 1-11, filed on April 5, 2023;
3. Reply Affirmation, filed on April 9, 2023

The function of the court in these CPLR Article 78 proceedings is to review whether the Board's decision to deny parole was arbitrary and capricious. Thus, judicial intervention to vacate a denial of parole by the Board is warranted only when there is a showing of "irrationality bordering on impropriety." *Hamilton v. New York State Div. of Parole*, 119 A.D.3d 1268, 1269 (3d Dept. 2014). "Although the Board is required to consider the factors set forth in Executive Law § 259-i (2)(c), it is not required to give equal weight to each factor or specifically articulate every factor considered in making its decision." *Larmon v. Travis*, 14 A.D.3d 960, 961 (3d Dept. 2005). In its review, the court may not assess whether the Board applied the proper amount of weight (or not) to the various factors it considered in reaching its decision. *Hamilton*, 119 A.D.3d at 1270 (noting that the court cannot "effectively review the Board's *weighing process*, given that it is not required to state each factor that it considers, weigh each factor equally or grant parole as a reward for exemplary institutional behavior").

The *Hamilton* case summarized the function of the Board as follows:

Executive Law article 12-B mandates that “[d]iscretionary release on parole shall not be granted merely as a reward for good conduct” (Executive Law § 259-i[2][c][A]). Rather, the Board must consider whether “there is a reasonable probability that, if such inmate is released, he [or she] will live and remain at liberty without violating the law, and that his [or her] release is not incompatible with the welfare of society and will not so deprecate the seriousness of his [or her] crime as to undermine respect for law” (Executive Law § 259-i[2][c][A]). The decision to grant parole release is discretionary, but the Board is required to consider certain guidelines in making its determination (*see Matter of Silmon v. Travis*, 95 N.Y.2d at 477, 718 N.Y.S.2d 704, 741 N.E.2d 501). Those guidelines include the inmate's institutional record (goals and accomplishments, academic achievement, vocational education, training and work assignments, therapy and interaction with staff), release plans, statements by the crime victim, the seriousness of the offense considering type and length of sentence, recommendations of the sentencing court and district attorney, the presentence probation report, mitigating or aggravating factors to the crime, activities following arrest prior to confinement, and prior criminal record (Executive Law § 259-i[2][c][A][i], [iii], [v], [vii], [viii]).

Hamilton v. New York State Div. of Parole, 119 A.D.3d 1268, 1270 (3d Dept. 2014).

Here, the Court finds no irrational basis or impropriety upon which to vacate the Board's denial of parole. The record reflects that the Board and the Petitioner had a thorough and thoughtful interaction and that the Board properly considered Petitioner's criminal history, as well as the severity of the crime, his prison disciplinary record, his institutional accomplishments, his post-release plans, his letters of support and his COMPAS test results. *See Davis v. Evans*, 105 A.D.3d 1305, 1306 (3d Dept. 2013).

Petitioner's contention that the Board, by denying parole, was effectively “sentencing” the Petitioner to further time in prison for his arrest for a subsequent robbery attempt (which had led to Petitioner's arrest/capture on the prior robbery/2nd degree murder conviction for which he is now imprisoned) is unfounded. The Petitioner's flight from both alleged robberies and subsequent capture and arrest on the second robbery attempt, even though those charges were dismissed, is part of the Petitioner's arrest history and relevant to the analysis of Petitioner's ability to live a lawful life at liberty. *Larmon v. Travis*, 14 A.D.3d 960, 961 (3d Dept. 2005) (the Petitioner's history of flight/fleeing was relevant to the Board's parole decision).

Petitioner also contended that the Board excessively or solely focused on the severity of his crime (robbery with 2nd degree murder) was unlawful. However, so long as the Board reviews the entire record, it is within its authority/discretion to base a denial upon the severity of the crime, even where the petitioner has an exemplary record in prison. *See Walker v. Travis*, 252 A.D.2d

360, 362 (1st Dept. 1998). Here, the Board's determination and interview show that its review and focus was not solely on the severity of the Petitioner's crimes. Regardless, the Board was not legally required to give each statutory factor equal weight or disproportionate weight. Instead, in its discretion, the Board was legally entitled to place greater emphasis upon Petitioner's crimes for which he was currently imprisoned, Petitioner's prior criminal history, Petitioner's prior prison terms and Petitioner's prior record of failed community supervision over, for example, his COMPAS test results.¹ *See, e.g., Bello v. Bd. of Parole*, 149 A.D.3d 1458, 1459 (3d Dept. 2017).

While the Petitioner should be commended for his progress in prison and his candid interaction with the Board, it cannot be said, on this record, that the Board acted arbitrarily or capriciously in exercising its discretion to deny parole at this juncture. This Court is without power to substitute its judgment for the Board's own judgment regarding the factors it considered or the weight to be attributed to them.

For these reasons, it is hereby

ORDERED and ADJUDGED that herein Petition dated March 6, 2023 is denied and dismissed.

This constitutes the Order and Judgment of this Court.

Dated: April 12, 2023
Goshen, New York



Hon. Timothy P. McElduff, Jr., A.J.S.C.

ENTERED


ACTING DEPUTY COUNTY CLERK

04/19/2023

¹ Petitioner argued that his COMPAS test results, which indicated a high history of violence, but low or unlikely risks of criminal risk factors, was not properly considered and, if it was, should have mandated his release. However, the record shows that Petitioner's COMPAS results were received, reviewed and discussed by the Board. Further, Petitioner failed to present any relevant or controlling legal authority to support his argument that COMPAS results should have outweighed all other factors or otherwise been dispositive in the Board's release decision.