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Decision in Art. 78 proceeding - Croshier, Christopher (2022-08-24)

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To commence the 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 PUTNAM**

-----X
In the Matter of the Application of
CHRISTOPHER CROSHIER,

Petitioner,

-against-

TINA M. STANFORD,
CHAIRWOMAN, NEW YORK STATE
BOARD OF PAROLE

Respondent.

ORDER & JUDGMENT
Index No. 500547/2022
Motion Seq. No. 1

-----X
CAPONE, J.S.C.

The following papers, numbered 1-41, were read, and considered on Petitioner Christopher Croshier’s Petition pursuant to CPLR Article 78 for annulment of Respondent’s September 14, 2021, denial of parole and for a directive that the Parole Board (hereinafter Board) conduct a *de novo* parole review.

PAPERS

NUMBERED

Notice of Petition/ Memorandum of Law in Support/
Exhibits 1 – 21

1 - 23

Answer in Special Proceeding/ Exhibits A – O¹/
Memorandum of Law in Opposition

24 - 40

Affirmation in Reply

41

Petitioner is currently incarcerated at Fishkill Correctional Facility. Petitioner plead guilty to murder in the second degree and assault in the first degree on September 6, 1995, and

¹ The Court has received and reviewed, *in camera*, unredacted versions of Exhibits B, F, K, and L.

was sentenced to serve twenty-five years to life on the murder in the second-degree conviction and seven and a half to fifteen-years on the assault in the first-degree conviction, which were to run concurrently. Those convictions arose from an incident that occurred on January 13, 1995, when Petitioner, then twenty-years old, entered a bar in Schenectady, New York, became intoxicated, and, as a result of an altercation between a bar patron and the Petitioner's friend, the Petitioner retrieved an assault rifle from his vehicle, fired eighteen shots, killed one person and seriously injured a second.

On December 13, 2016, Petitioner was convicted of assault in the second degree and was sentenced to serve two to four years, which sentence was to run consecutively to his prior sentences. That conviction arose from a February 23, 2016, incident when Petitioner stabbed a fellow inmate in the face with a pen during an altercation.

On March 17, 2021, Petitioner was first denied parole. On September 14, 2021, he was denied parole for the second time. Petitioner timely appealed the Board's decision. The Appeals Unit upheld the Board's decision on January 25, 2022. The instant Petition was brought on May 10, 2022. Respondent filed an Answer on June 10, 2022, and Petitioner filed a Reply on June 16, 2022.

STANDARD OF REVIEW

“In New York, the Parole Board holds the power to decide whether to release a sentenced prisoner on parole” (*Matter of Ferrante v Stanford*, 172 AD3d 31, 37 [2d Dept 2019]). “The Board's release decisions are discretionary, and if made in accordance with statutory requirements, they are not subject to judicial review” (*Matter of Ferrante v Stanford*, 172 AD3d at 37). “A Board's determination to deny parole release may be set aside only where it evinces irrationality bordering on impropriety” (*Matter of Ferrante v Stanford*, 172 AD3d at 37 [internal quotations omitted]).

“In making the parole release determination, the Board must consider the relevant statutory factors” (*Matter of Ferrante v Stanford*, 172 AD3d at 37, citing Executive Law § 259-

i[2][c][A]). Under NY Exec. Law § 259-i(2)(c)(A), the State Board of Parole is required to consider the following eight factors when determining whether an inmate is fit to be released: (1) institutional record, (2) performance, if any, as a participant in a temporary release program, (3) release plans, (4) any deportation order issued by the federal government against the inmate while in the custody of the department and any recommendation regarding deportation made by the commissioner of the department, (5) any current or prior statement made to the board by the crime victim or the victim's representative, (6) the length of the determinate sentence to which the inmate would be, (7) the seriousness of the offense with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court, the district attorney, the attorney for the inmate, the pre-sentence probation report as well as consideration of any mitigating and aggravating factors, and activities following arrest prior to confinement, and (8) prior criminal record, including the nature and pattern of offenses, adjustment to any previous probation or parole supervision and institutional confinement.

“While consideration of these guidelines is mandatory, the ultimate decision to parole a prisoner is discretionary” (*Silmon v Travis*, 95 NY2d 470, 477 [2000]). “Whether the Board considered the proper factors and followed the proper guidelines are questions that should be assessed based on the written determination...evaluated in the context of the parole hearing transcript” (*Matter of Jackson v Evans*, 118 AD3d 701, 702 [2d Dept 2014] [italics and quotations omitted]). “The Board is not required to give equal weight to each factor, nor is it required to articulate specifically each factor in its determination” (*Matter of Huntley v Evans*, 77 AD3d 945, 947 [2d Dept 2010]). In its determination, the Board “must, by law, inform the inmate in writing of the factors and reasons for denial of parole, and such reasons shall be given in detail and not in conclusory terms” (*Matter of Mitchell v New York State Div. of Parole*, 58 AD3d 742, 743 [2d Dept 2009]).

Petitioner argues for *de novo* review of the Board’s decision for six reasons. First, Petitioner argues that the Board failed to provide a rational explanation for its departure from its

Correctional Offender Management Profiling for Alternative Sanctions (hereinafter “COMPAS”) scores, specifically “risk of felony violence,” in violation of 9 NYCRR § 8002.2, which states:

“In making a release determination, the Board shall be guided by risks and needs principles, including the inmate’s risk and needs scores as generated by a periodically-validated risk assessment instrument, if prepared by the Department of Corrections and Community Supervision. If a Board determination, denying release, departs from the Department Risk and Needs Assessment’s scores, the Board shall specify any scale within the Department Risk and Needs Assessment from which it departed and provide an individualized reason for such departure...” 9 NYCRR § 8002.2

Second, Petitioner argues that the Board failed to explain in non-conclusory terms how it considered the applicable statutory factors including, inter alia, victim impact statements and Petitioner’s release plans. Third, the Petitioner contends that the Board failed to explain how the Board considered the applicable statutory factors, evincing a failure to consider those factors. Fourth, Petitioner argues the Board’s statement that Petitioner made excuses for his actions is not supported by the record. Fifth, Petitioner argues the Board relied on inaccurate information with respect to the Petitioner’s mental health score and COMPAS scores. Sixth, Petitioner argues the Board failed to explain its denial in detail, and not in conclusory terms, how Petitioner’s release would be incompatible with the welfare of society or deprecate the seriousness of the offense so as to undermine respect for the law.

In opposition, the Respondent contends that the Parole Board properly considered the serious nature of Petitioner’s crime, his affinity for weaponry, and his subsequent 2016 conviction for a violent attack on a fellow inmate in determining that parole was not warranted. Respondent argues that the Board’s determination should be undisturbed for two reasons. First, Respondent argues the Board’s determination does not evince irrationality bordering on impropriety, as (i) the transcript and written decision indicate the Board considered all required statutory factors and (ii) the Board did not rely on inaccurate information. Specifically, Respondent asserts that the Petitioner’s COMPAS scores were mixed because in the “substance

abuse” category of COMPAS and, even if the mental health score of “3” referenced in the interview is inaccurate, there was no evidence that the Board relied on this information in making its decision. Second, Respondent argues the Parole Board followed the statutory guidelines in explaining its reasoning for departing from Petitioner’s risk of felony violence score, as required by the law.

In reply, Petitioner further argues that the Board’s departure from Petitioner’s low “risk of felony violence” score was irrational and that the Board’s decision is contradicted by the record. Petitioner also highlights how the Board is required to consider victim impact statements in reaching its decision (*see* 9 NYCRR§ 8002.2[d][5]; Executive Law § 259 – i [2][C][a]), but here, the Respondent has outright denied knowledge and information sufficient to determine whether victim statements were in the parole file, even though Respondent is the only person who would have such knowledge, as those documents would be under the Board’s exclusive control. Assuming the existence of victim impact statements are deemed admitted, Petitioner further argues that the Board’s failure to make reference to victim impact statements in its decision means that the Board did not properly consider them as required by the statutory guidelines.

ANALYSIS

Here, upon review of, inter alia, Petitioner’s parole interview and the Board’s decision, the Court finds that annulment of the Board’s decision and *de novo* review is not warranted at this time. Evaluated in the context of the Parole transcript, the Court finds that the Board considered the applicable statutory factors including, inter alia, the seriousness of the crime committed in 1995, the subsequent violent nature of the crime committed in 2016, completion of vocational programs, completion of academic degrees, COMPAS scores and deviations thereof, prior unlawful conduct, and Petitioner’s Parole packet, which included, inter alia, Petitioner’s letter of remorse and future release plans. Furthermore, the Board’s explicit departure from Petitioner’s COMPAS score in the category of “risk of felony violence” was rational, as it cited

both the serious nature of Petitioner's crimes and Petitioner's past affinity for weaponry as its reason for departure (*see* 9 NYCRR § 8002.2).

Moreover, the Board's decision was neither unsupported by the record nor conclusory. With respect to Petitioner's argument that Respondent relied on inaccurate information because the Board indicated that Petitioner has a mental health score of "3," "there is nothing in the record to indicate that this alleged erroneous information served as a basis for the denial of [Petitioner's] parole release" (*Matter of Restivo v New York State Bd. of Parole*, 70 AD3d 1096, 1097 [3d Dept 2010]). Moreover, the Board may assess Petitioner's credibility as it sees fit. The Board also explained how it weighed the factors relevant to reaching its decision. While the Board applauded Petitioner for earning his bachelor's degree in the Bard College program and for succeeding in other vocational programs, the Board weighed Petitioner's assault while confined at a facility, past excuses, and affinity for weaponry more heavily. As such, Respondent concluded that Petitioner's release would be incompatible with welfare of society and would so deprecate the serious nature of the crime as to undermine respect for the law. Thus, in compliance with the statutory guidelines, the Board's decision was supported by the record and not merely conclusory.

Victim impact statements and victim impact statements elicited by a victim's representative are among the factors to be considered in a parole release (*see* 9 NYCRR § 8002.2[d][5]; Executive Law § 259-i[2][C][a][v]). Although Respondent did not submit victim impact statements to the Court for review or reference victim impact statements in its decision, "we appreciate that respondent may weigh the relevant factors...as it sees fit and need not discuss each factor in its decision" (*Bottom v New York State Bd. of Parole*, 30 AD3d 657, 658 [3d Dept 2006]). "[I]n the absence of affirmative proof to the contrary, we presume that respondent fully complied with applicable statutory directives" (*Bottom v New York State Bd. of Parole*, 30 AD3d at 658). However, Respondent should be cautioned "[t]he mandate that a victim impact statement shall be maintained in confidence certainly should not trump the

statutory requirement that the Board’s decision reveal the factors and reasons it considered in reaching its decision, particularly when such consideration is mandated by statute” (*Matter of West v New York State Bd. of Parole*, 41 Misc 3d 1214[A], 980 NYS2d 279, 2013 Slip Op 51688[U] [Sup. Ct. Albany Cty. 2013]).

Accordingly, it is hereby

ORDERED and ADJUDGED that the Petition is denied and the Proceeding dismissed.

Dated: August 24, 2022
Carmel, New York



HON. GINA C. CAPONE, J.S.C.