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Administrative Appeal Decision - Bush, Ronnie (2019-06-06)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Bush, Ronnie

Facility: Woodbourne CF

NYSID: [REDACTED]

Appeal Control No.: 11-003-18 B

DIN: 85-B-1355

Appearances: Ronnie Bush (85B1355)
Woodbourne Correctional Facility
99 Prison Road, Box 1000
Woodbourne, New York 12788

Decision appealed: October 2018 decision, denying discretionary release and imposing a hold of 24 months.

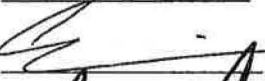
Board Member(s) who participated: Agostini, Demosthenes, Davis


Papers considered: Appellant’s Brief received March 20, 2019

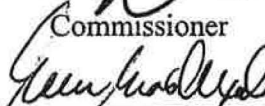
Appeals Unit Review: Statement of the Appeals Unit’s Findings and Recommendation

Records relied upon: Pre-Sentence Investigation Report, Parole Board Report, Interview Transcript, Parole Board Release Decision Notice (Form 9026), COMPAS instrument, Offender Case Plan.

Final Determination: The undersigned determine that the decision appealed is hereby:

 Affirmed Vacated, remanded for de novo interview Modified to _____
Commissioner

 Affirmed Vacated, remanded for de novo interview Modified to _____
Commissioner

 Affirmed Vacated, remanded for de novo interview Modified to _____
Commissioner

If the Final Determination is at variance with Findings and Recommendation of Appeals Unit, written reasons for the Parole Board’s determination must be annexed hereto.

This Final Determination, the related Statement of the Appeals Unit’s Findings and the separate findings of the Parole Board, if any, were mailed to the Inmate and the Inmate’s Counsel, if any, on 6/16/19 66.

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Appellant challenges the October 2018 determination of the Board, denying release and imposing a 24-month hold.

Appellant is serving an indeterminate sentence of 25 years to Life imprisonment for the crimes of Murder 2nd and Manslaughter 1st. Appellant and his accomplice were involved in the shooting death of an off-duty police officer. The victim was shot dead with his own revolver.

Appellant raises the following issues in his brief: (1) the Board’s decision relied too heavily upon the serious nature of Appellant’s crimes of conviction; (2) community opposition letters should not be considered by the Board; (3) the Board’s decision was conclusory and lacked sufficient detail; and (4) the Board should not have “expressed” “penal philosophy”.

As to the first issue, discretionary release to parole is not to 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 the law.” Executive Law §259-i(2)(c)(A) (emphasis added); accord Matter of Hamilton v. New York State Div. of Parole, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014). “Although these standards are no longer repeated in the [Board’s] regulation, this in no way modifies the statutory mandate requiring their application.” Notice of Adoption, NY Reg, Sept. 27, 2017 at 2. A conclusion that an inmate fails to satisfy **any one** of the considerations set forth in Executive Law §259-i(2)(c)(A) is an independent basis to deny parole. See, e.g., Matter of Silmon v. Travis, 95 N.Y.2d 470, 477, 718 N.Y.S.2d 704, 708 (2000); Matter of Robles v. Fischer, 117 A.D.3d 1558, 1559, 985 N.Y.S.2d 386 (4th Dept. 2014); Matter of Hamilton v. New York State Div. of Parole, 119 A.D.3d 1268; Matter of Phillips v. Dennison, 41 A.D.3d 17, 21, 834 N.Y.S.2d 121, 124 (1st Dept. 2007).

Executive Law §259-i(2)(c)(A) requires the Board to consider criteria which is relevant to the specific inmate, including, but not limited to, the inmate’s institutional record and criminal behavior. People ex rel. Herbert v. New York State Bd. of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881 (1st Dept. 1983). While consideration of these factors is mandatory, “the ultimate decision to parole a prisoner is discretionary.” Matter of Silmon v. Travis, 95 N.Y.2d 470, 477. Thus, it is well settled that the weight to be accorded the requisite factors is solely within the Board’s discretion. See, e.g., Matter of Delacruz v. Annucci, 122 A.D.3d 1413, 997 N.Y.S.2d 872 (4th Dept. 2014); Matter of Hamilton, 119 A.D.3d at 1271; Matter of Garcia v. New York State Div. of Parole, 239 A.D.2d 235, 239, 657 N.Y.S.2d 415, 418 (1st Dept. 1997). The Board need not explicitly refer to each factor in its decision, nor give them equal weight. Matter of Betancourt v. Stanford, 148 A.D.3d 1497, 49 N.Y.S.3d 315 (3d Dept. 2017); Matter of LeGeros v. New York State Bd. of Parole, 139

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A.D.3d 1068, 30 N.Y.S.3d 834 (2d Dept. 2016); Matter of Phillips v. Dennison, 41 A.D.3d 17. In the absence of a convincing demonstration that the Board did not consider the statutory factors, it must be presumed that the Board fulfilled its duty. Matter of Fuchino v. Herbert, 255 A.D.2d 914, 914, 680 N.Y.S.2d 389, 390 (4th Dept. 1998); Matter of McLain v. New York State Div. of Parole, 204 A.D.2d 456, 611 N.Y.S.2d 629 (2d Dept. 1994); Matter of McKee v. New York State Bd. of Parole, 157 A.D.2d 944, 945, 550 N.Y.S.2d 204, 205 (3d Dept. 1990); People ex rel. Herbert, 97 A.D.2d 128.

As to the second issue, the Board may receive and consider written communications from individuals, other than those specifically identified in Executive Law §259-i(2)(c)(A), opposing an inmate's release to parole supervision. Matter of Applewhite v. New York State Bd. of Parole, 167 A.D.3d 1380, --N.Y.S.3d-- (3d Dept. 2018) ("Contrary to petitioner's contention, we do not find that [the Board's] consideration of certain unspecified 'consistent community opposition' to his parole release was outside the scope of the relevant statutory factors that may be taken into account in rendering a parole release determination"); Matter of Clark v. New York Bd. of Parole, 166 A.D.3d 531, 89 N.Y.S.3d 134 (1st Dept. 2018) ("the Board permissibly considered letters in opposition to the parole application submitted by public officials and members of the community"); Matter of Grigger v. New York State Div. of Parole, 11 A.D.3d 850, 852–53, 783 N.Y.S.2d 689, 691 (3d Dept. 2004) (recognizing 259-i(2)(c)(A)(v)'s list is not the exclusive information the Board may consider and persons in addition to victims and their families may submit letters), lv. denied, 4 N.Y.3d 704, 792 N.Y.S.2d 1 (2005); see also Matter of Jordan v. Hammock, 86 A.D.2d 725, 447 N.Y.S.2d 44 (3d Dept. 1982) (letters from private citizens are protected and remain confidential); Matter of Rivera v. Evans, Index No. 0603-16, *Decision & Order* dated July 5, 2016 (Sup. Ct. Sullivan Co.)(LaBuda A.J.S.C.) (recognizing "[c]onsideration of community or other opposition was proper under the statute" and the Board is required to keep identity of persons opposing release confidential), aff'd sub nom. Matter of Rivera v. Stanford, 53 N.Y.S.3d 404, 149 A.D.3d 1445 (3d Dept. 2017); Matter of Hamilton v. New York State Bd. of Parole., Index # 3699-2013, *Order and Judgment* dated October 25, 2013 (Devine J.S.C.)(Albany Co. Court)(no showing of prejudice by allegedly false information in PBA online petition where Board acknowledged public opposition during interview), aff'd, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014); cf. Krebs v. N.Y. State Div. of Parole, No. 9:08-CV-255NAMDEP, 2009 WL 2567779, at *12 (N.D.N.Y. Aug. 17, 2009) (public and political pressure "are permissible factors which parole officials may properly consider as they relate to 'whether 'release is not incompatible with the welfare of society and will not so deprecate the seriousness of the offense as to undermine respect for the law'"); Morel v. Thomas, No. 02 CV 9622 (HB), 2003 WL 21488017, at *5 (S.D.N.Y. June 26, 2003) (same); Seltzer v. Thomas, No. 03 CIV.00931 LTS FM, 2003 WL 21744084, at *4 (S.D.N.Y. July 29, 2003) (same). The same has also long been recognized as true with respect to letters supporting an inmate's potential parole release. See, e.g.,

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Matter of Hamilton v. New York State Div. of Parole, 119 A.D.3d at 1273, 990 N.Y.S.2d at 719 (3d Dept. 2014); Matter of Gaston v. Berbary, 16 A.D.3d 1158, 1159, 791 N.Y.S.2d 781, 782 (4th Dept. 2005); Matter of Torres v. New York State Div. of Parole, 300 A.D.2d 128, 129, 750 N.Y.S.2d 759, 760 (1st Dept. 2002); Matter of Walker v. Travis, 252 A.D.2d 360, 362, 676 N.Y.S.2d 52, 54 (1st Dept. 1998); cf. Cardenales v. Dennison, 37 A.D.3d 371, 371, 830 N.Y.S.2d 152, 153 (1st Dept. 2007) (Board permissibly determined offense outweighed other positive factors including letters of support from, among others, victim's mother). Indeed, 9 N.Y.C.R.R. §8000.5(c)(2) refers to the security of letters either in support of or in opposition to an inmate's release.; Matter of Costello v. New York State Bd. of Parole, 101 A.D.3d 1512, 957 N.Y.S.2d 486 (3d Dept. 2012) (indicating Board considered Police Commissioner's letter of opposition in original determination to grant open date), rev'd on other grounds 23 N.Y.3d 1002, 1004, 994 N.Y.S.2d 39 (2014); Matter of LaBarbera v. New York State Div. of Parole, Index No. 12711/18, Decision/Order of Jan. 17, 2019 (Sup. Ct. Columbia Co.) (Mott, J.S.C.) (Board properly considered community opposition); Matter of Bottom v. Dep't of Corr. & Cmty. Supervision, Index No. 902448-17, *Judgment* dated Jan. 10, 2018 (Sup. Ct. Albany Co.) (DeBow A.S.C.J.) (rejecting challenge to Board's reliance on community opposition where majority of submissions addressed matters permitted by Executive Law and [per Duffy] there was no indication Board was influenced by improper objections predicated solely on victims' police officer status); Matter of Bottom v. Dep't of Corr. & Cmty. Supervision, Index No. 902448-17, *Decision & Order* dated Nov. 2, 2017 (Sup. Ct. Albany Co.) (DeBow A.S.C.J.) (recognizing Board may consider letters from private citizens while non-individualized objections based on class of crime would be improper); Matter of Comfort v. New York State Bd. of Parole, Index No. 3299-17, *Decision & Order* dated Oct. 27, 2017 (Sup. Ct. Albany Co.) (Koweek A.S.C.J.) (rejecting challenge to community opposition and speculative allegation that Board considered erroneous information therein); Matter of Hayes v. New York State Bd. of Parole, Index No. 200-2017, *Decision & Order* dated May 3, 2017 (Sup. Ct. Sullivan) (Schick J.S.C.) (rejecting challenge to Board decision based on reliance on community opposition including by PBA); Matter of Reyes v. Stanford, Index No. 1674/2017, *Decision, Order & Judgment* dated Sept. 21, 2017 (Supt. Ct. Dutchess Co.) (Forman A.S.C.J.) (concluding community opposition is an appropriate factor the Board may consider **but** treated as harmless misstatement); Matter of Bailey v. New York State Div. of Parole, Index No. 973-16, *Decision & Judgment* dated Aug. 17, 2016 (Sup. Ct. Albany Co.) (Hartman A.J.S.C.) (rejecting challenge to Board decision based on reliance on letters generated by police officers' union [even assuming letters contained inaccuracies or were inflammatory, Board would be permitted to consider them for what they were worthy per Duffy and will be presumed not to have relied on inappropriate matters therein unless decision indicates otherwise]); Matter of Gordon v. Stanford, Index No. 788-16, *Decision & Order* dated June 17, 2016 (Sup. Ct. Albany Co.) (McGrath J.S.C.) (finding no error in Board's consideration of community opposition, which was mentioned during

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interview), aff'd on other grounds Matter of Gordon v. Stanford, 148 A.D.3d 1502, 50 N.Y.S.3d 627 (3d Dept. 2017) (remaining claims unpreserved for review).

As to the third issue, the Board's decision satisfied the criteria set out in Executive Law §259-i(2)(a) and 9 N.Y.C.R.R. §8002.3(d), as it was sufficiently detailed to inform the inmate of the reasons for the denial of parole. Matter of Applegate v. New York State Bd. of Parole, 164 A.D.3d 996, 997, 82 N.Y.S.3d 240 (3d Dept. 2018); Matter of Kozlowski v. New York State Bd. of Parole, 108 A.D.3d 435, 968 N.Y.S.2d 87 (1st Dept. 2013); Matter of Little v. Travis, 15 A.D.3d 698, 788 N.Y.S.2d 628 (3d Dept. 2005); Matter of Davis v. Travis, 292 A.D.2d 742, 739 N.Y.S.2d 300 (3d Dept. 2002); People ex rel. Herbert v. New York State Bd. of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881 (1st Dept. 1983).

As to the fourth issue, Appellant fails to articulate what he means by his unsupported statement that a Commissioner expressed a penal philosophy that was improper. We are therefore unable to respond to this statement.

Recommendation: Affirm.