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Administrative Appeal Decision - Smallwood, Stacey (2021-10-15)

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STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Smallwood, Stacey

DIN: 93-A-7461

Facility: Great Meadow CF

AC No.: 03-124-21 SC

Findings: (Page 1 of 3)

Appellant challenges the March 2021 determination of the Board, denying release and imposing a 18-month hold. Appellant’s instant offense is for shooting the victim to death. Appellant raises the following issues: 1) the decision is arbitrary and capricious in that the Board failed to consider and/or properly weigh the required statutory factors. 2) the decision lacks details. 3) the decision fails to offer any future guidance.

Executive Law § 259-i(2)(c)(A) requires the Board to consider factors relevant to the specific incarcerated individual, including, but not limited to, the individual’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, 718 N.Y.S.2d 704, 708 (2000). 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, 990 N.Y.S.2d at 717; 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 Schendel v. Stanford, 185 A.D.3d 1365, 1366, 126 N.Y.S.3d 428, 429 (3rd Dept. 2020); Matter of Campbell v. Stanford, 173 A.D.3d 1012, 1015, 105 N.Y.S.3d 461 (2d Dept. 2019); Matter of Phillips v. Dennison, 41 A.D.3d 17, 21, 834 N.Y.S.2d 121, 124 (1st Dept. 2007).

The Board is permitted to consider, and place greater emphasis on, the heinous nature of the offense. Executive Law § 259-i(2)(c)(a); 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 Olmosperez v. Evans, 114 A.D.3d 1077, 1078, 980 N.Y.S.2d 845, 846 (3d Dept. 2014), affd 26 N.Y.3d 1014, 21 N.Y.S.3d 686 (2015); Matter of Almeyda v. New York State Div. of Parole, 290 A.D.2d 505, 736 N.Y.S.2d 275 (2d Dept. 2002); Matter of Garcia v. New York State Div. of Parole, 239 A.D.2d 235, 239-40, 657 N.Y.S.2d 415, 418 (1st Dept. 1997).

The Board “was free to place particular emphasis, as it did, on the violent nature of the crime. Matter of Schendel v. Stanford, 185 A.D.3d 1365, 1366, 126 N.Y.S.3d 428, 429 (3rd Dept. 2020).

The Board may place particular emphasis on the inmate’s troubling course of conduct both during and after the commission of the instant offenses. Jones v New York State Board of Parole, 175 A.D.3d 1652, 108 N.Y.S.3d 505 (3d Dept. 2019).

The Board may take note of the inmate’s disregard for the life of another human being. Hakim v Travis, 302 A.D.2d 821, 754 N.Y.S.2d 600 (3d Dept 2003); Angel v Travis, 1 A.D.3d 589, 767 N.Y.S.2d 290 (3d Dept 2003). The Board may consider the inmate’s blatant disregard for the law and

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the sanctity of human life. Campbell v Stanford, 173 A.D.3d 1012, 105 N.Y.S.3d 461 (2nd Dept. 2019).

The Board may consider an incarcerated individual's failure to comply with DOCCS rules in denying parole. See Matter of Almonte v. New York State Bd. of Parole, 145 A.D.3d 1307, 42 N.Y.S.3d 691 (3d Dept. 2016), lv. denied, 29 N.Y.3d 905 (2017); Matter of Karlin v. Cully, 104 A.D.3d 1285, 1286, 960 N.Y.S.2d 827, 828 (4th Dept. 2013); Matter of Stanley v. New York State Div. of Parole, 92 A.D.3d 948, 948-49, 939 N.Y.S.2d 132, 134 (2d Dept.), lv. denied, 19 N.Y.3d 806, 949 N.Y.S.2d 343 (2012).

The Board may consider inadequate release plans in denying parole. See, e.g., Matter of Delrosario v. Stanford, 140 A.D.3d 1515, 34 N.Y.S.3d 696 (3d Dept. 2016) (concern about reentry plans in case immigration does not deport incarcerated individual); Matter of Murphy v. State of New York Exec. Dep't Div. of Parole Appeals Unit, 2010 N.Y. Slip Op 32825(U), 2010 N.Y. Misc. Lexis 4926 (Sup. Ct. Albany Co. Sept. 30, 2010) (Ceresia S.C.J.) (denial based in part on absence of legitimate release plan).

The Board may consider negative aspects of the COMPAS instrument. Matter of Espinal v. New York Bd. of Parole, 172 A.D.3d 1816, 100 N.Y.S.3d 777 (3d Dept. 2019) (COMPAS instrument yielded mixed results); Matter of Bush v. Annucci, 148 A.D.3d 1392, 50 N.Y.S.3d 180 (3d Dept. 2017) (COMPAS instrument with mixed results including substance abuse relevant given use before crime); Matter of Wade v. Stanford, 148 A.D.3d 1487, 52 N.Y.S.3d 508 (3d Dept. 2017) (low risk felony violence but probable risk for substance abuse alcohol related crimes); Matter of Crawford v. New York State Bd. of Parole, 144 A.D.3d 1308, 46 N.Y.S.3d 228 (3d Dept. 2016) (scores not uniformly low including family support), lv. denied, 29 N.Y.3d 901, 57 N.Y.S.3d 704 (2017).

The Board's decision satisfied the criteria set out in Executive Law § 259-i(2)(a), as it was sufficiently detailed to inform the incarcerated individual 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 for Appellant's complaint about lack of future guidance, the Board is not required to state what an incarcerated individual should do to improve his chances for parole in the future. Matter of Francis v. New York State Div. of Parole, 89 A.D.3d 1312, 934 N.Y.S.2d 514 (3d Dept. 2011); Matter of Freeman v. New York State Div. of Parole, 21 A.D.3d 1174, 800 N.Y.S.2d 797 (3d Dept. 2005); Matter of Partee v. Evans, 40 Misc.3d 896, 969 N.Y.S.2d 733 (Sup. Ct. Albany Co. 2013),

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aff'd, 117 A.D.3d 1258, 984 N.Y.S.2d 894 (3d Dept. 2014), lv. denied, 24 N.Y.3d 901, 995 N.Y.S.2d 710 (2014).

“Arbitrary action is without sound basis in reason and is generally taken without regard to the facts’; or, put differently, ‘[r]ationality is what is reviewed under . . . the arbitrary and capricious standard.’” Hamilton v. New York State Division of Parole, 119 A.D.3d 1268, 1270 n.1, 990 N.Y.S.2d 714, 716 (3d Dept. 2014) (quoting Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 231, 356 N.Y.S.2d 833, 839 (1974)).

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, 468 N.Y.S.2d 881.

Recommendation: Affirm.

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Smallwood, Stacey

Facility: Great Meadow CF

NYSID: [REDACTED]

Appeal Control No.: 03-124-21 SC

DIN: 93-A-7461

Appearances: Steven Maio Esq.
319 East Second Street
Corning, New York 14830

Decision appealed: March 2021 decision, denying discretionary release and imposing a hold of 18 months.

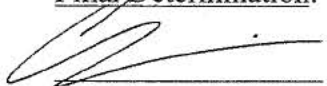
Board Member(s) who participated: Crangle, Coppola

Papers considered: Appellant's Brief received August 17, 2021

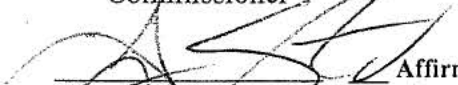
Appeals Unit Review: Statement of the Appeals Unit's Findings and Recommendation

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

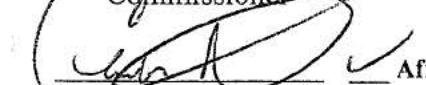
Final Determination: The undersigned determine that the decision appealed is hereby:

 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 Appellant and the Appellant's Counsel, if any, on

10/15/2021 66.