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Administrative Appeal Decision - Slater, Michael A (2021-12-03)

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STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Slater, Michael

DIN: 89-A-7123

Facility: Wende CF

AC No.: 04-094-21 B

Findings: (Page 1 of 3)

Appellant challenges the March 2021 determination of the Board, denying release and imposing a 24-month hold. Appellant’s instant offense is for breaking into a house during the night, raping a woman in the house, and repeatedly stabbing her and hitting on her head with a hammer, causing her death. Appellant raises the following issues: 1) the Board failed to consider and/or properly weigh the required statutory factors. 2) the Board decision failed to satisfy the preponderance of the evidence burden of proof. 3) the Board failed to comply with the 2011 amendments to the Executive Law, and the 2017 regulations, in that the positive portions of the COMPAS were ignored, and the departure from the COMPAS failed to give legally proper reasons.

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 brutal and 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).

Although the Board assigned greater weight to the seriousness of petitioner's crimes, his history of violence, and his lengthy prison disciplinary record, we find that the ultimate determination is rational...” Matter of Allen v. Stanford, 161 A.D.3d 1503, 78 N.Y.S.3d 445 (3d Dept.), lv. denied, 32 N.Y.3d 903 (2018).

If during the interview the inmate becomes angry and argumentative, then a denial due to issues with anger management control are proper. Palmeri v New York State Division of Parole, 57 Misc.3d 1202(A), 66 N.Y.S.3d 654 (St. Lawrence Co. 2017).

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It was well within the Board’s authority to make an assessment of Appellant’s credibility. Matter of Siao-Pao v. Dennison, 51 A.D.3d 105, 108, 854 N.Y.S.2d 348, 351 (1st Dept.) (“credibility determinations are generally to be made by the Board”), aff’d, 11 N.Y.3d 777, 866 N.Y.S.2d 602 (2008).

The Board may consider that his insight was limited. Pulliam v Board of Parole, 197 A.D.3d 1495, 153 N.Y.S.3d 704 (3d Dept. 2021).

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).

Appellant’s challenge appears to be based in part upon the mistaken impression that an appearance before the Board is a formal hearing in which documentary and testimonial evidence is introduced. However, a parole interview is not an adversarial proceeding; rather, the Board conducts an informal interview which is intended to function as a non-adversarial discussion between the incarcerated individual and panel as part of an administrative inquiry into the incarcerated individual’s suitability for release. Matter of Briguglio v. New York State Bd. of Parole, 24 N.Y.2d 21, 28, 298 N.Y.S.2d 704, 710 (1969); Matter of Banks v. Stanford, 159 A.D.3d 134, 144, 71 N.Y.S.3d 515, 522 (2d Dept. 2018). There are no substantial evidence issues. Matter of Tatta v. Dennison, 26 A.D.3d 663, 809 N.Y.S.2d 296 (3d Dept.), lv. denied, 6 N.Y.3d 714, 816 N.Y.S.2d 750 (2006); Matter of Valderrama v. Travis, 19 A.D.3d 904, 905, 796 N.Y.S.2d 758 (3d Dept. 2005); cf. Matter of Horace v. Annucci, 133 A.D.3d 1263, 20 N.Y.S.3d 492 (4th Dept. 2015).

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.

Appellant’s claim that the Board failed to comply with the 2011 amendments to the Executive Law is rejected. Dolan v New York State Board of Parole, 122 A.D.3d 1058, 995 N.Y.S.2d 850 (3d Dept. 2014); Tran v Evans, 126 A.D.3d 1196, 3 N.Y.S.3d 633 (3d Dept. 2015); Boccadisi v Stanford, 133

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A.D.3d 1169, 20 N.Y.S.3d 477 (3d Dept. 2015). Furthermore, the 2011 Executive Law amendments have been incorporated into the regulations adopted by the Board in 2017.

The Board considered Appellant's COMPAS instrument but disagreed with the low risk scores indicated therein as it is entitled to do. See Matter of Montane, 116 A.D.3d at 202, 981 N.Y.S.2d at 870. In so doing, the Board provided an explanation consistent with 9 NYCRR § 8002.2(a) by referring to the elevated history of violence and prison disciplinary scales as justifying the departure from the overall low risk scores.

Recommendation: Affirm.

STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Slater, Michael

Facility: Wende CF

NYSID: [REDACTED]

Appeal Control No.: 04-094-21 B

DIN: 89-A-7123

Appearances: Michael Conroy Esq.
44 School Street
Tonawanda, New York 14217

Decision appealed: March 2021 decision, denying discretionary release and imposing a hold of 24 months.

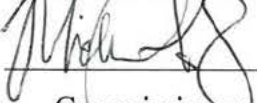
Board Member(s) who participated: Drake, Lee

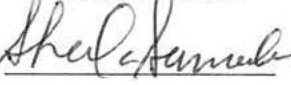
Papers considered: Appellant’s Letter-brief received October 5, 2021


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:


Commissioner 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 _____

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 12/03/2021 66.