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Administrative Appeal Decision - Stevens, Richard (2022-03-02)

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STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Stevens, Richard

DIN: 98-B-0188

Facility: Ulster CF

AC No.: 07-018-21 B

Findings: (Page 1 of 4)

Appellant challenges the June 2021 determination of the Board, denying release and imposing a 24-month hold. The instant offense involved Appellant causing the death of his ex-girlfriend by strangling her. The victim was then hogtied, placed in a dresser, and brought to a canal where her body was dumped. Appellant raises the following issues: 1) the determination was arbitrary and capricious because the Board failed to meaningfully consider the statutory factors including his institutional record; 2) the Board placed too much emphasis on the seriousness of the crime; 3) the Board mischaracterized Appellant as being evasive and lacking insight and remorse; 4) Appellant's unwillingness to discuss a second murder or incriminate his brother was held against him; 5) the decision did not explain the denial of parole; 6) the Board failed to give sufficient weight to the COMPAS and did not conduct a forward-looking risk and needs assessment; 7) the Board did not inform Appellant of what he needs to do to improve his chances of release at his next Board interview. These arguments are without merit.

As an initial matter, 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 [incarcerated individual] 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). Executive Law § 259-i(2)(c)(A) requires the Board to consider criteria which is 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 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 A.D.3d 1068, 30 N.Y.S.3d 834 (2d Dept. 2016); Matter of Phillips v. Dennison, 41 A.D.3d 17, 21, 834 N.Y.S.2d 121, 124 (1st Dept. 2007). 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).

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The record as a whole, including the interview transcript, reflects that the Board considered the appropriate factors, including: the instant offense of Murder in the second degree; that Appellant maintains his innocence; Appellant's criminal history including two prior state terms of incarceration and failure while on community supervision; Appellant's institutional efforts including a minimal disciplinary record and positive programming; and release plans to seek housing assistance from a reentry organization. The Board also had before it and considered, among other things, the case plan, the COMPAS instrument, the sentencing minutes, a letter from the District Attorney, and a personal statement.

After considering all required factors, the Board acted within its discretion in determining release would not satisfy the standards provided for by Executive Law § 259-i(2)(c)(A). In reaching its conclusion, the Board permissibly relied on the instant offense; Appellant's criminal record and his minimization of that larcenous behavior; Appellant's lack of insight into his role in the instant offense; and Appellant's lack of remorse and evasive responses during the interview, leading the panel to question his credibility. See Matter of Beodeker v. Stanford, 164 A.D.3d 1555, 82 N.Y.S.3d 669 (3d Dept. 2018); Matter of Rivera v. Stanford, 53 N.Y.S.3d 404, 149 A.D.3d 1445 (3d Dept. 2017); Matter of Davis v. Evans, 105 A.D.3d 1305, 963 N.Y.S.2d 485 (3d Dept. 2013); Matter of Lashway v. Evans, 110 A.D.3d 1417, 1418, 974 N.Y.S.2d 164, 165 (3d Dept. 2013); 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 Payne v. Stanford, 173 A.D.3d 1577, 1578, 104 N.Y.S.3d 383, 385 (3rd Dept. 2019). The Board also cited the COMPAS instrument's elevated scores for history of violence and low family support. See Matter of Espinal v. New York Bd. of Parole, 172 A.D.3d 1816, 100 N.Y.S.3d 777 (3d Dept. 2019).

Inasmuch as Appellant contends the Board failed to consider requisite factors, there is a presumption of honesty and integrity that attaches to Judges and administrative fact-finders. See People ex rel. Carlo v. Bednosky, 294 A.D.2d 382, 383, 741 N.Y.S.2d 703 (2d Dept. 2002); People ex. rel. Johnson v. New York State Bd. of Parole, 180 A.D.2d 914, 916, 580 N.Y.S.2d 957, 959 (3d Dept. 1992). The Board is presumed to follow its statutory commands and internal policies in fulfilling its obligations. See Garner v. Jones, 529 U.S. 244, 256, 120 S. Ct. 1362, 1371 (2000).

While Appellant claims the Board mischaracterized him as being evasive and lacking insight and remorse, 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.), aff'd, 11 N.Y.3d 777, 866 N.Y.S.2d 602 (2008)) and there is record support. For example, the interview transcript reflects that Appellant omitted significant details when describing the instant offense, stated that he was "at a loss for why this all happened in the first place," and only appeared contrite after being prompted. (Tr. at 21-22, 51, 58.)

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While Appellant claims that his unwillingness to discuss a second murder or incriminate his brother was held against him, the discussion stemmed from a statement that Appellant made at his sentencing and Appellant's own apparent suggestion during the interview that his brother may have been responsible. (Tr. at 28-29.) The Board may inquire into the circumstances of the offense, subsequent developments, and the incarcerated individual's state of mind consistent with the Executive Law. The Board's questions – and the Board's reference to this exchange in the decision – were aimed at Appellant's credibility. *See, e.g., Matter of Payne v. Stanford*, 173 A.D.3d 1577, 1578, 104 N.Y.S.3d 383, 385 (3rd Dept. 2019).

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(b), 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 Kozłowski 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). The Board addressed many of the factors and principles considered in individualized terms and explained those that ultimately weighed most heavily in its deliberations.

There is no merit to Appellant's contention that the Board failed to give sufficient weight to the COMPAS and did not conduct a forward-looking risk and needs assessment. The 2011 amendments require procedures incorporating risk and needs principles to "assist" the Board in making parole release decisions. Executive Law § 259-c(4). The Board satisfies this requirement in part by using the COMPAS instrument. *Matter of Montane v. Evans*, 116 A.D.3d 197, 202, 981 N.Y.S.2d 866, 870 (3d Dept. 2014); *see also Matter of Hawthorne v. Stanford*, 135 A.D.3d 1036, 1042, 22 N.Y.S.3d 640, 645 (3d Dept. 2016); *Matter of LeGeros v. New York State Bd. of Parole*, 139 A.D.3d 1068, 30 N.Y.S.3d 834 (2d Dept. 2016); *Matter of Robles v. Fischer*, 117 A.D.3d 1558, 1559, 985 N.Y.S.2d 386, 387 (4th Dept. 2014). This is encompassed in the Board's regulations. 9 N.Y.C.R.R. § 8002.2(a). However, the COMPAS is not predictive and was never intended to be the sole indicator of risk and needs as the Board gets risk and needs information from a variety of sources, including the statutory factors and the interview. Notably, the 2011 amendments did not eliminate the requirement that the Board conduct a case-by-case review of each incarcerated individual by considering the statutory factors including the instant offense. The amendments also did not change the three substantive standards that the Board is required to apply when deciding whether to grant parole. Executive Law § 259-i(2)(c)(A). Thus, the COMPAS cannot mandate a particular result. *Matter of King v. Stanford*, 137 A.D.3d 1396, 26 N.Y.S.3d 815 (3d Dept. 2016). Rather, the COMPAS is an additional consideration that the Board must weigh along with the statutory factors for the purposes of deciding whether the three standards are

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satisfied. See Matter of Rivera v. N.Y. State Div. of Parole, 119 A.D.3d 1107, 1108, 990 N.Y.S.2d 295 (3d Dept. 2014); accord Matter of Dawes v. Annucci, 122 A.D.3d 1059, 994 N.Y.S.2d 747 (3d Dept. 2014); see also Matter of Gonzalvo v. Stanford, 153 A.D.3d 1021, 56 N.Y.S.3d 896 (3d Dept. 2017). That is exactly what occurred here.

Finally, 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), 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).

Recommendation: Affirm.

STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Stevens, Richard

Facility: Ulster CF

NYSID: [REDACTED]

Appeal Control No.: 07-018-21 B

DIN: 98-B-0188

Appearances: Marshall Nadan, Esq.
PO Box 4091
Kingston, NY 12402

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

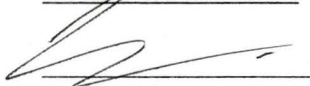
Board Member(s) who participated: **Drake, Mitchell**

Papers considered: Appellant’s Brief received December 15, 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.

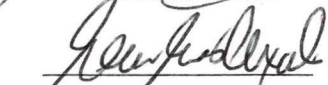
Final Determination: The undersigned determine that the decision appealed is hereby:

 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

03/02/2022 66