May 2022

Administrative Appeal Decision - Campbell, Chad A (2021-12-23)

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Campbell, Chad **DIN:** 96-R-0119

Facility: Woodbourne CF **AC No.:** 08-143-21 B

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Appellant challenges the August 2021 determination of the Board, denying release and imposing a 15-month hold. The instant offense involved Appellant luring a fifteen-year-old girl and the seventeen-month-old infant she was babysitting to a secluded area, raping the girl, and fatally stabbing her forty-four times. Appellant then killed the crying infant by slitting his throat and stabbing him an additional six times. The Appeals Unit received a letter-brief from Appellant's counsel on September 9, 2021 purporting to perfect his appeal, even though Appellant had not yet been provided with the transcript of the interview or other relevant records requested by Appellant's counsel. The transcript was sent to Appellant's counsel on September 20, 2021 and requested records were provided via e-mail on October 18, 2021. As no supplemental materials amending Appellant's submission have been received since the initial letter-brief, the Appeals Unit now issues its findings and recommendation in the interest of responding within four months. Appellant's letter-brief raises the following issues in bullet point form:

1) the denial is arbitrary and capricious and based solely on the seriousness of the underlying offense;
2) politics and self-interest motivated the decision;
3) the decision is conclusory, irrational and proper, and evades judicial review and appellate reversal;
4) the decision improperly weighs the statutory factors.
5) the decision relies on non-statutory factors including but not limited to "community" and "official" opposition;
6) the decision violates Appellant's Eighth Amendment rights;
7) the decision violates Appellant's Sixth Amendment rights;
8) the decision fails to explain its departure from the COMPAS;
9) the panel weighed [redacted] as an aggravating, rather than a mitigating circumstance; and
10) the decision relies upon factual errors.

These arguments are without merit. To the extent Appellant attempts to assert arguments relating to prior Board appearances, those claims are moot and not a proper part of the instant challenge. Those claims are also the subject of ongoing litigation.

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)

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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); 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.

The record as a whole, including the interview transcript, reflects that the Board considered the appropriate factors, including: the instant offense of two counts of Juvenile Offender Murder in the second degree; Appellant's age at the time of the offense; the diminished culpability of youth; Appellant's middle-class upbringing and boyhood challenges [redacted], [redacted] and struggling in school; [redacted] Appellant's friendships, [redacted] and his history of harming multiple animals as a teen; Appellant's efforts during incarceration to change and grow into a man from the [redacted] that committed the crimes; Appellant's institutional achievements including a positive disciplinary record, educational achievements with Bard College, completion of all recommended programs including sex offender training and extensive vocational training; and release plans to receive assistance and housing from a reentry organization. The Board also had before it and considered, among other things, the case plan, the COMPAS instrument, the sentencing minutes, official and community opposition to Appellant's release, letters that Appellant drafted and sent to the Apology Bank, and Appellant's multiple parole packets including achievements, a personal statement, detailed release plans, certificates, and letters of support and reasonable assurance.

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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 heinous and extremely violent instant offenses, official and community opposition to Appellant's release, and Appellant's failure to express genuine remorse or meaningful empathy during the interview, in his personal statement, and in his perfunctory apology letters to each family. See Matter of Beodeker v. Stanford, 164 A.D.3d 1555, 82 N.Y.S.3d 669 (3d Dept. 2018); Matter of Robinson v. New York State Bd. of Parole, 162 A.D.3d 1450, 81 N.Y.S.3d 235 (3d Dept. 2018); Matter of Rivera v. Stanford, 53 N.Y.S.3d 404, 149 A.D.3d 1445 (3d Dept. 2017); 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 Jones v. New York State Bd. of Parole, 175 A.D.3d 1652, 1652, 108 N.Y.S.3d 505, 506 (3d Dept. 2019); Matter of Applewhite v. New York State Bd. of Parole, 167 A.D.3d 1380, 91 N.Y.S.3d 308, 311 (3d Dept. 2018); Matter of Beodeker v. Stanford, 164 A.D.3d 1555, 82 N.Y.S.3d 669 (3d Dept. 2018). While the Board does not agree that aggravating factors are always necessary to support reliance on an incarcerated individual's crime, Matter of Hamilton, 119 A.D.3d 1268, 990 N.Y.S.2d 714, there are multiple aggravating factors present here including: the fact that Appellant targeted the young female victim because he knew she would come and meet him and because he simply wanted to hurt someone; that Appellant prepared for the crime by going home and getting his fishing knife; and the fact that Appellant simply left the scene of the crime and had the presence of mind to clean up, attend a soccer game, and go to work the next day.

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 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).

Appellant's claim that politics and self-interest motivated the decision is purely speculative and unsubstantiated. Matter of MacKenzie v. Evans, 95 A.D.3d 1613, 1614, 945 N.Y.S.2d 471, 472 (3d Dept.), lv. denied, 19 N.Y.3d 815, 955 N.Y.S.2d 553 (2012); Matter of Huber v. Travis, 264 A.D.2d, 695 N.Y.S.2d 622 (3d Dept. 1999).

Appellant's contention that the decision evades judicial review and appellate reversal is without merit. The Board's decision was made in accordance with the law and was not irrational "bordering

on impropriety." Matter of Silmon, 95 N.Y.2d 470, 476, 718 N.Y.S.2d 704 (2000) (quoting Matter of Russo v. New York State Bd. of Parole, 50 N.Y.2d 69, 427 N.Y.S.2d 982 (1980)).

The Board committed no error in its consideration of official opposition to Appellant's release. Executive Law § 259-i(2)(c)(A)(vii) requires the Board to consider recommendations of the sentencing court, the incarcerated individual's attorney, and the "district attorney." As such, the Board was obligated to consider the official statements it received. As for community opposition, 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 incarcerated individual's release to parole supervision. Matter of Jones, 175 A.D.3d 1652, 1652, 108 N.Y.S.3d 505, 506 (3d Dept. 2019); Matter of Applewhite, 167 A.D.3d 1380, 91 N.Y.S.3d 308, 311 (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"), appeal dismissed, 32 N.Y.3d 1219 (2019); 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 Rivera v. Stanford, 53 N.Y.S.3d 404, 149 A.D.3d 1445 (3d Dept. 2017), aff'g 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"); 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), lv. denied, 4 N.Y.3d 704, 792 N.Y.S.2d 1 (2005). The same has also long been recognized as true with respect to letters supporting an incarcerated individual's potential parole release. See, e.g., 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; cf. Cardenales v. Dennison, 37 A.D.3d 371, 371, 830 N.Y.S.2d 152, 153 (1st Dept. 2007). 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 incarcerated individual's release.

As for the Eighth Amendment, the denial of parole under a statute invoking discretion in parole determinations does not violate the Eighth Amendment's prohibition against cruel and unusual punishment. Carnes v. Engler, 76 Fed. Appx. 79 (6th Cir. 2003); Lustgarden v. Gunter, 966 F.2d 552, 555 (10th Cir.), cert den. 506 U.S. 1008, 113 S. Ct. 624 (1992), rehearing denied 507 U.S. 955, 113 S. Ct. 1374 (1993); Pacheco v. Pataki, No. 9:07–CV–0850, 2010 WL 3909354, at *3 (N.D.N.Y. Sept. 30, 2010). Appellant's maximum sentence is life imprisonment. The Board acted within its discretion to hold Appellant for another 15 months, after which he will have the

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opportunity to reappear before the Board. Even assuming arguendo that the Eighth Amendment applies to parole consideration for minor offenders, Appellant offers only a generic claim and the record reveals no such violation. As outlined above, the Board discussed the circumstances of Appellant's youth at length, along with his growth and maturity since.

There is no merit to Appellant's contention that the panel weighed youth as an aggravating, rather than a mitigating circumstance. The Board considered Appellant's youth at the time of the crimes, but ultimately "placed greater emphasis on other factors, including the seriousness of [his] crimes and his history of unlawful and violent conduct, as it was entitled to do." Matter of Allen v. Stanford, 161 A.D.3d 1503, 78 N.Y.S.3d 445 (3d Dept.) (citing Matter of Hamilton v. New York State Div. of Parole, 119 A.D.3d 1268, 1274, 990 N.Y.S.2d 714 (3d Dept. 2014)), lv. denied, 32 N.Y.3d 903 (2018); see also Matter of Campbell v. Stanford, 173 A.D.3d 1012, 105 N.Y.S.3d 461 (2d Dept. 2019). The Board acknowledged Appellant's age and the diminished culpability of youth but explained that, while [redacted] can be impulsive, Appellant's actions were purposeful and intentional.

There is no Sixth Amendment right to have a jury determine facts in connection with a parole release determination. Cf. Billiteri v. U.S. Bd. of Parole, 541 F.2d 938, 944 (2d Cir. 1976) (Parole Board is entitled to consider behavior described in pre-sentence investigation report); U.S. v. Carlton, 442 F.3d 802, 807-10 (2d Cir. 2006) (finding no right to jury trial in supervised release proceedings).

The Board considered the COMPAS instrument and did not depart from it. That is, the decision was not impacted by a departure from a scale. Notice of Adoption, NY Reg, Sept. 27, 2017 at 2. For example, the Board did not find a reasonable probability that Petitioner will not live and remain at liberty without violating the law but rather concluded, *despite* low risk scores, release would be inappropriate under the other two statutory standards. This is entirely consistent with the Board's intention in enacting the amended regulation.

Finally, while Appellant suggests that the decision relies upon factual errors, no alleged mistakes are specified.

Recommendation: Affirm.

STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Campbell, Chad **Facility:** Woodbourne CF

NYSID: [redacted] **Appeal Control No.:** 08-143-21 B

DIN: 96-R-0119

Appearances: Rochelle F. Swartz, Esq.
Orrick, Herrington & Sutcliffe LLP
51 West 52nd Street
New York, NY 10019-6142

Decision appealed: August 2021 decision, denying discretionary release and imposing a hold of 15 months.

Board Member(s) who participated: **Alexander, Drake, Samuels**

Papers considered: Appellant's Letter-brief received September 9, 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 12/23/2021 GG

Distribution: Appeals Unit – Appellant - Appellant's Counsel - Inst. Parole File - Central File
P-2002(B) (11/2018)