May 2022

Administrative Appeal Decision - St.Germain, William D (2021-11-19)

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: St. Germain, William **DIN:** 88-C-0712

Facility: Woodbourne CF **AC No.:** 11-109-20 B

Findings: (Page 1 of 5)

Appellant is serving a sentence of 23 years to life upon his conviction by plea to Murder in the 2nd Degree and Rape in the 1st Degree. The instant offense involved the appellant raping a 3-year-old girl and slitting her throat with a knife. The appellant, through counsel, challenges the November 2020 determination of the Board, denying release and imposing a 24-month hold on the following grounds: (1) the decision is arbitrary, capricious and irrational bordering on impropriety, in that the Board failed to consider and/or properly weigh the required statutory factors; (2) the Board is punishing the appellant for proclaiming his innocence; (3) the Board failed to consider the appellant's positive COMPAS scores; (4) the decision is based upon erroneous information in that the appellant needed additional sex offender programming; (5) the Board resentenced him; and (6) the Board decision is conclusory. 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 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). 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 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).

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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). See 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); Matter of Symmonds v. Dennison, 21 A.D.3d 1171, 1172, 801 N.Y.S.2d 90, 90 (3d Dept.), lv. denied, 6 N.Y.3d 701, 810 N.Y.S.2d 415 (2005); Matter of Warren v. New York State Div. of Parole, 307 A.D.2d 493, 493, 761 N.Y.S.2d 883 (3d Dept. 2003); 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); Matter of Silmon v. Travis, 95 N.Y.2d 470, 478, 718 N.Y.S.2d 704 (2000); 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). The record as a whole, including the interview transcript, reflects that the Board considered the appropriate factors, including the extremely violent and heinous nature of the instant offense; appellant's criminal history which includes a failure on community supervision; appellant's institutional efforts and his disciplinary record, which includes sanctions; release plans and programming competition. The Board also had before it and considered, among other things, a letter from the Judge who presided over the plea and sentencing, the PSI and appellant's lengthy parole packet and other information related to the underlying offense.

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).

Although the Board placed emphasis on the crime, the record reflects it also considered other appropriate factors and it was not required to place equal weight on each factor considered. Matter of Peralta v. New York State Bd. of Parole, 157 A.D.3d 1151, 69 N.Y.S.3d 885 (3d Dept. 2018).

The appellant claims that he is innocent of the offense for which he entered a guilty plea. However, a parole interview is not an adversarial proceeding and there are no disputed issues of fact. Menechino v. Oswald, 430 F.2d 403, 407 (2d Cir. 1970), cert. den. 400 U.S. 1023, 91 S. Ct. 588 (1971); Matter of Briguglio v. New York State Bd. of Parole, 24 N.Y.2d 21, 28, 298 N.Y.S.2d 704, 710 (1969). The Board is obligated to rely upon appellant's conviction and assume his guilt in making its determination. Executive Law § 259-i; 9 N.Y.C.R.R. §§ 8001.3 and 8002.1, et seq.; Matter of Silmon v. Travis, 95 N.Y.2d 470, 476-77, 718 N.Y.S.2d 704, 707-708 (2000); Matter of Vigliotti v. State Executive Div. of Parole, 98 A.D.3d 789, 950 N.Y.S.2d 619 (3d Dept. 2012). It is

not the Board's role to reevaluate a claim of innocence. Matter of Copeland v. New York State Bd. of Parole, 154 A.D.3d 1157, 63 N.Y.S.3d 548 (3d Dept. 2017).

Appellant's additional contention that the Board failed to comply with the 2011 amendments to the Executive Law is likewise without merit. Notably, the 2011 amendments did not change the three substantive standards that the Board is required to apply when deciding whether to grant parole, namely (1) whether "there is a reasonable probability that, if such incarcerated individual is released, he will live and remain at liberty without violating the law"; (2) whether release "is not incompatible with the welfare of society"; and (3) whether release "will not so deprecate the seriousness of his crime as to undermine respect for law." Executive Law § 259-i(2)(c)(A). Here, the Board relied on the second and third standards in denying release. Even uniformly low COMPAS scores and other evidence of rehabilitation would not resolve the broader questions of society's welfare, public perceptions of the seriousness of a crime, or whether release would undermine respect for the law. Thus, the COMPAS cannot mandate a particular result, and declining to afford the COMPAS controlling weight does not violate the 2011 amendments. Matter of King v. Stanford, 137 A.D.3d 1396, 26 N.Y.S.3d 815 (3d Dept. 2016). 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 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).

The Board is not required to give the COMPAS and case plan greater weight than the other statutory factors. Matter of Gonzalvo v. Stanford, 153 A.D.3d 1021, 56 N.Y.S.3d 896 (3d Dept. 2017); accord Matter of Lewis v. Stanford, 153 A.D.3d 1478, 59 N.Y.S.3d 726 (3d Dept. 2017).

The Board still is entitled to place greater emphasis on the instant offense. See Matter of Montane v. Evans, 116 A.D.3d 197, 203, 981 N.Y.S.2d 866, 871 (3d Dept. 2014); see also Matter of Gonzalvo v. Stanford, 153 A.D.3d 1021, 56 N.Y.S.3d 896 (3d Dept. 2017); Matter of Lewis v. Stanford, 153 A.D.3d 1478, 59 N.Y.S.3d 726 (3d Dept. 2017).

The Board may consider an incarcerated individual's need to complete rehabilitative programming in denying parole. See Matter of Jones v. N.Y. State Bd. of Parole, 175 A.D.3d 1652, 1652, 108 N.Y.S.3d 505, 506 (3rd Dept. 2019); Matter of Allen v. Stanford, 161 A.D.3d 1503, 1506, 78 N.Y.S.3d 445 (3d Dept.), lv. denied, 32 N.Y.3d 903 (2018); Matter of Barrett v. New York State Div. of Parole, 242 A.D.2d 763, 661 N.Y.S.2d 857 (3d Dept. 1997); see also Matter of Connelly v. New York State Div. of Parole, 286 A.D.2d 792, 729 N.Y.S.2d 808, 809 (3d Dept.), appeal dismissed 97 N.Y.2d 677, 738 N.Y.S.2d 291 (2001). DOCCS "has considerable discretion in determining the program needs of [incarcerated individuals]." Matter of McKethan v. Kafka,

31 A.D.3d 1078, 1079, 819 N.Y.S.2d 204, 205 (3d 2006); accord Matter of Gomez v. Goord, 34 A.D.3d 963, 964, 823 N.Y.S.2d 610, 611 (3d Dept. 2006).

Appellant's assertion that the denial of parole release amounted to an improper resentencing is without merit inasmuch as the Board fulfilled its obligation to determine the propriety of release per Executive Law § 259-i(2)(c)(A) and after considering the factors set forth therein. Executive Law § 259 et seq.; Penal Law § 70.40; Matter of Murray v. Evans, 83 A.D.3d 1320, 920 N.Y.S.2d 745 (3d Dept. 2011); Matter of Crews v. New York State Exec. Dept. Bd. of Parole Appeals Unit, 281 A.D.2d 672, 720 N.Y.S.2d 855 (3d Dept. 2001). The Board was vested with discretion to determine whether release was appropriate notwithstanding the minimum period of incarceration set by the Court. Matter of Burress v. Dennison, 37 A.D.3d 930, 829 N.Y.S.2d 283 (3d Dept. 2007); Matter of Cody v. Dennison, 33 A.D.3d 1141, 1142, 822 N.Y.S.2d 677 (3d Dept. 2006), lv. denied, 8 N.Y.3d 802, 830 N.Y.S.2d 698 (2007). The appellant has not in any manner been resentenced. Matter of Mullins v. New York State Bd. of Parole, 136 A.D.3d 1141, 1142, 25 N.Y.S.3d 698 (3d Dept. 2016).

That the Board did not reference every statutory factor in the decision does not constitute convincing evidence that the Board did not consider the factors. Matter of Dolan v. New York State Bd. of Parole, 122 A.D.3d 1058, 995 N.Y.S.2d 850 (3d Dept. 2014), lv. denied, 24 N.Y.3d 915, 4 N.Y.S.3d 601 (2015); Matter of Morel v. Travis, 18 A.D.3d 930, 793 N.Y.S.2d 920 (3d Dept. 2005); Matter of Hawkins v. Travis, 259 A.D.2d 813, 686 N.Y.S. 2d 198 (3d Dept.), appeal dismissed, 93 N.Y.2d 1033, 697 N.Y.S.2d 556 (1999). The Board is not required to address each factor considered in its decision. Matter of Mullins v. New York State Bd. of Parole, 136 A.D.3d 1141, 1142, 25 N.Y.S.3d 698 (3d Dept. 2016); Matter of Fraser v. Evans, 109 A.D.3d 913, 971 N.Y.S.2d 332 (3d Dept. 2013); Matter of Shark v. New York State Div. of Parole Chair, 110 A.D.3d 1134, 972 N.Y.S.2d 741 (3d Dept. 2013), appeal dismissed 23 N.Y.3d 933, 986 N.Y.S.2d 876 (2014); Matter of Waters v. New York State Div. of Parole, 252 A.D.2d 759, 760-61, 676 N.Y.S.2d 279, 280 (3d Dept. 1998), lv. denied, 92 N.Y.2d 812, 680 N.Y.S.2d 905 (1998); Matter of Garcia v. New York State Div. of Parole, 239 A.D.2d 235, 657 N.Y.S.2d 415 (1st Dept. 1997). See also Matter of Rice v. Hammock, 99 A.D.2d 644, 472 N.Y.S.2d 60, 60 (4th Dept. 1984).

Denial of parole is neither arbitrary nor capricious when the Board relied on the factors defined by the New York statue. Hodge v. Griffin, 2014 WL 2453333 (S.D.N.Y. 2014) citing Romer v. Travis, 2003 WL 21744079. An arbitrary action is one without sound basis in reason and without regard to the facts. Rationality is what is reviewed under an arbitrary and capricious standard. Hamilton v. New York State Division of Parole, 119 A.D. 3d 1268, 990 N.Y.S.2d 714 (3d Dept 2014). An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts. Ward v. City of Long Beach, 20 N.Y.3d 1042 (2013). Denial is

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neither arbitrary nor capricious when the Board relies on factors defined by New York statute. Siao-Paul v. Connolly, 564 F. Supp. 2d 232, 242 (S.D.N.Y. 2008); Hanna v. New York State Board of Parole, 169 A.D.3d 503, 92 N.Y.S.3d 621 (1st Dept 2019).

The appellant has failed to demonstrate that the Parole Board's determination was affected by a showing of irrationality bordering on impropriety. Matter of Silmon v. Travis, 95 N.Y.2d 470, 718 N.Y.S.2d 704 (2001); Matter of Russo v. New York State Board of Parole, 50 N.YY.2d 69, 77, 427 N.Y.S.2d 982 (1980).

Recommendation: Affirm.

STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: St. Germain, William **Facility:** Woodbourne CF

NYSID: [redacted] **Appeal Control No.:** 11-109-20 B

DIN: 88-C-0712

Appearances: Gail B. Rubenfeld, Esq.
10 St. John Street – PO Box 281
Monticello, New York 12701

Decision appealed: November 2020 decision, denying discretionary release and imposing a hold of 24 months.

Board Member(s) who participated: Demosthenes, Agostini

Papers considered: Appellant's Brief received September 14, 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 11/19/2021 GG.

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