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Administrative Appeal Decision - Kanani, Behrooz (2022-06-08)

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STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Kanani, Behrooz

DIN: 91-A-5678

Facility: Otisville CF

AC No.: 01-022-22 B

Findings: (Page 1 of 2)

Appellant challenges the December 2021 determination of the Board, denying release and imposing a 24-month hold. The instant offense involved Appellant sexually abusing and sodomizing his two daughters on multiple occasions over a period of almost two years that began when the victims were eight and ten years old. Appellant raises the following issues: 1) the Board improperly denied release based on the circumstances of the offense and a mischaracterization of his feelings toward his daughters; and 2) the Board departed from his low COMPAS scores without specifying a scale or providing an individualized reason. 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); 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.

APPEALS UNIT FINDINGS & RECOMMENDATION

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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 twelve counts of Sodomy in the first degree; Appellant's continued claim of innocence; Appellant's institutional efforts including completion of sex offender treatment, no misbehavior reports since his last appearance, and other activities including religious studies, translation projects, and educational pursuits; and release plans to live with friends. The Board also had before it and considered, among other things, the case plan, the COMPAS instrument, the sentencing minutes, a packet of support from the Office of the Appellate Defender, and numerous letters of support and assurance.

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 continued claim of innocence, and Appellant's lack of remorse for the victimization that his daughters suffered. See Matter of Campbell v. Stanford, 173 A.D.3d 1012, 1016, 105 N.Y.S.3d 461, 465 (2d Dept. 2019); Matter of Kirkpatrick v. Travis, 5 A.D.3d 385, 772 N.Y.S.2d 540 (2d Dept. 2004); Matter of Miller v. New York State Div. of Parole, 72 A.D.3d 690, 691, 897 N.Y.S.2d 726, 727 (2d Dept. 2010); Matter of Silmon v. Travis, 95 N.Y.2d 470, 478, 718 N.Y.S.2d 704 (2000). The Board explained that it was struck by the dismissive nature of Appellant's concern for what happened to his daughters and that Appellant seemed devoid of a sense of parental obligation and responsibility for their well-being.

Inasmuch as Appellant disputes the Board's findings with respect to remorse and his feelings toward his daughters, 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). The Board's conclusions after evaluating Appellant's statements during the interview were not arbitrary or capricious.

Finally, 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, that his release would be incompatible with the welfare of society. This is entirely consistent with the Board's intention in enacting the amended regulation.

Recommendation: Affirm.

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Kanani, Behrooz

Facility: Otisville CF

NYSID: [REDACTED]

Appeal Control No.: 01-022-22 B

DIN: 91-A-5678

Appearances: Behrooz Kanani, 91-A-5678
Otisville Correctional Facility
57 Sanitorium Road
P.O. Box 8
Otisville, NY 10963-0008

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

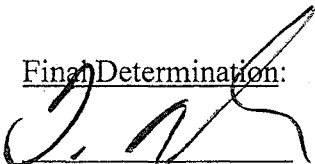
Board Member(s) who participated: **Agostini, Berliner, Mitchell**

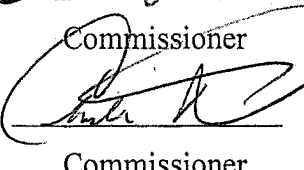
Papers considered: Appellant’s Brief received April 1, 2022

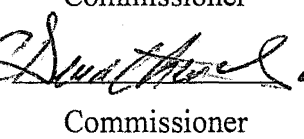
Appeals Unit Review: Statement of the Appeals Unit’s Findings and Recommendation

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 _____

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

06/08/2022