June 2023

Administrative Appeal Decision - Weakfall, Anthony A Jr (2022-03-14)

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Weakfall, Anthony **DIN:** 11-A-3271

Facility: Cayuga CF **AC No.:** 08-107-21 B

Findings: (Page 1 of 4)

Appellant is serving an aggregate sentence of 13 years to life upon his conviction by plea to Murder in the Second degree. In the instant offense, the Appellant brutally beat the victim, a 20-month-old girl, causing her death. Appellant challenges the July 2021 determination of the Board, denying release and imposing a 24-month hold on the following grounds: (1) the decision is arbitrary and capricious because the Board failed to consider the statutory factors and denied parole based solely on the underlying offense; (2) the Board failed to consider other factors such as the Appellant's institutional accomplishments and programming; (3) the Board disregarded the Appellant's release plans; (4) the Board failed to consider Appellant's young age at the time of the instant offense; and (5) the decision to deny release was predetermined.

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). Receipt of a Limited Credit Time Allowance does not entitle an incarcerated individual to release, as parole is not to be granted as an award for good conduct. Matter of Mentor v. New York State Div. of Parole, 87 A.D.3d 1245, 1246, 930 N.Y.S.2d 302, 303 (3d Dept. 2011); see also Executive Law § 259-i(2)(c)(a); Matter of Karlin v. Cully, 104 A.D.3d 1285, 960 N.Y.S.2d 827 (4th Dept. 2013); Matter of Gutkaiss v. New York State Div. of Parole, 50 A.D.3d 1418, 857 N.Y.S.2d 755 (3d Dept. 2008).

In addition, the Board must consider the incarcerated individual's youth and its attendant circumstances in relation to the crime, as well as subsequent growth and maturity, if sentenced to a maximum life term for a crime committed prior to the individual attaining the age of 18. 9 N.Y.C.R.R. § 8002.2(c). The case precedent did not abrogate the requirements of Executive Law § 259-i. Thus, the Board must consider an incarcerated individual's youth and subsequent growth and maturity in addition to other relevant factors and principles, such as disciplinary records and programming, the risks and needs assessment, recommendations from relevant parties, as well as the underlying offense. See, e.g., 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).

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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 reflects that the Board considered the appropriate factors, including appellant's instant offense, and the appellant's institutional adjustment. The Board also had before it and considered appellant's program participation, case plan, and letters of support. The Board also considered official letters received from the District Attorney and Judge as well as the sentencing minutes from the instant offense.

The Board permissibly denied parole release as incompatible with the welfare of society based upon the nature of the instant offense. See 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). Even when an incarcerated individual's institutional record is exemplary, the Board may place particular emphasis on the violent nature or gravity of the crime, so long as the relevant statutory factors are considered. The record establishes the Board acknowledged individual's institutional accomplishments along with additional statutory factors but placed greater emphasis on the seriousness of his crimes in determining release would be incompatible with the welfare of society and so deprecate the seriousness of the offenses as to undermine respect for the law, as it is entitled to do. Matter of Hamilton v. New York State Div. of Parole, 119 A.D.3d 1268, 1272, 1273-74, 990 N.Y.S.2d 714, 718, 719 (3d Dept. 2014). The record demonstrates that the Parole Board considered the relevant statutory factors, including petitioner's record in prison and post release plans, before concluding in its discretion that, due to the serious and violent nature of the crime and petitioner's other violent conduct, petitioner is not an acceptable candidate for release on parole." Matter of Thurman v. Hodges, 292 A.D.2d 872, 873, 739 N.Y.S.2d 324 (4th Dept.), lv. denied, 98 N.Y.2d 604, 746

N.Y.S.2d 278 (2002); accord Matter of Shapard v. Zon, 30 A.D.3d 1098, 1099, 815 N.Y.S.2d 852, 853 (4th Dept. 2006).

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 in which the Appellant severely beat a 20-month-old child with metal rods, cords and fists, and left her to die alone. 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 reflects that the Board properly considered Appellant's youth and attendant circumstances at the time of the offenses as well as subsequent growth and maturity as required. 9 N.Y.C.R.R. § 8002.2(c). In addition to considering Appellant's submissions, the Board discussed with Appellant during his interview the circumstances of his youth and his subsequent development, specifically, the abuse he suffered at the hands of his own mother and father (see, e.g., Tr. at 9, 19), the death of his mother when he was 11 (see, e.g., Tr. at pg 8), his parents' alcoholism (see, e.g., Tr. at 8, 9, 10), running away at age 13 (see, e.g., Tr. at 10, 19), his schooling (see, e.g., Tr. at 10, 11), employment (see, e.g., Tr. at 11), and his relationship with his siblings (see, e.g., Tr. at 11, 12). In denying parole, the Board also acknowledged Appellant's age but expressed concern that his adjustment was "less than satisfactory" and the COMPAS scores indicated medium risk for felony violence, highly probable prison misconduct and probable risk for re-entry substance abuse. The Board was further persuaded by the strong official statements included in the file. See, e.g. 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).

There is a presumption of honesty and integrity that attaches to Judges and administrative factfinders. 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). Contrary to the appellant's argument, there is no evidence the Board's decision was predetermined based upon the instant offense. Matter of Gonzalvo v. Stanford, 153 A.D.3d 1021,

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56 N.Y.S.3d 896 (3d Dept. 2017); Matter of Hakim-Zaki v. New York State Div. of Parole, 29 A.D.3d 1190, 814 N.Y.S.2d 414 (3d Dept. 2006); Matter of Guerin v. New York State Div. of Parole, 276 A.D.2d 899, 695 N.Y.S.2d 622 (3d Dept. 2000).

Recommendation: Affirm.

STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Weakfall, Anthony **Facility:** Cayuga CF

NYSID: [redacted] **Appeal Control No.:** 08-107-21 B

DIN: 11-A-3271

Appearances: Ryan James Muldoon, Esq.
126 Genesee Street, Suite 105
Auburn, NY 13021

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

Board Member(s) who participated: Cruse, Berliner, Corley

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 03/14/2022 LG.

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