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Decision in CPLR Article 78 proceedings - Morales, Julio

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To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS**

-----X
In the Matter of the Application of

DECISION & ORDER

JULIO MORALES - 93A2487,

Index No. 934/2017

Petitioner,

Sequence No. 1

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

Motion Date: 7/28/17

NEW YORK STATE BOARD OF PAROLE,

Respondent.

-----X
GROSSMAN, J.S.C.

The following papers, numbered 1 to 18, were considered in connection with Petitioner's Order to Show Cause, dated April 27, 2017, seeking an Order, *inter alia*, annulling the Parole Board's denial of his parole application, and ordering a *de novo* hearing.

PAPERS

NUMBERED

Verified Petition/Exh. 1/Exhs. A-C/Exh. 2

1-6

Respondents' Answer and Return/Exhs. 1-11¹

7-18

On March 15, 1993, Petitioner Julio Morales was convicted of murder in the second degree for the death of Susan Kaiser, age 36, who was shot multiple times on December 18, 1991. After a jury found Petitioner guilty, the court sentenced him to an indeterminate term of

¹The Court also reviewed, *in camera*, confidential documents submitted by Respondent, as part of these exhibits.

imprisonment of 25 years to life. At the time of his sentencing, Petitioner was 30 years old and it was his second felony conviction – the first being property-related.

On August 30, 2016, Petitioner appeared before a 3-member Parole Board. By then, he had served 25 years of his sentence, and this was his 1st review. The Board denied Petitioner parole, stating (Answer, Exh. 5):

Parole denied. Hold 24 months. Next appearance, August 2018.

This Panel has concluded that your release to supervision is not compatible with the welfare of society and, therefore, parole is denied.

This finding is made following a personal interview, record review and deliberation.

Of significant concern is your course of conduct during the Instant Offense of Murder, Second, where you obtained, carried and, ultimately fired a weapon, resulting in a death.

Positive factors considered include your letters of support, Case Plan, and program accomplishments.

Your behavior has been poor, as noted in your COMPAS risk score.

In addition, the Instant Offense represents an escalation of unlawful actions, from prior sanctions of probation and jail.

Required statutory factors have been considered; including your risk to the community, rehabilitation efforts, and your needs for successful community reintegration.

To grant your release, at this time, would so deprecate the seriousness of your offense, as to undermine respect for the law.

On December 4, 2016, Petitioner appealed the denial. In that appeal, Petitioner argued that: (1) the Parole Board improperly based its decision to deny parole release solely on the nature of the instant offense; (2) the Parole Board failed to provide Petitioner with future guidance in its determination, as is required by law; and (3) the Board erred in basing its determination on Petitioner's *mens rea* from over 25 years ago (Petition, Exh. 1). The Appeals Unit affirmed the Parole Board's determination (Answer, Exh. 7).

Petitioner now brings the following application, arguing, inter alia, that the action taken

by Respondent of denying Petitioner release to parole was irrational, bordering on impropriety, as well as being arbitrary and capricious. Petitioner argues, inter alia, that Respondent's decision was pre-determined, which is apparent by Respondent's use of boiler-plate language in its decision, and merely gave lip service to Petitioner's rehabilitative efforts. Petitioner states that Respondent's decision to deny parole was based only on the nature of the instant offense, and gave only cursory reference to the other statutory factors.

According to CPLR §7803(3), “[p]arole release determinations are discretionary and will not be disturbed as long as they meet the statutory requirements of Executive Law §259-i.” Matter of Friedgood v. New York State Bd. of Parole, 22 A.D.3d 950 (3d Dept. 2005). “While all relevant statutory factors must be considered, respondent is not required to give them equal weight or to articulate each and every factor that was considered in making its decision.” Friedgood, supra. However, “decisions of the Board require flexibility and discretion, and the guidelines used to arrive at these decisions are not meant to establish a rigid, numerical policy invariably applied across-the-board to all [inmates] without regard to individualized circumstances or mitigating factors.” Matter of Montane v. Evans, 116 A.D.3d 197, 202 (3d Dept. 2014)(internal quotations omitted).

Upon review, this Court's finds that Respondent's decision to deny parole to Petitioner was arbitrary and capricious. While stating in its decision that his behavior had been poor as reflected in his COMPAS risk score, the Board also acknowledged that Petitioner had low COMPAS risk assessments (Petition, Exh. A at 4). And, despite Petitioner's low COMPAS risk assessment, his acceptance of responsibility for the instant crime, his outdated disciplinary infractions – the most recent being 4 years prior – and his accomplishments while in prison, the

Board summarily denied his application without any explanation other than by off-handedly reiterating some of the statutory factors, and focusing on the instant offense and his minor criminal convictions committed prior to the instant offense when he was a minor and young adult. The minimal attention, barely lip service, given to these factors cannot be justified given the amount of time already served. The “Parole Board denied petitioner’s request to be released on parole solely on the basis of the seriousness of the offense,” and its “explanation for doing so was set forth in conclusory terms, which is contrary to law.” Matter of Perfetto v. Evans, 112 A.D.3d 640, 641 (2d Dept. 2013), citing Matter of Gelsomino v. New York State Bd. of Parole, 82 A.D.3d 1097, 1098 (2d Dept. 2011); see also Matter of Thwaites v. New York State Bd. of Parole, 34 Misc.3d 694, 701 (Sup.Ct. [Orange] 2011); see generally Matter of Silmon v. Travis, 95 N.Y.2d 470, 476 (2000). Moreover, the fact that the Board barely mentioned, in its determination, Petitioner’s rehabilitative efforts and education while incarcerated leads the Court to conclude that denial of parole was an inevitable event.

As a final note, this Court cannot keep silent, finding once again, that despite the growing body of decisions that have been issued from the courts, including this Court, over the recent years, Respondent continues to generate boilerplate rulings that fail to address the specific details of each case when determining parole, resorting to listing some of the statutory factors allegedly considered without any attempt at tailoring each decision to each inmate. Simply put, “there is no effort to provide even minimal insight into how the Board’s consideration of the statutory factors led to its ultimate conclusion that the denial of parole was warranted.” Williams v. New York State Parole of Bd., 2015 WL 5840089, 2015 N.Y. Slip.Op. 31820(U) (Sup.Ct. [St. Lawrence] September 30, 2015). This Court is unsure why the Parole Board cannot

individualize each determination in a way to assist the courts and the petitioners to understand the reasons for a parole denial, and the steps an inmate would have to take in order to ensure the possibility of parole upon his or her next appearance before the Board. Matter of Stokes v. Stanford, 43 Misc.3d 1231(A), *1 (Sup. Ct. [Albany] June 9, 2014) (“Absent any discussion of what petitioner needs to do to improve his chances of release at the next parole hearing, the determination lacks a rational basis in the record.”); Matter of McBride v. Evans, 42 Misc.3d 1230(A), *3 (Sup. Ct. [Dutchess] January 13, 2014)(Posner, J.) (Board left Petitioner with no guidance as to what he can do to improve his chances of being released at his next parole hearing). Again, the Court hopes that in the future, it will not be presented with the typical “cut and paste” decisions it has been seeing.

In light of the above, the Court need not address any of Petitioner’s other assertions.

As such, it is hereby

ORDERED that the petition is granted and the determination is annulled; and it is hereby

ORDERED that the matter is remitted to Respondent for a de novo hearing on the matter of Petitioner’s release to parole supervision, focusing on Petitioner’s rehabilitative efforts while incarcerated and specific facts that have been considered in reaching its decision; and it is further

ORDERED that said hearing is to be conducted within sixty (60) days of the date of this Court’s Decision and Order, and a decision is to be issued within thirty (30) days of the date of such hearing.

The foregoing constitutes the Decision and Order of the Court.

Dated: Poughkeepsie, New York
September 8, 2017



HON. VICTOR G. GROSSMAN, J.S.C.

To: Julio Morales, 93A2487
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