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Decision in CPLR Article 78 proceedings - Sloan, Walter

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To commence the statutory time 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 ORANGE

COPY

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

WALTER SLOAN, 93A4234,
Petitioner,

DECISION AND ORDER
INDEX NO.: 7512/2016
Motion Date: 12/21/2016
Sequence Nos. 1-2

For a Judgment Pursuant to CPLR Article 78

-against-

NEW YORK STATE BOARD OF PAROLE,
Respondent.

-----X
SCIORTINO, J.

The following papers numbered 1 to 20 were read in connection with petitioner's application, by Order to Show Cause, to proceed as a poor person and for an order and judgment pursuant to CPLR Article 78:

<u>PAPERS</u>	<u>NUMBERED</u>
Order to Show Cause / Affidavit in Support / Poor Person Affidavit / Petition / Exhibits A - I	1 - 6
Answer and Return / Exhibits 1 - 11	7 - 18
Reply	19

Petitioner Walter Sloan seeks an order and judgment pursuant to CPLR Article 78 directing (a) annulment of the Parole Board's March 22, 2016 decision which denied him parole; (b) a *de novo* hearing within 30 days, in front of a new panel; and (c) the Parole Board's strict adherence to statutory requirements.

Background and Procedural History

Petitioner is an inmate at Otisville Correctional Facility serving an indeterminate sentence of 20 years to life upon a conviction of murder in the second degree in connection with the shooting death of

an intended robbery victim in 1992.

On March 22, 2016, petitioner appeared for his third parole hearing, was denied release and ordered held for an additional 24 months. The Commissioners found that there was a reasonable probability that, if released, petitioner would not live and remain at liberty without again violating the law, and that his release was incompatible with the welfare of society and would so deprecate the serious nature of his crime as to undermine respect for the law.

Petitioner filed an administrative appeal on or about July 5, 2016. Denial of release was upheld by decision dated August 8, 2016. Petitioner thereafter timely filed an Article 78 Petition with supporting papers by Order to Show Cause made returnable December 21, 2016.

In support of his application for a *de novo* hearing, petitioner contends that respondent's March 22, 2016 decision was pre-determined, improperly based solely on the nature of his crime, and improperly relied on erroneous information in his COMPAS report. Petitioner additionally contends that the Appeals Unit's decision failed to address the issues raised on his appeal.

In opposition, respondent contends that, because petitioner did not raise the issue of the COMPAS report decision during his parole hearing, that argument is waived and may not be raised for the first time in this Article 78 proceeding. Respondent argues that, in any event, the high history of violence rating in petitioner's COMPAS report is clearly supported by petitioner's criminal history, which includes multiple violent offenses involving the use of deadly weapons. In addition, respondent contends that the Board's decision was sufficiently detailed to satisfy the requirements of Executive Law § 259-I and was not based solely on the underlying crime. Furthermore, the Board is permitted to place more weight on one statutory factor than another.

In reply, petitioner argues that the COMPAS report issue was properly preserved as the hearing

officer would have had no authority to correct the alleged errors in the report at the time of the hearing, and petitioner therefore need not have raised the issue at that time. In addition, petitioner asserts that he was never shown the Parole Board Criminal History Report upon which respondent relies to support its contention that his COMPAS report is in fact accurate. Petitioner thus concludes that his ability to properly appeal the Board's decision was prejudiced.

The Court has fully considered the submissions of the parties.

Discussion

Petitioner's application to proceed as a poor person is denied. Petitioner's application contains no evidence that service of the Order to Show Cause and underlying papers was ever made upon the Office of the Orange County Attorney. In accordance with CPLR § 1101, petitioner shall pay all applicable filing fees in this matter within 120 days of the date hereof.

In the matter at bar, petitioner's claim that the Board relied upon erroneous information in his COMPAS report is clearly without merit, as is any contention that petitioner was prejudiced by respondent's alleged failure to provide him with a copy of his Parole Board Criminal History Report. There can be no argument that petitioner was unaware that he had been convicted of several violent offenses involving the use of deadly weapons.

Furthermore, the Board's decision indicates that the Board made note of petitioner's efforts at rehabilitation and considered all required statutory factors, and include the Board's conclusion that petitioner's release would be incompatible with the welfare of society and would so deprecate the serious nature of petitioner's crimes as to undermine respect for the law. This Court is bound by the rule announced in *Matter of Cassidy v. New York State Board of Parole*, 140 AD3d 953 (2nd Dep't 2016), under which the Board need not do more.

On the basis of the foregoing, it is hereby ORDERED that petitioner's application for a *de novo* hearing is denied in its entirety, and the petition is dismissed.

This decision shall constitute the order of the Court.

Dated: February 16, 2017
Goshen, New York

ENTER:

HON. SANDRA B. SCIORTINO, J.S.C.

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