

Branch v Annucci
2017 NY Slip Op 30912(U)
May 5, 2017
Supreme Court, Seneca County
Docket Number: 50889
Judge: Dennis F. Bender
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STATE OF NEW YORK
SUPREME COURT COUNTY OF SENECA

WALTER BRANCH,
DIN NO: 98A2006

Petitioner

DECISION & JUDGMENT

-against-

Index No. 50889

ANTHONY J. ANNUCCI, DOCCS COMMISSIONER
AND TINA M. STANFORD, NEW YORK STATE
DIVISION OF PAROLE SUPERVISION,

Respondents

The petitioner herein filed this Article 78 proceeding, challenging the determination of the New York State Division of Parole that the Petitioner’s request for parole be denied and imposing an additional hold of 24 months. The Petitioner requests that this Court reverse the determination made by the Respondents on June 28, 2016 and affirmed October 28, 2016. The parole appearance was his fifth.

The Petitioner is serving a 12 year to Life sentence for Assault 2nd degree, a Class D felony. He has served 20 years. This is his third state bid and he has six felony convictions. The Petitioner alleges that upon his Parole Board review, the decision made by the Parole Board was perfunctory and did not consider the needs and risks in accordance with the COMPAS review. He alleges the Board was pre-disposed to deny his request for Parole release and that the Board failed to clearly set forth reasons for the Parole Board’s denial. He submits that the Board focused again on the severity of the underlying crime and that he has no ability to change what occurred in 1996. He indicates he has made great success in changing what he can control.

The last crime for which the Petitioner currently serves, was extremely serious. A missionary that was working with the Petitioner was stabbed multiple times with a pair of scissors. During the incident, he apparently told the missionary he was going to kill her because he wasn't going back to jail. He tied a long fabric object around her neck and pulled it tight causing her to lose her breath. He took money from her. The Petitioner had been out on Parole for less than 2 weeks for Attempted Murder and Robbery in the 1st degree when he committed the most recent crime (Verified Answer and Return, Exhibit D, Transcript of Hearing page 3). The victim was so injured both physically and mentally following the incident she could not work and lost her job as a missionary.

The Petitioner explained that he felt he had made great progress in dealing with his temper and violent issues. When asked why he thought he attacked the missionary, he explained, "One of the issues that I was dealing with, which is one of the issues I was dealing with in SHU, is that I have bad anxiety attacks and I black out. There is a lot of times that I do things and I don't even remember it until other people tell me about it. What happened in my instant offense was terrible...I don't even know now what precipitated the violence. Maybe, I think it was anxiety that caused it. To be honest with you I'm not really sure what precipitated it." (Return, Exhibit D, Transcript pages 4 to 5). In the prior conviction of Attempted Murder, the victim was the Petitioner's sister-in-law. The Petitioner admits, "It just escalated out of proportion, several people getting hurt, including my sister-in-law, who actually I got charged for." (Return, Exhibit D, Transcript page 5). The Petitioner believes he can act out violently due to "levels of stress", ID. He states now he constantly regulates himself which is why he has had an improved disciplinary record since his last Parole Board appearance. (Return, Exhibit d, Transcript page 6).

The Petitioner has had health issues. He had quadruple bypass November 1, 2014. He also

had surgery on his left leg three or three and a half months before the Parole Board hearing but he stated overall he felt pretty good and that he could work part-time (Return, Exhibit D, Transcript page 7).

The Parole Board reviewed the COMPAS re-entry risk assessment and advised the Petitioner he was “a low overall risk for future violence re-arrest; medium for absconding. In terms of your needs out in the community it has a high for history of violence.” (Return, Exhibit D, Transcript page 7). Petitioner is 60 years old and he was 38 years old when he committed the last crime. He acknowledged this is his third time in prison (Return, Exhibit D, Transcript page 8). The Petitioner concluded in the Hearing, “I mean, I really don’t know what else I could do. I did all my program requirements. I’ve done everything that’s been asked of me. I’ve been told to improve my disciplinary. I’m doing that. I just don’t know which direction to go in to maintain what I’m already doing. If there’s something else that I can do that could possibly enhance my chances then let me know what that is so I can get off the mark and take care of my business.” (Return, Exhibit D, Transcript page 9) Thereafter, the Court denied Parole release and stated the following: “This decision is based on the following factors: Your instant offenses Assault 2nd degree for which you are serving twelve to life. Your instant offense involved you stabbing a female victim. You were on Parole at the time of the instant offense for less than two weeks for Attempted Murder and Robbery 1st degree. Your history includes multiple State terms of incarceration. You have been undeterred by prior court intervention and community supervision. During the interview, you did not express much remorse for the female victim, who was seriously injured by your actions. Moreover, you did not present a satisfactory release plan. Since your last Board appearance you incurred a Tier 2 infraction. There is community opposition to your release. There is also official

opposition to your release. The panel notes your completion of AVP, food service, tailoring vocation and industry training. The panel also notes your medical issues.” (Return, Exhibit D, Transcript page 10). The Petitioner administratively appealed the determination and the same was affirmed. (Return, Exhibit H)

“It is well settled that, “Determinations rendered by the Board are discretionary and are generally not subject to judicial review if made in accordance with the requirements of the statutory guidelines.” (Citations omitted). Contrary to Petitioner’s contention that the Board’s decision was based solely on the seriousness of the crime, the records supports the conclusion that the Board considered the other relevant statutory factors in denying Petitioner’s release, including its interview with the Petitioner, his failing health, and his positive institutional record.” (Trobiano v State of NY Div. Of Parole, 285 AD 2d 812 (3rd Dept, 2001), pages 812-813). In Trobiano, the inmate had positive evaluations dating back to 1972 for his various prison jobs and his inmate status reports indicated he was one of the best behaved inmates and required little or no supervision. Despite this extremely positive history, the Court noted the underlying crime was done in the fit of rage and jealousy when he murdered his girlfriend. In this case, the Petitioner has definitely established an improving disciplinary record. He had SHU confinements in his prior disciplinary histories, and on this occasion, he has only had one Tier II, ticket which is certainly to his credit. In light of his long history of violence, however, the Board was not arbitrary and capricious in being concerned about the Petitioner’s continued potential for violence. The Board’s emphasis on the seriousness of Petitioner’s crime is permissible and does not establish that its ultimately discretionary determination was affected by “irrationality bordering on impropriety” (Citations omitted) and of course the Board is not required to expressly discuss, or give the same weight, to each statutory factor (Citations omitted). Trobiano supra

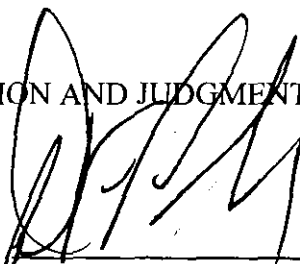
The Court does not agree with the Petitioner's arguments that it was a perfunctory determination and that the Board failed to clearly set forth reasons for the Parole denial. As listed above, they clearly set forth their reasons and the interview was searching, reviewing the Petitioner's progress as well as his underlying crimes and his current health. Further, the Board did use the COMPAS risk assessment and informed the Petitioner of the results. As noted above, the Parole Board noted the Petitioner's progress completing certain programs and that his disciplinary record had improved. The Petitioner discussed in detail how he has been working on his impulse control issues and that he has to "...constantly regulate myself. The reason why I have been able to improve on my disciplinary and stuff like that as opposed to fighting and lashing out and things like that, which my history would indicate, is developing that ability to step back and take a breath...it takes an effort. With my personality its really hard for me to say. You know what, you're right and just walk away from the situation that I know is bad or I know is wrong or I know is negative. Those are things I never did when I was growing up." (Return, Exhibit D, Transcript page 6)

If the Parole Board complies with the procedures set forth in Executive Law §259-i, its discretionary determinations are not subject to review unless there has been a showing of irrationality bordering on impropriety. Zane v Travis, 231 AD 2d 848, (4th Dept, 2002); Matter of Russo v NY State Board of Parole, 50 NY 2d 69, 77 ; Burgos v Berbary, 270 AD 2d 930 (4th Dept, 2000).

The petition is in all respect dismissed, without cost, as the Petitioner has not met the "heavy burden" required to show impropriety in the Board's action. Walker v Travis, 252 AD 2d 360 (1st Dept, 1998)

THIS CONSTITUTES THE DECISION AND JUDGMENT OF THE COURT.

DATED: 5/5/17



HON. DENNIS F. BENDER