

Matter of Hynes v Stanford
2017 NY Slip Op 32322(U)
November 3, 2017
Supreme Court, Seneca County
Docket Number: 51482
Judge: Dennis F. Bender
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STATE OF NEW YORK
SUPREME COURT COUNTY OF SENECA

In the Matter of the Application of

MICHAEL HYNES
DIN # 84-A-1295,

Petitioner

DECISION AND JUDGMENT
Index No. 51482

-against-

TINA M. STANFORD, CHAIRPERSON
OF THE NEW YORK STATE DIVISION OF
PAROLE AND ANTHONY J. ANNUCCI,
COMMISSIONER, NEW YORK STATE
DEPARTMENT OF CORRECTIONS AND
COMMUNITY SUPERVISION,

Respondents

The Petitioner herein filed this Article 78 petition, challenging the determination of the New York Board of Parole denying his request for parole following a hearing held on January 3, 2017.

The Petitioner is serving a term of 20 years to Life for his conviction, by verdict, of Murder in the 2nd Degree. He has appeared before the New York State Parole Board on seven prior occasions and was denied parole again on his latest appearance.

The underlying crime for which the Petitioner is incarcerated is extremely serious. On April 10, 1983, following an argument with the Petitioner's paramour, the Petitioner picked up the victim and dropped her into a bath tub and held her head underwater until she died from drowning. He then solicited his brother's help to remove the victim's lifeless body and initially lied about committing the crime. The Petitioner alleges he has expressed sorrow for the crime and he believes the Parole Board is so focused on the underlying nature of his crime that they have not considered his progress during incarceration. The Petitioner alleges he has participated in all mandated programs and has

completed ASAT, ART, and other vocational programs required and programs for which he has volunteered. He acknowledges he has had some difficulties in maintaining a clean disciplinary record, but that he has not had any infractions since 2015. The Petitioner alleges the Parole Board has failed to conduct a thorough evaluation of the required statutory factors and that his denial was a foregone conclusion. He alleges there was no discussion of his accomplishments and vocational training or his educational development and that there was minimal discussion concerning his release plans. He also alleges that the Parole Board failed to utilize the COMPAS Risk and Needs Assessment Instrument in making the determination. He alleges the Parole Board delivered a standard cookie cutter response to his request for his release. The Petitioner submits that the Parole Board violated lawful procedure by denying his parole release, and acting in an arbitrary and capricious manner. The Petitioner acknowledges disciplinary misconduct was discussed, but argues that it played no role in the determination as there was no mention of his disciplinary record or history in the Parole Board's decision. Petitioner submits it was the seriousness of the underlying crime which is the primary focus for denying his parole supervision. The Petitioner argues the Parole Board's decision was conclusory and it lacked detail and factual reasons to support the determination. The Petitioner believes he has expressed remorse and that the Parole Board was wrong in determining he had failed to take full responsibility for committing such a violent crime and that he needed to gain insight.

In response thereto, the Court has received a Verified Answer and Return from the Respondents through Assistant Attorney General Volunteer, Aaron M. Griffin, Esq. The Respondents submit that the determination made was in full compliance with the law and in no way was made erroneously, improperly, partially, arbitrarily, or capriciously.

Respondents note the heavy presumption of propriety when a Court reviews a determination made by the Parole Board and that it is the Petitioner's burden to overcome the presumption that the determination was properly made. The Respondents note a Court may reverse a Parole Board's decision only when the Petitioner articulates a convincing "showing of irrationality bordering on impropriety". Respondents note the Parole Board does not have to list every factor it considers in reaching its determination but rather, must provide the Petitioner sufficient substance to support its determination and analysis so that it can be gleaned that the disposition was not merely conclusory.

The Respondents further note that a Petitioner's remorse for past crimes and his insight into his prior offenses, as well as the seriousness of the crime, for which the Petitioner is incarcerated are all factors that the Parole Board must consider.

The Petitioner supplied a copy of the Parole Board's determination as part of the transcript annexed to his petition labeled Exhibit A. The Decision is set forth on page 15 of said transcript and provides,

"It is the determination of this Panel that if released at this time, there is a reasonable probability that you would not live at liberty without violating the law. Your release at this time is incompatible with the welfare and safety of the community.

You appear before this Panel for the offense of Murder in the 2nd Degree, wherein you killed your girlfriend, who was living with you at the time. You tried to cover up the crime by burying her. This Panel notes your release plans and institutional record while serving this State bid, as well as your case plan has been reviewed. Consideration has been given to the assessment of your risks and needs

for success on parole. However, more compelling is your serious instant offense, which involved you causing the death of another human being. The crime was senseless and a total disregard for human life. You failed to take full responsibility for committing this violent crime. You need to gain insight. When considering all relevant factors, release would so deprecate the serious nature of the crime to undermine respect for the law”.

The Petitioner administratively appealed the determination and the determination was affirmed. In a detailed decision, which reviewed the arguments that the Petitioner makes to this Court, the Appeals Unit found the argument unpersuasive (Exhibit B, Petition).

With regard to the Petitioner’s disciplinary history, the Board did discuss with the Petitioner that his last infraction was a Tier III infraction in November of 2015 at Five Points Correctional Facility, for which he received 30 days SHU (Transcript, Page 9). The Board also discussed with the Petitioner his plans if he were granted release, which included going to his sister’s place in Queens. The Board discussed the arrest record the Petitioner had prior to being incarcerated for the present crime which was extensive even though the Petitioner was only 26 years of age when he committed the murder for which he now stands convicted (Transcript, Page 9). They discussed what the Petitioner might do if he were granted release and he indicated he had an interest in landscaping and fixing of houses (Transcript, Page 12). They also discussed his completion of school, the ART program, the drug program, and recreation. The Board noted that in his file they had his case plan and his risk assessment. They advised the Petitioner that “due to the infractions, again, and I know things have improved in the last year, but the risk assessment shows you are high on prison misconduct, you are low with risk of felony violence according to the COMPAS which is

good, and medium with criminal involvement category.” (Transcript, Page 13). The Board also noted that the Petitioner had not received any substance abuse tickets (Transcript, Page 13).

As to the Board’s determination that the Petitioner had not accepted responsibility for his crime and needed to gain insight, it is noted that the Petitioner, when asked whose fault it was that his girlfriend got killed , responded “It--mainly, it was her fault because, you know, I gave her - - you know, she is living in my apartment, I am doing everything and she technically was a drug addict, out of control.” (Transcript, Pages 6 - 7). He then went on to say “No, I am admitting fault in that matter you know like - - but it was both of us. It takes two to fight.” (Transcript, Page 7)

If the Parole Board complies with the procedures set forth in the Executive Law §259-i, its discretionary determinations are not subject to review unless there has been a showing of irrationality boarding on impropriety. Matter of Zane v Travis, 231 AD 2d 848 (4th Dept, 2002); Matter of Russo v New York State Board of Parole, 50 NY 2d 69, 77; Burgos v Berbary, 270 AD 2d 930 (4th Dept, 2000). “While the relevant statutory factors must be considered, it is well settled that the weight to be accorded each of the factors lies solely within the discretion of the Parole Board (Citations omitted). Moreover, the Board is not ... required to expressly discuss each of the guidelines in its determination” (Citations omitted). Walker v Travis, 252 AD 2d 360 (1st Dept, 1998).

The petition is in all respects dismissed, without costs, as the Petitioner has not met the “heavy burden” required to show impropriety in the board’s actions. Walker v Travis, *Supra*.

THIS CONSTITUTES THE DECISION AND JUDGMENT OF THE COURT.

DATED: November 3, 2017



 HON. DENNIS F. BENDER
 Acting Supreme Court Justice