Matter of Ridgeway v New York State Bd. of Parole
2016 NY Slip Op 30281(U)
February 11, 2016
Supreme Court, St. Lawrence County
Docket Number: 146690
Judge: S. Peter Feldstein
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STATE OF NEW YORK
SUPREME COURT **COUNTY OF ST. LAWRENCE**

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In the Matter of the Application of
JEROME RIDGEWAY,#13-B-2839,
Petitioner,

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

-against-

DECISION AND JUDGMENT
RJI #44-1-2015-0718.30
INDEX #146690
ORI # NY044015J

NEW YORK STATE BOARD OF PAROLE,
Respondent.

- X

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the Petition of Jerome Ridgeway, verified on October 28, 2015 and filed in the St. Lawrence County Clerk's office on November 3, 2015. Petitioner, who is an inmate at the Gouverneur Correctional Facility, is challenging the November 2014 determination denying him discretionary parole release and directing that he be held for an additional 24-months. The Court issued an Order to Show Cause on November 9, 2015 and has received and reviewed respondent's Answer and Return, including confidential Exhibits B, C and I, verified on December 31, 2015. The Court has also received and reviewed petitioner's Reply, dated January 11, 2016 and filed in the St. Lawrence County Clerk's office on January 21, 2016.

On September 13, 2013 petitioner was sentenced in Erie County Court to a controlling indeterminate sentence of 2 to 6 years upon his conviction of the crimes of Operating a Motor Vehicle While Under the Influence of Alcohol or Drugs (Vehicle and Traffic Law §1192(3)) and Aggravated Unlicensed Operation of a Motor Vehicle 1°. At the same time petitioner was sentenced to an additional, concurrent indeterminate sentence of 1 to 3 years upon his conviction, following the revocation of parole, of the crime of

Operating a Motor Vehicle While Under the Influence of Alcohol or Drugs (Vehicle and Traffic Law §1192(2)). He was received into DOCCS custody on September 27, 2013 and made his initial appearance before a Parole Board on November 19, 2014. Following that appearance petitioner was denied discretionary parole release and it was directed that he be held for an additional 24 months. The parole denial determination reads as follows:

> "AFTER CAREFULLY REVIEWING YOUR RECORD AND CONDUCTING A PERSONAL INTERVIEW, THIS PANEL CONCLUDES THAT DISCRETIONARY RELEASE IS DENIED.
>
> YOU STAND CONVICTED OF TWO COUNTS OF DWI: ALCOHOL OR DRUGS 3RD OFFENSE, AND AGGERVATED [sic] UNLICENSED OPERATION IN CONNECTION WITH YOUR ACTIONS DRIVING WHILE INTOXICATED. FOR ONE OF THE DWI CHARGES YOU WERE ORIGINALLY SENTENCED TO PROBATION BUT YOU VIOLATED AND PRISON TIME WAS IMPOSED. THESE OFFENSES ARE A CONTINUATION OF YOUR CRIMINAL HISTORY AND RECORD ON COMMUNITY SUPERVISION WHICH INCLUDES TWO PREVIOUS DRIVING WHILE INTOXICATED CHARGES, A PRISON TERM FOR A DRUG RELATED CONVICTION AND PREVIOUS MISDEMEANORS AND FELONIES IN CONNECTION WITH THEFT AND TRESPASS RELATED CRIMES. THE PANEL MAKES NOTE OF YOUR PROGRAM GOALS AND ACCOMPLISHMENTS INCLUDING YOUR PARTICIPATION IN ASAT [Alcohol and Substance Abuse Treatment] WHICH YOU RECENTLY STARTED IN SEPTEMBER, RISK AND NEEDS ASSESSMENT AND YOUR CLEAN DISCIPLINARY RECORD, YOUR CERTIFICATE OF EARNED ELIGIBILITY HAS BEEN DENIED. ALSO, YOUR RELEASE PLANS, AND SENTENCING MINUTES HAVE BEEN REVIEWED AND CONSIDERED.
>
> THE PANEL REMAINS CONCERNED ABOUT YOUR DANGEROUS HISTORY OF DRIVING AND YOUR LIMITED INSIGHT ABOUT YOUR ACTION WHICH PUTS MULTIPLE CITIZENS USING THE ROADS AT RISK.
>
> AFTER DELIBERATING, REVIEWING YOUR OVERALL RECORD AND STATUTORY FACTORS, DISCRETIONARY

> RELEASE IS NOT PRESENTLY WARRANTED AS THERE IS A REASONABLE PROBABILITY YOU WOULD NOT LIVE AT LIBERTY WITHOUT AGAIN VIOLATING THE LAW AND FURTHERMORE, YOUR RELEASE WOULD BE INCOMPATIBLE WITH THE WELFARE OF SOCIETY."

The document perfecting petitioner's administrative appeal from the November 2014 parole denial determination was received by the DOCCS Board of Parole Appeals Unit on May 18, 2015. On or about September 9, 2015 the parole denial determination was affirmed. This proceeding ensued**.**

Executive Law §259-i(2)(c)(A), as amended by L 2011, ch 62, part C , subpart A, §§38-f and 38-f-1, effective March 31, 2011, provides, in relevant part, as follows:

> "Discretionary release on parole shall not 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 inmate 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. In making the parole release decision, the procedures adopted pursuant to subdivision four of section two hundred fifty-nine-c of this article shall require that the following be considered: (i) the institutional record including program goals and accomplishments, academic achievements, vocational education, training or work assignments, therapy and interactions with staff and inmates . . . (iii) release plans including community resources, employment, education and training and support services available to the inmate . . . (vii) the seriousness of the offense with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court, the district attorney, the attorney for the inmate, the presentence probation report as well as consideration of any mitigating and aggravating factors, and activities following arrest prior to confinement; and (viii) prior criminal record, including the nature and pattern of offenses, adjustment to any previous probation or parole supervision and institutional confinement . . ."

Discretionary parole release determinations are statutorily deemed to be judicial functions which are not reviewable if done in accordance with law (Executive Law §259-i(5) unless there has been a showing of irrationality bordering on impropriety. *See Silmon*

v. Travis, 95 NY2d 470, *Hamilton v. New York State Division of Parole,* 119 AD3d 1268, *Vasquez v. Dennis*on, 28 AD3d 908 and *Webb v. Travis*, 26 AD3d 614. Unless the petitioner makes a "convincing demonstration to the contrary" the Court must presume that the New York State Board of Parole acted properly in accordance with statutory requirements. *See Jackson v. Evans,* 118 AD3d 701, *Nankervis v. Dennison,* 30 AD3d 521 and *Zane v. New York State Division of Parole*, 231 AD2d 848.

The Petition focuses upon the argument that the Parole Board failed to adequately consider/properly weigh all of the required statutory factors and instead relied excessively on the nature of the crimes underlying petitioner's incarceration as well as his prior criminal record. In this regard petitioner specifically alleges as follows:

> "In light of Petitioner's acceptance of responsibility; low risk to the community; good behavior; and promising Release Plans, it was improper to deny him parole. The Parole Board's Decision impermissibly ignored Executive Law §259-c(4), and the factors laid out in Executive Law §259-i(2)(c)(A)(i-vi), by only perfunctorily mentioning Petitioner's positive qualities. In doing so, the Parole Board created a strong indication that Petitioner's denial of parole was a forgone conclusion." (References to exhibits and citations omitted).

Petitioner's above arguments notwithstanding, a Parole Board need not assign equal weight to each statutory factor it is required to consider in connection with a discretionary parole determination, nor is it required to expressly discuss each of those factors in its written decision. *See Montane v. Evans,* 116 AD3d 197, *lv granted* 23 NY3d 903, *app dismissed* 24 NY3d 1052, *Valentino v. Evans,* 92 AD3d 1054 and *Martin v. New York State Division of Parole,* 47 AD 3d 1152. As noted by the Appellate Division, Third Department, the role of a court reviewing a parole denial determination ". . . is not to assess whether the Board gave the proper weight to the relevant factors, but only whether

the Board followed the statutory guidelines and rendered a determination that is supported, and not contradicted, by the facts in the record. Nor could we effectively review the Board's weighing process, given that it is not required to state each factor that it considers, weigh each factor equally or grant parole as a reward for exemplary institutional behavior." *Comfort v. New York State Division of Parole,* 68 AD3d 1295, 1296 (citations omitted).

In the case at bar, reviews of the Parole Board Report (Initial November 2014) and transcript of petitioner's November 19, 2014 Parole Board appearance reveal that the Board had before it information with respect to the appropriate statutory factors, including petitioner's educational and therapeutic programing records, COMPAS ReEntry Risk Assessment Instrument, sentencing minutes, clean disciplinary record and release plans/community support, in addition to information with respect to the circumstances of the crimes underlying his incarceration and prior criminal record. The Court, moreover, finds nothing in the hearing transcript to suggest that the Parole Board cut short petitioner's discussion of any relevant factor or otherwise prevented him from expressing clear and complete responses to its inquiries. Indeed, just prior to the close of the November 19, 2014 Parole Board interview one of the presiding commissioners inquired as follows: "Anything else that you would like to say, sir, that would help us with our Parole decision that we haven't talked about?" Petitioner responded "[n]ot that I can think of right now."

In view of the foregoing, the Court finds no basis to conclude that the Parole Board failed to consider the relevant statutory factors. *See Pearl v. New York State Division of Parole,* 25 AD3d 1058 and *Zhang v. Travis,* 10 AD3d 828. Since the requisite statutory

factors were considered, and given the narrow scope of judicial review of discretionary parole denial determinations, the Court finds no basis to conclude that the denial determination in this case was affected by irrationality boarding on impropriety as a result of the emphasis placed by the Board on the nature of the crimes underlying petitioner's incarceration, his prior criminal record (including multiple DWI convictions and the fact that the offense underlying one of petitioner's current DWI convictions was committed while he was on probation from a previous DWI conviction) and his perceived lack of insight. *See Neal v. Stanford,* 131 AD3d 1320 and *Confoy v. New York State Division of Parole,* 173 AD2d 1014.

To the extent petitioner specifically argues that the results of the COMPAS Re Entry Risk Assessment Instrument "were not properly taken into consideration by the Parole Board," the Court rejects such argument. In this regard petitioner asserts that "[t]he Risk Assessment Instrument indicates that Petitioner does not pose a high risk of felony violence, arrest, or absconding. Despite such an assessment, the parole Board opined that Petitioner's release was incompatible with the welfare of society. The Board's act of ignoring its own methodology designed to predict recidivism was improper and illogical." (References to exhibits and citation omitted).

Petitioner does not dispute that a COMPAS risk and needs assessment instrument was prepared in conjunction with the discretionary parole release consideration process. The COMPAS instrument is part of the record in this proceeding and was specifically discussed during the course of petitioner's November 19, 2014 Parole Board interview, with one of the presiding commissioners noting that the instrument had been reviewed in that "[i]t does show that your criminal involvement is at a high level as well as a history

of violence. Your discipline in prison is good. You have a completely clean record. So it [the COMPAS instrument] indicates that your prison misconduct is low. Arrest risk and absconding is at a medium level. And I will say that the number one need would be substance abuse help."

Although the Appellate Division, Third Department, has determined that a risk and needs assessment instrument (such as COMPAS) must be utilized in connection with post-September 30, 2011 parole release determinations (*see Linares v. Evans,* 112 AD3d 1056*, Malerba v. Evans,* 109 AD3d 1067, *lv denied* 22 NY3d 858 and *Garfield v. Evans*, 108 AD3d 830), there is nothing in such cases, or Executive Law §259-c(4), to suggest that the quantified risk assessment determined through utilization of the risk and needs assessment instrument supercedes the independent discretionary authority of the Parole Board to determine, based upon its consideration of the factors set forth in Executive Law §259-i(2)(c)(A), whether or not an inmate should be released to parole supervision. The "risk and need principles" that must be incorporated pursuant to Executive Law §259-c(4), while intended to measure the rehabilitation of a prospective parolee as well as the likelihood that he/she would succeed under community-based parole supervision, serve only to " . . . assist members of the state board of parole in determining which inmates may be released to parole supervision . . ." Executive Law §259-c(4)(emphasis added). Thus, while the Parole Board was required to consider the COMPAS instrument when exercising its discretionary authority to determine whether or not petitioner should be released from DOCCS custody to community-based parole supervision, it was not bound by the quantified results of the COMPAS assessment and was free to grant or deny parole based upon its independent assessment of the factors set forth in Executive Law

§259-i(2)(c)(A) including, as here, the nature of the crimes underlying petitioner's incarceration, his prior criminal record (including multiple DWI convictions and the fact that the offense underlying one of petitioner's current DWI convictions was committed while he was on probation from a previous DWI convictions) and his perceived lack of insight. *See Rivera v. New York State Division of Parole,* 119 AD3d 1107 and *Partee v. Evans*, 40 Misc 3d 896, *aff'd* 117 AD3d 1258, *lv denied* 24 NY3d 901.

Based upon all of the above, it is, therefore, the decision of the Court and it is hereby

ADJUDGED, that the petition is dismissed.

Dated: February 11, 2016 at
Indian Lake, New York

S. Peter Feldstein
Acting Justice, Supreme Court