

Matter of Rivera v Stanford

2017 NY Slip Op 33156(U)

November 27, 2017

Supreme Court, Dutchess County

Docket Number: Index No. 50638-2017

Judge: Denise M. Watson

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

In the Matter of the Application of
RICHARD RIVERA, #82-B-0892,
for a judgment pursuant to Article 78
of the Civil Practice Law and Rules,

Petitioner,

**DECISION AND ORDER
Index No. 50638-2017**

-against-

**TINA M. STANFORD, Chairwoman of the
New York State Board of Parole,**

Respondent.

WATSON, D., ACTING SUPREME COURT JUSTICE

THE FOLLOWING PAPERS WERE READ AND CONSIDERED ON THIS APPLICATION
by petitioner pursuant to Article 78 of the CPLR seeking reversal of a Parole Board decision rendered
on September 14, 2016 which denied him discretionary release to parole supervision.

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On April 22, 1982, the Petitioner was convicted of two counts of Murder in the 2nd Degree, and several other felonies, and sentenced to 25 years to life on each count. Petitioner is an inmate currently incarcerated at Eastern Correctional Facility. The petitioner had a Parole Board Release Interview on September 14, 2016, was denied release, and ordered held for another 24 months.

In the present proceeding, the petitioner argues: 1) that he was denied a meaningful opportunity

for release, as required by the Eighth Amendment; 2) that the Parole Board violated Executive Law §259-i(2)(c)(A) by failing to fairly consider all relevant statutory factors; and 3) that the Parole Board's decision was conclusory and brief.

Respondent has filed an answer and return and asks that the petition be denied on the grounds that the Parole Board acted in compliance with the law and that the determination was neither arbitrary or capricious. The respondent claims that the Board acted appropriately in issuing its decision. Additionally, the respondent argues that the Board's reasons to deny petitioner's parole are not all related to the nature of the instant offense, the Board considered all the statutory factors and the Board's decision is not conclusory, and the petition should be dismissed.

The Parole Board's release decisions are discretionary in nature. *Davis v. New York State Division of Parole*, 114 AD2d 412 (2nd Dept. 1985). Where the Parole Board renders a decision denying an application for parole, "[j]udicial intervention is warranted only when there is a 'showing of irrationality bordering on impropriety.'" *Matter of LeGeros v. New York State Bd. Of Parole*, 139 A.D.3d 834 (2nd Dept. 2016); *Silmon v. Travis*, 95 NY2d 470 (2000). This Court is not convinced that the Board's decision is unsupported by the record thereby rendering its decision arbitrary and capricious nor does the record support that the Parole Board violated its Constitutional and statutory obligations or was conclusory in its decision.

A review of the transcript reveals that the Board did not rely solely on the serious nature of the instant offense in its determination. There was discussion regarding petitioner's accomplishments (including asking the petitioner which programs he found most beneficial); his educational accomplishments while incarcerated; post release employment and living arrangements; as well as his disciplinary history and infractions while incarcerated. "While the relevant statutory factors must be considered, the weight to be accorded to each of the factors lies solely within the discretion of the Parole Board." *Phillips v. Dennison*, 41 AD3d 17 (1st Dept. 2007). "The Board is not required to discuss

every factor considered, ..., and it need not accord every factor equal weight.” Graziano v. Evens, 90 AD3d 1367 (3rd Dept. 2011).

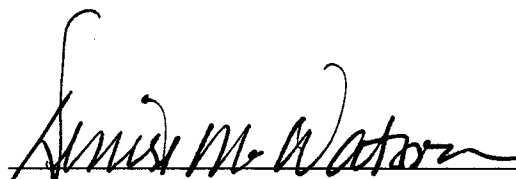
The Board need not discuss all of the factors considered in making its decision and may make a finding to deny release based on a finding that “there is a reasonable probability that, if ... released, [the inmate] will not live and remain at liberty without violating the law and that his release is not compatible with the welfare of society”. See Matter of Walker v. Russi, 176 AD2d 1185 (3rd Dept. 1991), appeal dismissed, 79 NY2d 897 (1992).

The Court has reviewed the record, including the transcript of the Parole hearing and the confidential information submitted for *in camera* review and finds that petitioner has failed to make a convincing showing that the Board of Parole acted improperly. Additionally, the record reflects that the Board considered the COMPAS prepared for its review but determined that Petitioner’s lengthy disciplinary hearing was more compelling. Therefore, the determination denying him parole is not subject to judicial review (Executive Law § 259-i (5)). Absent a convincing demonstration to the contrary, it is presumed that the Board of Parole acted properly in accordance with statutory requirements. See Bouknight v. Russi, 242 AD2d 329 (2nd Dept. 1997).

Accordingly, the petition is dismissed and the relief requested therein is in all respects denied.

The foregoing constitutes the decision and order of the Court.

Dated: November 27, 2017
Poughkeepsie, New York



Hon. Denise M. Watson
Acting Supreme Court Justice

cc: Alex Chaches, Esq.
Attorney for Petitioner
ORRICK, HERRINGTON & SUTCLIFFE, LLP
51 West 52nd Street
New York, New York 10019

Lorraine Mc Evilly, Esq.
Davis Loftis, Esq.
Attorneys for Petitioner
THE LEGAL AID SOCIETY
Parole Revocation Defense Unit
199 Water Street, 5th Floor
New York, New York 10038

Elizabeth A. Gavin, Esq.
Attorney for Respondent
Assistant Attorney General
NEW YORK STATE ATTORNEY GENERAL
One Civic Center Plaza, Suite 401
Poughkeepsie, NY 12601