Matter of Police Benevolent Assn. of the N.Y. State Troopers Inc. v New York State Bd. of Parole
2018 NY Slip Op 30687(U)
February 2, 2018
Supreme Court, Albany County
Docket Number: 7877-17
Judge: Christina L. Ryba
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STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In the Matter of the Application of POLICE BENEVOLENT ASSOCIATION OF THE NEW YORK STATE TROOPERS INC.,

Petitioner,

DECISION/JUDGMENT

-against-

Index No. 7877-17
RJI No. 01-17-ST9239

NEW YORK STATE BOARD OF PAROLE, and TINA M. STANFORD in her Official Capacity as Chairwoman of the Board of Parole,

Respondents.

APPEARANCES:

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RYBA, J.

On October 24, 1974, John E. Ruzas and several accomplices committed an armed robbery and were in the process of fleeing when Ruzas, who was then on parole for his role in two previous robberies, shot and killed New York State Trooper Emerson J. Dillon during a traffic stop on the New York Thruway. Ruzas was tried and convicted of two counts of murder in the second degree, one count of robbery in the first degree and two counts of criminal possession of a weapon in the second degree, and was sentenced as a second felony offender to an aggregate term 25 years to life in prison. Following the expiration of his 25-year minimum sentence, Ruzas appeared before

respondent New York State Board of Parole (hereinafter the Board) for parole consideration every 24 months and was consistently denied parole release. When Ruzas appeared before the Board for the eleventh time and was once again denied parole, Ruzas commenced a CPLR Article 78 proceeding in Dutchess County, where petitioner was incarcerated and the challenged determination was made, seeking an order annulling the determination and directing a de novo hearing. By decision and order dated January 30, 2017, the Dutchess County Supreme Court (J. Grossman) found that the Board improperly based its summary denial of parole almost exclusively upon the severity of the underlying offense and Ruzas' criminal history, without giving more than superficial consideration to petitioner's rehabilitative efforts and other factors that must be considered under Executive Law § 259–I. The Court further found that the Board improperly considered "community opposition" letters from individuals outside the scope of those permitted by the applicable statute, which limits consideration of opposing statements to those "made to the Board by the crime victim or the crime victim's representative, where the crime victim is deceased".[1] Based on these findings, the Court annulled the determination denying Ruzas parole release and remitted the matter for a de novo hearing "focusing on petitioner's rehabilitative efforts, rather than solely the events of 41 years ago." Evidently, the January 30, 2017 decision and order, as well as a subsequent October 2017 order finding the Board in contempt for failing to comply with the January 2017 decision and order, are currently on appeal to the Appellate Division, Second Department. To the Court's knowledge, no decisions on said appeals have been rendered to date.

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[1] A "crime victim's representative" is defined by Executive Law § 258-i (c) (A) as the crime victim's "closest surviving relative, the committee or guardian of such person, or the legal representative of any such person."

As directed by the January 2017 decision and order, a de novo hearing on Ruzas' request for parole release was conducted on November 7, 2017. At the commencement of the hearing, the Board explicitly stated on the record that the hearing was being conducted pursuant to the directive of the January 2017 order and that therefore only letters of opposition from the victim's family, and not "community opposition" letters, would be considered. Following a lengthy interview with Ruzas which included a detailed discussion of the statutory factors that the Board was required to consider, the Board issued a 2-1 decision granting Ruzas' request for parole based upon a finding that parole release was not incompatible with public safety and welfare and that Ruzas, who had served 44 years of his 25-year to life sentence, could live and remain at liberty without violating the law. Ruzas was scheduled to be released to parole supervision on Monday, December 18, 2017.

By Order to Show Cause signed on December 11, 2017, petitioner commenced this CPLR Article 78 proceeding in Albany County Supreme Court seeking to stay and annul the Board's determination on the ground that the required statutory factors, including the letters of community opposition, were not properly weighed and considered in granting Ruzas' request for parole release. Upon signing the Order to Show Cause, the Court (Mackey, J.) struck the provision for a temporary restraining order staying Ruzas' scheduled parole release pending oral argument. In opposition to the petition, respondents cross-moved pursuant to CPLR 3211 (a) for an order dismissing the petition for lack of standing, failure to join a necessary party and failure to state a cause of action. Petitioner opposed the cross motion.

The parties appeared before the Court for oral argument on December 15, 2017, during which time the Court considered petitioner's request for a stay of Ruzas' parole release based upon the Board's failure to consider letters of community opposition at the November 7, 2017 parole hearing.

At the conclusion of oral argument, the Court issued a decision from the bench denying the stay application on the ground that the issue of whether letters of community opposition should have been considered was pending before the Appellate Division, Second Department in conjunction with the appeals from the January 2017 and October 2017 decisions issued by the Dutchess County Supreme Court. The Court further rejected petitioner's argument that the Court was authorized to rescind Ruzas' parole release date pursuant to certain Board regulations that govern the Board's internal rescission process, as opposed to the judicial review process. The Court reserved decision on the remaining issues raised by the petition and motion to dismiss, which are now ripe for determination.

The Court will first address respondents' motion to dismiss the petition pursuant to CPLR 3211 (a), and in particular the issue of petitioner's standing. The applicable test to establish associational or organizational standing requires petitioner to demonstrate: (1) that one or more of its members has standing to sue; (2) that the interests advanced are sufficiently germane to petitioner's purposes to satisfy the court that the petitioner is an appropriate representative of those interests; and (3) that the participation of the individual members is not required to assert the claim or to afford the plaintiff complete relief (see, Matter of Aeneas McDonald Police Benevolent Assn. v City of Geneva, 92 NY2d 326, 331 [1998] ; Society of Plastics Indus. v County of Suffolk, 77 NY2d 761, 775 [1991]; Civil Serv. Empls. Assn. v County of Nassau, 264 AD2d 798 [1999]). If any of these elements is lacking, the organization lacks standing and its claims must be dismissed (see, Matter of Save Our Main Street Building v Greene Co. Leg., 293 AD2d 907, 909 [2002]). Thus, resolution of the organizational standing issue turns upon the nature and purpose of petitioner's organization and the identity of its members.

Petitioner, Police Benevolent Association of New York State Troopers Inc., is a labor union whose members consist of regular, full-time employees in the titles of State Police Trooper, State

Police Sergeant, State Police Lieutenant, State Police Captain and State Police Major. Petitioner's stated mission is to seek fair wages and benefits for its members, as well as to challenge unfair working conditions and management practices through grievances, lawsuits and other methods. Thus in order to satisfy the first prong of the three-part organizational standing test, petitioner must present proof that at least one of its members would have individual standing to challenge the Board's determination granting Ruzas parole release. For an individual member to establish standing, the individual must first demonstrate an 'injury in fact,' meaning that he or she will actually be harmed by the challenged administrative determination which is different than that suffered by the public at large (see, New York State Assoc. of Nurse Anesthetists v Novello, 2 NY3d 207, 211 [2004]). Second, the member's claimed injury "must fall within the zone of interests sought to be promoted or protected by the statute under which the agency has acted." (New York State Assoc. of Nurse Anesthetists v Novello, 2 NY3d at 211 [2004]). If either element is lacking, standing is has not been established and dismissal is warranted (see, New York State Assoc. of Nurse Anesthetists v Novello, 2 NY3d at [2004]).

Here, petitioner has not established that any of the individual State Police Officers that form its membership have suffered any injury in fact as the result of the Board's determination. While the Court acknowledges that petitioner's members may experience heightened feelings of vulnerability when a fellow police officer is murdered in the line of duty, this emotional response, standing alone, is insufficient to give rise to an "injury in fact" that would confer individual standing upon those officers to challenge a determination granting parole release to an inmate. Likewise, while petitioner asserts that it has standing to commence this proceeding as the "legal representative" of the crime victim's relatives, and although the emotional effect experienced by a crime victim's relative may certainly be greater than that experienced by the public at large, it has been held that a

crime victim's relative does not have individual standing to challenge a parole release determination (see, Matter of Hancher v Travis, 1 Misc 3d 903 [2003]). Indeed, the Executive Law does not confer standing to a crime victim who wishes to challenge a parole board determination, nor does it grant the it authorize the crime victim or the victim's relatives to participate in the parole process beyond the mere submission of letters to the Board. While the Court does not question that the family of the crime victim herein continues to suffer real emotional effects as the result of the subject crime, there has not been a showing that the family has any legal right that has been affected by the parole determination which they seek to challenge. Accordingly, petitioner cannot satisfy the first prong of the organizational standing test.

Similarly, petitioner has not demonstrated the existence of the final two prongs of organizational standing, namely that the interests advanced in this case are sufficiently germane to petitioner's stated purpose of protecting the employment interests of its members, and that the participation of the individual members is not required to assert the claim or to afford the petitioner complete relief. In view of petitioner's failure to come forward with sufficient proof to demonstrate organizational standing to challenge the Board's determination in this case, the petition must be dismissed.

In view of the foregoing conclusion that petitioner's lack of standing requires dismissal of the petition, the Court need not consider the remaining arguments advanced by the parties. Even if the Court were to find that petitioner had standing to commence this proceeding, and could proceed in the absence of joining Ruzas as a necessary party, it would decline to disturb the Board's determination on the ground that the Board improperly declined to consider letters of community opposition. The scope of the Court's review of parole determinations is extremely limited, and"[j]udicial intervention is warranted only when there is a 'showing of irrationality bordering on

impropriety'" (Matter of Silmon v Travis, 95 NY2d 470, 476 [2000], quoting Matter of Russo v New York State Bd. of Parole, 50 NY2d 69, 77 [1980]; see, Matter of Valderrama v Travis, 19 AD3d 904, 905[2005]). In light of the fact that the January 2017 and October 2017 orders of the Dutchess County Supreme Court specifically prohibited the Board form considering letters of opposition in rendering a determination, if the Court were to review the issue it would conclude that the Board's decision to disregard such letters was not irrational.

For the foregoing reasons, it is

ORDERED AND ADJUDGED that the motion is granted, without costs, and it is further

ORDERED AND ADJUDGED that the petition is dismissed, without costs.

This Memorandum constitutes the Decision and Judgment of the Court. This original Decision and Judgment is being returned to the attorney for the respondent. The below referenced original papers are being transferred to the Albany County Clerk. **The signing of this Decision and Judgment shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the provision of that rule regarding filing, entry, or notice of entry.**

SO ORDERED.
ENTER.

Dated: February 2, 2018

HON. CHRISTINA L. RYBA
Supreme Court Justice