

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D21684
Y/prt

_____AD3d_____

Argued - December 9, 2008

PETER B. SKELOS, J.P.
STEVEN W. FISHER
HOWARD MILLER
EDWARD D. CARNI, JJ.

2008-05464

DECISION & ORDER

In the Matter of Paul Hanson, respondent, v
New York State Board of Parole, appellant.

(Index No. 2044/08)

Andrew M. Cuomo, Attorney General, New York, N.Y. (Richard Dearing and
Patrick J. Walsh of counsel), for appellant.

Tom Terrizzi, Ithaca, N.Y., for respondent.

In a proceeding pursuant to CPLR article 78 to review a determination of the Executive Department of the New York State Division of Parole, dated December 21, 2007, which affirmed a determination of the Parole Board of the New York State Division of Parole, dated May 11, 2007, made after a hearing, denying the petitioner's application to be released on parole and directing him to be held for an additional 24 months, the New York State Division of Parole appeals from a judgment of the Supreme Court, Orange County (Alessandro, J.), dated April 28, 2008, which granted the petition, annulled the determination, and granted a new hearing.

ORDERED that the judgment is reversed, on the law, without costs or disbursements, the determination is confirmed, the petition is denied, and the proceeding is dismissed on the merits.

“A determination by the New York State Division of Parole (hereinafter the Board) made pursuant to Executive Law article 12-B ‘shall be deemed a judicial function and shall not be reviewable if done in accordance with law’” (*Matter of Nankervis v Dennison*, 30 AD3d 521, 522 quoting Executive Law § 259-i[5]). “Absent a ‘convincing demonstration’ to the contrary, the Board is presumed to have acted properly in accordance with statutory requirements, and judicial

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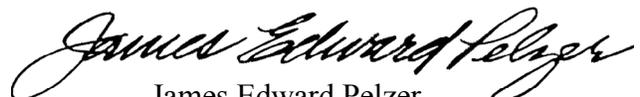
intervention is warranted only where there is a showing of ‘irrationality bordering on impropriety’” (*Matter of Hardwick v Dennison*, 43 AD3d 406, 407, quoting *Matter of Silmon v Travis*, 95 NY2d 470, 476).

The petitioner failed to demonstrate that the Board did not comply with the statutory requirements and failed to overcome the presumption that the Board reached its decision in accordance with those requirements (*see Matter of Nankervis v Dennison*, 30 AD3d at 522; *Matter of Heitman v New York State Bd. of Parole*, 214 AD2d 673; *Matter of McLain v New York State Div. of Parole*, 204 AD2d 456, 456; *Matter of Ganci v Hammock*, 99 AD2d 546, 547). “[The Board] was not required to give equal weight to each factor, nor was it required to discuss each of the factors in its determination” (*Matter of Mata v Travis*, 8 AD3d 570, 570; *see Matter of Johnson v Travis*, 284 AD2d 686, 687).

The petitioner’s remaining contentions are without merit.

SKELOS, J.P., FISHER, MILLER and CARNI, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court