

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

D54530  
T/htr

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Argued - October 23, 2017

MARK C. DILLON, J.P.  
JOHN M. LEVENTHAL  
SYLVIA O. HINDS-RADIX  
HECTOR D. LASALLE, JJ.

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2015-09183

DECISION & ORDER

In the Matter of David Putland, respondent, v New York State Department of Corrections and Community Supervision, appellant.

(Index No. 1895/15)

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Eric T. Schneiderman, Attorney General, New York, NY (Steven C. Wu and Philip V. Tisne of counsel), for appellant.

Cravath, Swaine & Moore LLP, New York, NY (Antony L. Ryan and Xiaoxi Tu of counsel), for respondent.

Appeal from a judgment of the Supreme Court, Orange County (Robert A. Onofry, J.), dated July 1, 2015. The judgment granted the petition, filed pursuant to CPLR article 78, to review a determination of the New York State Board of Parole denying, after an interview, the petitioner's application for parole, annulled the determination, and remitted the matter to the New York State Board of Parole for a de novo parole interview before a different panel.

ORDERED that the judgment is affirmed, without costs or disbursements.

The petitioner was convicted, as a juvenile offender, of murder in the second degree and sodomy in the first degree for crimes he committed in September 1979, when he was 15 years of age, against a victim who was 7 years of age (*see People v Putland*, 105 AD2d 199, 199-200). The petitioner was sentenced to indeterminate terms of imprisonment of 9 years to life on his conviction of murder in the second degree and 3½ to 10 years on his conviction of sodomy in the first degree, the sentences to run concurrently.

February 7, 2018

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AND COMMUNITY SUPERVISION

In June 2014, the petitioner appeared before the New York State Board of Parole (hereinafter the Parole Board) on his application for parole release. He was approximately 50 years of age, and had been denied parole release on 13 prior occasions. Following an interview, the Parole Board denied the petitioner's application.

The petitioner commenced this proceeding pursuant to CPLR article 78 to review the Parole Board's determination. In a judgment dated July 1, 2015, the Supreme Court granted the petition, annulled the determination, and remitted the matter to the Parole Board for a de novo interview before a different panel. This appeal ensued.

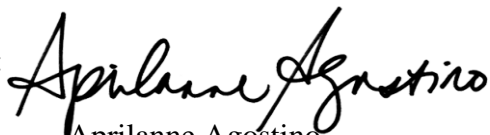
During the pendency of this appeal, the Appellate Division, Third Judicial Department decided *Matter of Hawkins v New York State Dept. of Corr. & Community Supervision* (140 AD3d 34). In *Matter of Hawkins*, the Third Department held that "[f]or those persons convicted of crimes committed as juveniles who, but for a favorable parole determination will be punished by life in prison, the [Parole] Board must consider youth and its attendant characteristics in relationship to the commission of the crime at issue" (*id.* at 39).

In its reply brief on this appeal, the appellant represents that the Parole Board "has elected to comply with *Matter of Hawkins* on a statewide basis." The appellant informs us that regulations requiring the Parole Board to consider, inter alia, the diminished culpability of youth, were proposed and are now in effect. Evidently, these regulations constitute a recognition, at least implicitly, of the holding in *Matter of Hawkins*, and of the United States Supreme Court cases *Montgomery v Louisiana* (136 S Ct 718) and *Miller v Alabama* (567 US 460), on which *Matter of Hawkins* is based. The appellant concedes that the petitioner should receive a de novo interview.

Under these circumstances, we deem it appropriate to affirm the judgment that annulled the Parole Board's determination and remitted the matter to the Parole Board for a de novo interview before a different panel. The petitioner is entitled to a meaningful opportunity for release in which the Parole Board considers, inter alia, his youth at the time of the commission of the crimes and its attendant circumstances (*see Matter of Hawkins v New York State Dept. of Corr. & Community Supervision*, 140 AD3d at 40). In view of the foregoing, we need not address the parties' remaining contentions.

DILLON, J.P., LEVENTHAL, HINDS-RADIX and LASALLE, JJ., concur.

ENTER:



Aprilanne Agostino  
Clerk of the Court