

**SUPREME COURT OF THE STATE OF NEW YORK**  
*Appellate Division, Fourth Judicial Department*

550

**CA 16-01804**

PRESENT: PERADOTTO, J.P., CARNI, LINDLEY, TROUTMAN, AND SCUDDER, JJ.

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IN THE MATTER OF LOUIS J. JONES,  
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND  
COMMUNITY SUPERVISION, NEW YORK STATE EXECUTIVE  
BOARD OF PAROLE APPEALS UNIT, ANTHONY ANNUCCI,  
ACTING COMMISSIONER, NEW YORK STATE DEPARTMENT  
OF CORRECTIONS AND COMMUNITY SUPERVISION, AND  
TINA STANFORD, CHAIRWOMAN, NEW YORK STATE  
DIVISION OF PAROLE, RESPONDENTS-APPELLANTS.

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ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (FRANK BRADY OF  
COUNSEL), FOR RESPONDENTS-APPELLANTS.

CALIHAN LAW PLLC, ROCHESTER (ROBERT B. CALIHAN OF COUNSEL), FOR  
PETITIONER-RESPONDENT.

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Appeal from a judgment (denominated order) of the Supreme Court,  
Erie County (John L. Michalski, A.J.), entered July 28, 2016 in a  
proceeding pursuant to CPLR article 78. The judgment granted the  
petition and granted petitioner a de novo parole hearing.

It is hereby ORDERED that the judgment so appealed from is  
unanimously reversed on the law without costs and the petition is  
dismissed.

Memorandum: Petitioner commenced this CPLR article 78 proceeding  
seeking to vacate the determination of the New York State Division of  
Parole (Board) denying his release to parole supervision. Respondents  
appeal from a judgment granting the petition and ordering a de novo  
hearing before a different parole panel. We reverse the judgment and  
dismiss the petition.

"It is well settled that parole release decisions are  
discretionary and will not be disturbed so long as the Board complied  
with the statutory requirements enumerated in Executive Law § 259-i"  
(*Matter of Gssime v New York State Div. of Parole*, 84 AD3d 1630, 1631,  
*lv dismissed* 17 NY3d 847; *see Matter of Johnson v New York State Div.*  
*of Parole*, 65 AD3d 838, 839; *see generally Matter of King v New York*  
*State Div. of Parole*, 83 NY2d 788, 790-791). The Board is "not  
required to give equal weight to each of the statutory factors" but,  
rather, may "place[] greater emphasis on the severity of the crimes

than on the other statutory factors" (*Matter of MacKenzie v Evans*, 95 AD3d 1613, 1614, *lv denied* 19 NY3d 815; see *Matter of Huntley v Evans*, 77 AD3d 945, 947). Where parole is denied, the inmate must be informed in writing of "the factors and reasons for such denial of parole" (§ 259-i [2] [a] [i]). "Judicial intervention is warranted only when there is a 'showing of irrationality bordering on impropriety' " (*Matter of Silmon v Travis*, 95 NY2d 470, 476; see *Matter of Johnson v Dennison*, 48 AD3d 1082, 1083; *Matter of Gaston v Berbery*, 16 AD3d 1158, 1159).

Contrary to the contention of petitioner, the Board considered the requisite statutory factors and adequately set forth in writing its reasons for denying his release to parole supervision (see *Matter of Siao-Pao v Dennison*, 11 NY3d 777, 778, *rearg denied* 11 NY3d 885; *Matter of Kenefick v Sticht*, 139 AD3d 1380, 1381, *lv denied* 28 NY3d 902). Contrary to petitioner's further contention, the Board's determination does not exhibit " 'irrationality bordering on impropriety' " (*Silmon*, 95 NY2d at 476).