

Matter of Gonzalez v Dennison

2007 NY Slip Op 33501(U)

October 26, 2007

Supreme Court, Albany County

Docket Number: 0059222/0071

Judge: Joseph C. Teresi

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In the Matter of the Application of
Ernesto Gonzalez, 80-A-4351

Petitioner,

-against-

DECISION
INDEX NO. 5922-07
RJI NO. 01-07-ST8040

Robert Dennison, Chairman of the New York
State Division of Parole, et. al.

Respondents.

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

Supreme Court, Albany County, Special Term, October 19, 2007
Assigned to Justice Joseph C. Teresi

APPEARANCES:

Ernesto Gonzalez
80-A-4351
Petitioner Pro Se
Arthur Kill Correctional Facility
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Staten Island, NY 10301

HON. ANDREW M. CUOMO, ESQ.
New York State Attorney General
Attorney for Respondents
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TERESI, J.:

Petitioner brings this CPLR Article 78 petition challenging the Respondents' denial of

parole for the Petitioner. Respondents oppose the petition with an answer.

After a full review of this record, the court will dismiss the petition.

The Petitioner had his first parole hearing in April of 2004. The parole board denied parole and scheduled Petitioner's next parole hearing two years later. At Petitioner's next hearing, in April of 2006, the parole board again denied Petitioner parole and ordered him to be held for another two years before reconsideration of his parole. Petitioner contends that the decision of the parole board was arbitrary, capricious, bordering on impropriety, and not in accordance with the law or legislative intent of the law. Petitioner also contends that he did not have a full and proper parole hearing in April of 2006 because the hearing lasted less than fifteen minutes and only one of the three board members asked Petitioner questions.

Petitioner's administrative appeal relied on the grounds that denial of his application for parole was arbitrary and capricious. Arguments not raised in the administrative appeal are "unpreserved for review." See, Matter of Moore v. New York State Bd. of Parole, 233 A.D.2d 653. Therefore, this court will only address whether the denial of Petitioner's application for parole release was arbitrary and capricious..

Petitioner alleges that the parole board did not consider his lack of prior criminal record, a clean twenty-seven year prison disciplinary record, positive parole plans, and recommendations for release. The decision of the parole board, however, stated specifically in its decision that although the board noted Petitioner's lack of a prior criminal record, excellent programming and disciplinary records, positive parole plans, and community support, releasing Petitioner at that time would "deprecate the seriousness" of the Petitioner's criminal acts and would "undermine respect for the law."

The board clearly considered all relevant factors here. The board, however, is not required to give equal weight to all of those factors. Cruz v. New York State Div. of Parole, 39 A.D.3d 1060, 1062, 833 N.Y.S.2d 311, 312 (3rd Dep't 2007). Here, the board placed more emphasis on the seriousness of the crime for which Petitioner is imprisoned, which is within the board's discretion. Id. Judicial review in an Article 78 proceeding serves to determine if there is a rational basis for the action sought to be reviewed. Clancy-Cullen Storage Co., Inc. V. Board of Elections in City of New York, 98 A.D.2d 635, 636, 469 N.Y.S. 894, 895 (1st Dept. 1983). It is not the function of the court to substitute its judgment for that of the body reviewed. Id. The board's written decision explained that all relevant information was considered and provided a rational basis for their decision. Therefore, this court finds that there was a rational basis for denying Petitioner's application for parole, and that the decision was not arbitrary or capricious.

The petition is dismissed.

All papers, including this Decision and Order are being returned to the attorneys for the Respondent. The signing of this Decision and Order shall not constitute entry or filing under CPLR 2220. Counsel are not relieved from the applicable provisions of that section respecting filing, entry and notice of entry.

SO ORDERED!

Dated: October 26, 2007
 Albany, New York


Joseph C. Teresi, J.S.C.

PAPERS CONSIDERED:

1. Petition, dated July 12, 2007, with Attached Exhibits A - F.
2. Answer, dated October 11, 2007 with Attached Exhibits A - J.