STATE OF NEW YORK
SUPREME COURT **COUNTY OF FRANKLIN**

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In the Matter of the Application of
CHARLES RANSOM, #85-A-1643,
Petitioner,

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

DECISION AND JUDGMENT
RJI #16-1-2010-0244.47
INDEX # 2010-601
ORI #NY016015J

-against-

NEW YORK STATE DIVISION
OF PAROLE,
Respondent.

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This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the Petition of Charles Ransom, verified on April 23, 2010 and filed in the Franklin County Clerk's office on May 3, 2010. Petitioner, who is now an inmate at the Otisville Correctional Facility, is challenging the February 2009 determination denying him parole and directing that he be held for an additional 24 months. The Court issued an Order to Show Cause on May 6, 2010 and received and reviewed respondent's Notice of Motion to dismiss, supported by the Affirmation of C. Harris Dague, Esq., Assistant Attorney General, dated June 24, 2010. Petitioner's opposing papers were filed in the Franklin County Clerk's office on July 26, 2010. By Decision and Order dated August 9, 2010 respondent's motion was denied and it was directed to serve answering papers. The Court has since received and reviewed respondent's Answer, including confidential Exhibits B and D, verified on November 17, 2010 and supported by the Affirmation of C. Harris Dague, Esq., Assistant Attorney General, dated November 17, 2010. The Court has also received and reviewed petitioner's Reply thereto, filed in the Franklin County Clerk's office on January 12, 2011.

On February 28, 1985 petitioner was sentenced in Supreme Court, New York County, to an indeterminate sentence of 25 years to life upon his conviction of the crime of Murder 2°. The "REMARKS" section of the sentence and commitment order contains the following notation: "with the recommendation that the defendant not be paroled". After a postponement in January of 2009, petitioner made his initial appearance before a Parole Board on February 3, 2009. Following that appearance a decision was rendered denying him discretionary release and directing that he be held for an additional 24 months. All three parole commissioners concurred in the denial determination which reads as follows:

> "AFTER A REVIEW OF THE RECORD AND INTERVIEW, THE PANEL HAS DETERMINED THAT IF RELEASED AT THIS TIME, YOUR RELEASE WOULD BE INCOMPATIBLE WITH THE WELFARE OF SOCIETY AND WOULD SO DEPRECATE THE SERIOUS NATURE OF THE CRIME AS TO UNDERMINE RESPECT FOR THE LAW. THIS DECISION IS BASED ON THE FOLLOWING FACTORS:
>
> YOUR INSTANT OFFENSE OF MURDER 2ND FOR WHICH YOU ARE SERVING 25-0-0/LIFE. THE RECORD STATES THAT YOU CAUSED THE DEATH OF A FEMALE VICTIM AFTER MANUAL STRANGULATION AND ASPHYXIATION. THE VICTIM'S DECOMPOSED BODY WAS FOUND INSIDE A STEAMER TRUNK ON THE APARTMENT TERRACE. THE HEAD WAS COVERED WITH A PLASTIC BAG.
>
> THIS CRIME WAS A SEVERE ESCALATION OF A CRIMINAL RECORD WHICH INCLUDED AN ATT. ROBBERY RELATED OFFENSE. WHILE INCARCERATED YOU INCURRED MULTIPLE TIER III DISCIPLINARY INFRACTIONS WHICH INCLUDES VIOLENT CONDUCT, FIGHTING AND A WEAPON.
>
> THE BOARD NOTES YOUR EDUCATIONAL AND PROGRAM ACCOMPLISHMENTS. MORE COMPELLING, HOWEVER, IS THE EXTREME VIOLENCE EXHIBITED IN THE INSTANT OFFENSE AND YOUR CALLOUS DISREGARD FOR THE LIFE OF THE VICTIM. THAT COMBINED WITH YOUR PRIOR DISCIPLINARY RECORD MAKES YOUR RELEASE AT THIS TIME INAPPROPRIATE."

The document perfecting petitioner's administrative appeal was received by the Division of Parole Appeals Unit on June 25, 2009. The Appeals Unit, however, failed to issue its findings and recommendation within the four-month time frame specified in 9 NYCRR §8006.4(c). This proceeding ensued.

Executive Law §259-i(2)(c)(A) provides, in relevant part, as follows: "Discretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society and will not so deprecate the seriousness of his crime as to undermine respect for law. In making the parole release decision, the guidelines adopted pursuant to subdivision four of section two hundred fifty-nine-c of this article shall require that the following be considered: (i) the institutional record including program goals and accomplishments, academic achievements, vocational education, training or work assignments, therapy and interpersonal relationships with staff and inmates . . . [and] (iii) release plans including community resources, employment, education and training and support services available to the inmate . . ." In addition to the above, where, as here, the minimum period of imprisonment was established by the sentencing court, the Board must also consider the seriousness of the underlying offense (with "due consideration" to, among other things, the "recommendations of the sentencing court . . .") as well as the inmate's prior criminal record. *See* Executive Law §259-i(2)(c)(A) and §259-i(1)(a).

Discretionary parole release determinations are statutorily deemed to be judicial functions which are not reviewable if done in accordance with law (Executive Law §259-i(5)) unless there has been a showing of irrationality bordering on impropriety. *See Silmon v. Travis,* 95 NY2d 470, *Vasquez v. Dennis*on, 28 AD3d 908, *Webb v. Travis*, 26

AD3d 614 and *Coombs v. New York State Division of Parole*, 25 AD3d 1051. Unless the petitioner makes a "convincing demonstration to the contrary" the Court must presume that the New York State Board of Parole acted properly in accordance with statutory requirements. *See Nankervis v. Dennison,* 30 AD3d 521*, Zane v. New York State Division of Parole*, 231 AD2d 848 and *Mc Lain v. Division of Parole*, 204 AD2d 456.

Petitioner first asserts that the parole denial determination was fatally flawed by reason of the Board's failure to obtain a copy of the 1985 sentencing minutes and the resulting failure of the Board to consider the recommendations of the sentencing court. A Parole Board considering a DOCS inmate for discretionary release is clearly required to take into account any parole recommendation of the sentencing judge and is therefore ordinarily required to have before it a copy of the relevant sentencing minutes. *See Standley v. New York State Division of Parole*, 34 AD3d 1169 and *McLaurin v. New York State Board of Parole*, 27 AD3d 565. Notwithstanding the foregoing, however, where a Parole Board erroneously fails to review the relevant sentencing minutes such error may be considered harmless where a copy of the minutes is ultimately made part of the Article 78 court's record and such minutes reveal that the sentencing judge made no parole recommendation. *See Schettino v. New York State Division of Parole*, 45 AD3d 1086. In the case at bar an examination of the 1985 sentencing minutes, annexed to the respondent's Answer as part of Exhibit H, reveals that the sentencing judge specifically recommended that petitioner " . . . never be granted parole." This Court finds it appropriate to apply the harmless error analysis, as set forth in *Schettino*, where, as here, the only parole recommendation set forth in the unreviewed sentencing minutes was unfavorable to the petitioner/ prospective parolee.

Petitioner next argues that the parole denial determination was based upon erroneous information in his parole records. More specifically, petitioner asserts that the

references to an Arson 2° arrest on May 26, 1983 and a Criminal Possession of a Controlled Substance 7° arrest on August 12, 1983, as set forth in the criminal history portion of the Inmate Status Report, were improper since both charges were ultimately adjudicated in his favor and the records thereof were ordered sealed pursuant to CPL §160.50. Petitioner also maintains that the reference to "2 thru 3" jail terms under the "PRIOR CRIMINAL HISTORY SCORE" calculations on page one of the Parole Board Release Decision Notice is erroneous since he only served one prior jail term as a result of a conviction of the crime of Attempted Robbery 2°.

Petitioner's assertions notwithstanding, the Court finds nothing in the record to indicate that the alleged erroneous information served as a basis for the parole denial determination. *See Restivo v. New York State Board of Parole*, 70 AD3d 1096. The only reference in the parole denial determination to a prior criminal offense was in the context of the Board's finding that petitioner's instant Murder 2° conviction represented ". . . A SEVERE ESCALATION OF A CRIMINAL RECORD WHICH INCLUDED AN ATT. ROBBERY RELATED OFFENSE." As alluded to previously, it is not disputed that before petitioner committed the acts underlying his Murder 2° conviction he had been convicted of the crime of Attempted Robbery 2°.

A significant portion of the remainder of the petition is focused, in one way or another, upon the assertion that the Parole Board failed to give adequate consideration to other, non-offense related, statutory factors. On the pages of the petition numbered six and seven the following is asserted:

> "The record before the Board demonstrated that each and every factor weighed in favor of release. Appellant's sole prior offense was for the non-violent offense of attempted robbery 2°, for which he received a determinate [presumably, definite] sentence of 1 year in the County Jail. Appellant has no other past convictions. Appellant's program record is exemplary. Not only has he completed all of his recommended programs, he has,

> throughout his incarceration, serve [sic] as a role model to his fellow inmates through example and volunteering in therapeutic programs . . . Appellant's Guidance Unit record will also show his voluntary involvement in charitable fund raisers for several organizations and not-for profit groups . . . and numerous other charitable fund raisers with church groups.
>
> While the Appellant's disciplinary record included a number of infractions, the majority of his infractions, specifically those mentioned by the Board, occurred during the earlier part of his incarceration. Notably, the Appellant has had a few serious infractions, and has had no infractions whatsoever since 2004."

A parole board need not assign equal weight to each statutory factor it is required to consider in connection with a discretionary parole determination, nor is it required to expressly discuss each of those factors in its written decision. *See Martin v. New York State Division of Parole*, 47 AD3d 1152, *Porter v. Dennison*, 33 AD3d 1147 and *Baez v. Dennison,* 25 AD3d 1052, *lv den* 6 NY3d 713. As noted by the Appellate Division, Third Department, the role of a court reviewing a parole denial determination ". . . is not to assess whether the Board gave the proper weight to the relevant factors, but only whether the Board followed the statutory guidelines and rendered a determination that is supported, and not contradicted, by the facts in the record. Nor could we effectively review the Board's weighing process, given that it is not required to state each factor that it considers, weigh each factor equally or grant parole as a reward for exemplary institutional behavior." *Comfort v. New York State Division of Parole,* 68 AD3d 1295, 1296 (citations omitted).

A review of the Inmate Status Report and the transcript of the parole hearing reveals that the Board had before it, and considered, the appropriate statutory factors including petitioner's programming, vocational and academic achievements, disciplinary record, release plans, as well as the circumstances of the crime underlying his incarceration and prior criminal record. *See Zhang v. Travis*, 10 AD3d 828. During the

course of the February 3, 2009 parole interview, moreover, petitioner was afforded wide latitude to discuss matters he considered relevant to the discretionary parole release determination. In view of the foregoing, the Court finds no basis to conclude that the Parole Board failed to consider the relevant statutory factors. *See Pearl v. New York State Division of Parole,* 25 AD3d 1058 and *Zhang v. Travis*, 10 AD3d 828.

Since the requisite statutory factors were considered, and given the narrow scope of judicial review of discretionary parole denial determinations, the Court finds no basis to conclude that the denial determination in this case was affected by irrationality bordering on impropriety as a result of the emphasis placed by the Board on the nature of the crime underlying petitioner's incarceration and his prison disciplinary record. *See Veras v. New York State Division of Parole,* 56 AD3d 878, *Serrano v. Dennison,* 46 AD3d 1002, *Schettino v. New York State Division of Parole,* 45 AD3d 1086 and *Farid v. Travis,* 17 AD3d 754, *app dis* 5 NY3d 782.

Finally, this Court finds that there is no statutory, regulatory or judicial requirement mandating the Parole Board to provide guidance as to in how an inmate might improve his or her chances of securing discretionary parole release at a future Board appearance. *See Freeman v. New York State Division of Parole*, 21 AD3d 1174.

Based upon all of the above, it is, therefore, the decision of the Court and it is hereby

ADJUDGED, that the petition is dismissed.

Dated: February 7, 2011 at
Indian Lake, New York.

S. Peter Feldstein
Acting Supreme Court Justice