Matter of Green v Annucci
2015 NY Slip Op 31064(U)
June 22, 2015
Supreme Court, Wyoming County
Docket Number: 21,599-15
Judge: Michael M. Mohun

STATE OF NEW YORK
SUPREME COURT : COUNTY OF WYOMING

In the Matter of the Application of
VALARAE GREEN, #11-A-1974
Petitioner,

-vs- Index No. 21,599-15

ANTHONY ANNUCCI, Acting Commissioner,
New York State Department of Corrections
and Community Supervision,

Respondent

MEMORANDUM AND JUDGMENT

By petition pursuant to Article 78 of the CPLR verified on February 20, 2015, Valarae Green seeks review of a parole release hearing conducted on March 19, 2014, at the Wyoming Correctional Facility. Petitioner is represented by counsel assigned by the order to show cause dated February 24, 2015. The respondent requests that the petition be denied or dismissed upon the answer dated April 22, 2015, and the record of confidential information submitted to the Court. Petitioner's counsel has also submitted a reply to the answer dated May 11, 2015.

The petition is without merit. The petitioner is serving an aggregate sentence with a maximum term of "life" (Penal Law §70.30[1][b]; see People v. Buss, 11 N.Y.3d 553 [2008]). In December of 1991, he received a prison term of 10 years to life for his conviction upon the charge

of Robbery in the 2nd degree. Then, having been paroled with respect to that sentence in February of 2006, the petitioner was arrested in July of 2010 for Burglary in the 3rd degree and Grand Larceny in the 4th degree. He pleaded guilty to those charges and received new sentences of 1½ to 3 years and 2 to 4 years to be served concurrently with each other and consecutively to his prior undischarged term.

Alleging that the petitioner never received notice that he had been declared delinquent upon his 1991 sentence following his convictions for the Burglary 3rd and Grand Larceny 4th, Petitioner's counsel claims that the petitioner "continues to serve on parole on the 1991 sentence." She further argues that the petitioner's Burglary and Grand Larceny sentences have expired. Upon this basis, she contends that the Board had no authority to deny the petitioner parole. This contention is incorrect. The petitioner continues to be held pursuant to his aggregate sentence which incorporates the term of 10 years to life that he received in 1991. His parole upon that sentence "was automatically revoked by operation of law" when he was convicted and sentenced to prison upon the new felony convictions (People ex rel. Jackson v. Morrisey, 43 A.D.3d 1301 [4th Dept., 2007], leave to appeal denied by 9 N.Y.3d 816 [2007]; Executive Law § 259–i [3][d][iii]). This automatic revocation of parole remains in force (compare Matter of Sparago v. New York State Board of Parole,71 N.Y.2d 943 [1988] [in which

the petitioner's parole revocation was subsequently vacated by stipulation]; see also, Matter of Santiago v. Alexander, 2010 WL 3235407 [Unreported decision, Supreme Ct., Franklin Co, July 22, 2010]; Matter of Maguire v. New York State Division of Parole, 304 A.D.2d 1003 [3rd Dept., 2003]). Furthermore, even if the petitioner's conclusory assertion is credited that no delinquency notice was given to him, this fact would not affect the requirement that the sentences be aggregated, nor would it affect the Parole Board's authority to conduct a parole release hearing pursuant to the resulting aggregated sentence.

The Parole Board's decision in the petitioner's case stated sufficient grounds for the denial of his application for parole release (see Matter of Fuchino v. Herbert, 255 A.D.2d 914 [4th Dept., 1998]; Matter of Scott v. Russi, 208 A.D.2d 931 [2nd Dept., 1994]; Matter of Putland v. Herbert, 231 A.D.2d 893 [4th Dept., 1996], motion for leave to appeal denied 89 N.Y.2d 806 [1997]; Matter of Salcedo v. Ross, 183 A.D.2d 771 [2nd Dept., 1992]; People ex rel Justice v. Russi, 226 A.D.2d 821 [3rd Dept., 1996]). In finding that parole should be denied, the commissioners had the discretion to give greater weight to the negative factors present in the petitioner's case – factors such as the petitioner's prior criminal record and his past failure to remain law abiding while under parole supervision – than they gave to the factors favoring parole (Matter of Hall v. New York State

Div. of Parole, 66 A.D.3d 1322 [3rd Dept., 2009]; Matter of Davis v. Lemons, 73 A.D.3d 1354 [3rd Dept., 2010]; Matter of Ristau v. Hammock, 103 A.D.2d 944 [3rd Dept., 1984], motion for leave to appeal denied 84 N.Y.2d 910 [1984]). Their decision denying parole did not have to specifically mention every factor weighed in reaching the determination (see Matter of Mackall v. New York State Board of Parole, 91 A.D.2d 1023 [2nd Dept., 1983], motion for leave to appeal denied 58 N.Y.2d 609 [1983]; Matter of Davis v. New York State Division of Parole, 114 A.D.2d 412 [2nd Dept., 1985]). The record fails to support the petitioner's contention that the Board neglected to consider his sentencing minutes. Lastly, the Board did not exceed its discretion in the scheduling of the petitioner's next appearance to be considered for discretionary release, and the petitioner has not shown that the 24-month hold was excessive under the circumstances of this case.

The Petitioner has not demonstrated that the Board failed to give fair consideration to all of the relevant statutory factors pursuant to Executive Law §259-i(2)(c) (see Matter of Robles v. Fischer, 117 A.D.3d 1558 [4th Dept., 2014]; Matter of Zane v. Travis, 231 A.D.2d 848 [4th Dept., 1996]; People ex rel Thomas v. Superintendent of Arthur Kill Correctional Facility, 124 A.D.2d 848 [2nd Dept., 1986], leave to appeal denied 69 N.Y.2d 611 [1986]). Thus, judicial intervention is precluded in this matter because the petitioner has failed to establish that the respondent's decision was made

in violation of the law, or was not supported by the record and tainted by "irrationality bordering on impropriety" (see Matter of Russo v. New York State Division of Parole, 50 N.Y.2d 69, 77 [1980]; Matter of Despard v. Russi, 192 A.D.2d 1076 [4th Dept., 1993], motion for leave to appeal denied 82 N.Y.2d 652 [1993]; Matter of Robles v. Alexander, 70 A.D.3d 1338 [4th Dept., 2010]).

NOW, THEREFORE, it is hereby

ORDERED that the petition is dismissed.

Dated: June 22, 2015
Warsaw, New York

HON. MICHAEL M. MOHUN
Acting Justice of the Supreme Court