Matter of Williams v New York State Parole of Bd.
2015 NY Slip Op 31820(U)
September 30, 2015
Supreme Court, St. Lawrence County
Docket Number: 145418
Judge: S. Peter Feldstein
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STATE OF NEW YORK
SUPREME COURT **COUNTY OF ST. LAWRENCE**

In the Matter of the Application of
RUDOLPH WILLIAMS, a/k/a
RUDOLF WILLIAMS, #75-B-0971,

Petitioner,

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

-against-

DECISION AND JUDGMENT
RJI #44-1-2015-0178.9
INDEX # 145418
ORI # NY044015J

NEW YORK STATE PAROLE OF BOARD,
Respondent.

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the Petition of Rudolph Williams, verified on March 11, 2015 and filed in the St. Lawrence County Clerk's Office on March 18, 2015. Petitioner, who is an inmate at the Gouverneur Correctional Facility, is challenging the May 2014 determination denying him discretionary parole release and directing that he be held an for an additional 24 months. The Court issued an Order to Show Cause on March 23, 2015 and has received and reviewed respondent's Answer and Return, including confidential exhibits, verified on May 15, 2015 and supported by the Affirmation of William B. Gannon, Esq., Assistant Counsel, New York State Board of Parole, dated April 13, 2015. The Court has also received and reviewed petitioner's Affidavit in Support of Petitioner's Reply to Respondent's Answer, dated May 24, 2015 and filed in the St. Lawrence County Clerk's office on May 28, 2015.

On June 19, 1975 petitioner was sentenced in Supreme Court, Kings County, to an indeterminate sentence of 20 years to life upon his conviction of the crime of Murder. After having been denied discretionary parole release on nine previous occasions

petitioner's made his tenth appearance before a Parole Board on May 21, 2014. Following that appearance a decision was issued again denying him discretionary parole release and directing that he be held for an additional 24 months. The May 2014 parole denial determination reads as follows:

> "AFTER CAREFULLY REVIEWING YOUR RECORD, A PERSONAL INTERVIEW, AND DUE DELIBERATION, THIS PANEL CONCLUDES THAT DISCRETIONARY RELEASE IS NOT PRESENTLY WARRANTED AS THERE IS A REASONABLE PROBABILITY YOU WOULD NOT LIVE AT LIBERTY WITHOUT AGAIN VIOLATING THE LAW AND FURTHERMORE, 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. YOU STAND CONVICTED OF THE SERIOUS OFFENSE OF MURDER. THIS IS YOUR FIRST NEW YORK STATE INCARCERATION. YOUR CRIMINAL HISTORY BEGAN IN 1972 AT AGE 16 AND SHOWS AN ESCALATION IN BEHAVIOR UNDETERRED BY COURT INTERVENTIONS.
>
> THE PANEL TAKES NOTE OF ALL STATUTORY FACTORS INCLUDING YOUR REHABILITATIVE EFFORTS AND PROGRAMING, RISK AND NEEDS ASSESSMENT, RE-ENTRY PLANS, LETTERS OF SUPPORT, DEGREE OF COMMUNITY OPPOSITION, SENTENCING MINUTES, AND YOUR DISCIPLINARY RECORD. THE PANEL NOTES YOUR IMPROVED DISCIPLINE SINCE YOUR LAST BOARD APPEARANCE.
>
> AT THIS TIME, THE PANEL HAS DETERMINED THAT AFTER WEIGHING ALL REQUIRED FACTORS, YOUR DISCRETIONARY RELEASE IS DENIED. THE PANEL URGES YOU TO REMAIN DISCIPLINE FREE AND CONTINUE TO PROGRAM POSITIVELY. THE PANEL ALSO URGES YOU TO WORK ON YOUR RELEASE PLANS."

The document perfecting petitioner's administrative appeal from the May 2014 parole denial determination was received by the DOCCS Board of Parole Appeals Unit on November 7, 2014. The Appeals Unit, however, failed to issue its findings and recommendation within the four-month time frame set forth in 9 NYCRR §8006.4(c). This proceeding ensued.

Executive Law §259-i(2)(c)(A), as amended by L 2011, ch 62, part C , subpart A, §38-f-1, effective March 31, 2011, 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 the law. In making the parole release decision, the procedures 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 interactions with staff and inmates . . . (iii) release plans including community resources, employment, education and training and support services available to the inmate . . . (vii) the seriousness of the offense with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court, the district attorney, the attorney for the inmate, the presentence probation report as well as consideration of any mitigating and aggravating factors, and activities following arrest prior to confinement; and (viii) prior criminal record, including the nature and pattern of offenses, adjustment to any previous probation or parole supervision and institutional confinement . . ."

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, *Hamilton v. New York State Division of Parole,* 119 AD3d 1268, *Vasquez v. Dennis*on, 28 AD3d 908 and *Webb v. Travis*, 26 AD3d 614. 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 Jackson v. Evans,* 118 AD3d 701*, Nankervis v. Dennison,* 30 AD3d 521 and *Zane v. New York State Division of Parole*, 231 AD2d 848.

Petitioner has advanced a variety of arguments in support of his ultimate contention that the May 2014 parole denial determination must be overturned. At this

juncture the Court is most concerned with the arguments advanced in paragraphs six through nine of the petition, wherein petitioner asserts that the May 2014 parole denial determination lacked sufficient, non-conclusory detail.

Upon review of the May 2014 parole denial determination the Court is struck by the fact that the Parole Board's conclusions are merely a recitation of portions of the language set forth in Executive Law §259-i(2)(c)(A). The Board then goes on to state that it noted various statutory factors, with minimal effort to tailor the largely boilerplate list of factors to the specific facts and circumstances of petitioner's case. There is no effort to provide even minimal insight into how the Board's consideration of the statutory factors led to its ultimate conclusion that the denial parole was warranted.

Although the Appellate Division, Third Department, has held that a parole denial determination may be based solely on the nature of the crime(s) underlying an inmate's incarceration where the remaining statutory factors are considered but ultimately found not to outweigh the seriousness of the crime (*see Hamilton v. New York State Division of Parole*, 119 AD3d 1268), in the case at bar the Court is left to speculate as to whether or not the Parole Board engaged in such a weighing process since the parole denial determination is silent on this point. The Court notes, moreover, that the largely boilerplate reference to the statutory factors, as set forth in the May 2014 parole denial determination, is particularly troubling since several of the factors bear no apparent relationship to the facts and circumstances of petitioner's case. While the Parole Board purported to take note of "LETTERS OF SUPPORT, DEGREE OF COMMUNITY OPPOSITION [and] SENTENCING MINUTES," no letters of support or expressions of community opposition appear to be included in the record before the Court and the 1975 sentencing minutes were specifically referenced as being unavailable.

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

ADJUDGED, that the petition is granted, without costs or disbursements, but only to the extent that the May 2014 parole denial determination is vacated and the matter remanded for prompt *de novo* parole release consideration not inconsistent with this Decision and Judgment.

DATED: September 30, 2015 at
Indian Lake, New York

____
S. Peter Feldstein
Acting Supreme Court Judge