Matter of Pratt v New York State Div. of Parole
2017 NY Slip Op 31988(U)
March 28, 2017
Supreme Court, St. Lawrence County
Docket Number: 148536
Judge: S. Peter Feldstein
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK
SUPREME COURT **COUNTY OF ST. LAWRENCE**

- X

In the Matter of the Application of
SHAVON PRATT,#15-R-1168,

Petitioner,

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

DECISION AND JUDGMENT
RJI #44-1-2016-0599.19
INDEX #148536

-against-

NEW YORK STATE DIVISION OF PAROLE,

Respondent.

- X

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the Petition of Shavon Pratt, verified on September 19, 2016 and filed in the St. Lawrence County Clerk's office on September 29, 2016. Petitioner, who is currently an inmate at the Gouverneur Correctional Facility, is challenging the determination of the Parole Board affirmed on August 15, 2016.

The Court issued an Order to Show Cause on October 7, 2016 and has received and reviewed respondent's Answer and Return verified January 6, 2017[1], including confidential Exhibits B, C and I. No reply was received.

On April 30, 2015, following his plea of guilt to one count of Conspiracy in the Second Degree, the Supreme Court, New York County sentenced petitioner to an indeterminate term of incarceration for a period of two (2) to six (6) years. The petitioner appeared for the first time before the Parole Board on January 27, 2016. Following that appearance, Petitioner was denied discretionary parole release and it was directed that he be held for an additional 24 months. The parole denial determination reads as follows:

" Denied 24 months. Next appearance December 2017.

---

[1] By letter-order dated December 23, 2016, the Court granted the respondent's request for a brief extension to file the Answer and Return.

> Despite an Earned Eligibility Certificate, parole is denied. After a personal interview, record review, and deliberation it is the determination of this Panel that if released at this time, there is a reasonable probability that you would not live at liberty without violating the law. Your release at this time is incompatible with the welfare and safety of the community. You appear before this Panel for the serious instant offense of conspiracy in the second degree. Your criminal record reflects prior unlawful behavior, which is a concern for this Panel. This Panel questions your judgment and disregard for the law.
>
> Consideration has been given to an assessment of your risk and needs for success on parole. The Panel notes your programming, good disciplinary record, your case plan, and release plans. However, despite these accomplishments, when considering all relevant factors, discretionary release is not warranted." Resp. Ex. E.

An appeal of the parole board's determination was filed by the petitioner on June 3, 2016. Thereafter, the Board of Parole Appeals Unit upheld the determination on June 30, 2016.

Notwithstanding the Parole Board interview held on January 27, 2016, the petitioner again appeared before the panel for a merit interview on February 24, 2016. The panel denied release and made the following determination:

> "Notwithstanding receipt of your earned eligibility certificate and merit award, after a review of the record and interview, the panel has determined that if released at this time, there is a reasonable probability that your would not live and remain at liberty without again violating the law and your release would be incompatible with the welfare of society. The panel has considered your institutional adjustment including discipline and program participation. Required statutory factors have been considered, including your risk to society, rehabilitation efforts, and your needs for successful re-entry into the community. Your release plans have also been considered, as well as your COMPAS risk and needs assessment, case plan and sentencing minutes which are in the file. You appeared before this panel for the serious offense of conspiracy 2nd in which you conspired with other gang members in an ongoing violent turf battle with other gangs in New York County. Your

> criminal history dates back to approximately 2005 and includes multiple misdemeanor convictions including assaultive, theft, criminal mischief and burglary related behaviors and failure when given the benefit of community supervision. Due consideration was given to your clean disciplinary history and satisfactory programming and letter of support in addition to your parole letter. You continue to seek to minimize your responsibility for the conspiracy which is a concern to this panel, as is your judgment in committing the number of crimes prior to the instant offense, demonstrating a willingness to place your own self interest above those of society and to violate the law. You clearly failed to benefit from prior efforts of leniency and rehabilitation. Parole denied." Resp. Ex. F.

Petitioner challenges the denial of parole release alleging that the parole board's determination was irrational bordering on impropriety as the record does not support the parole board's determination that the petitioner would violate the law if released. The petitioner argues that the parole board failed to consider any of the other criteria pursuant to Executive Law §259-i, including the COMPAS risk assessment and his Earned Eligibility Certificate, and instead focused solely on the instant offense and his past criminal history. The petitioner argues that the decision of the parole board was a foregone conclusion. The petitioner asserts that the parole board failed to give a detailed determination and that the parole board failed to give the inmate guidance in adjusting his future behavior. The petitioner asserts that while there is no constitutional right to parole, that there is a liberty interest created by the expectation of early release from prison. Similarly, the petitioner argues that the parole board is relying upon the same criteria the sentencing judge used in sentencing the petitioner; however, the parole board did not consider that the sentencing judge expected the petitioner to be released shortly after the minimum term was completed.

Preliminarily, the respondent argues that any reference to the February 24, 2016 merit interview must be dismissed insofar as the petitioner has been granted all the relief for which he is entitled relative to the merit interview. The respondent asserts that the purpose of the merit interview is to determine whether an inmate should be awarded an accelerated date for parole consideration. Insofar as the petitioner did, in fact, receive a parole interview, albeit prior to the merit interview, the petitioner has received the relief to which he would be entitled, to wit: appearance before the parole board.[2] By letter dated March 7, 2016, the Appeals Unit advised the petitioner of same. *See*, Resp. Ex. H.

Similarly, the respondent asserts that the petitioner failed to administratively raise the argument that the Parole Board failed to provide future guidance or that the denial of release is tantamount to re-sentencing. As such, the respondent argues that the failure to raise such arguments in the administrative appeal is a waiver of same in this petition. The Court agrees. "A petitioner must exhaust all administrative remedies before seeking judicial review unless an agency's action is challenged as either unconstitutional or wholly beyond its grant of power ... or when resort to an administrative remedy would be futile ... or when its pursuit would cause irreparable injury (*internal citation omitted*)" *Bennefield v. Annucci*, 122 AD3d 1329, 1331.

Additionally, respondent argues that the petition should be dismissed in its entirety insofar as the parole board is afforded great discretion in determining parole release provided that the board considers the relevant factors as described in Executive Law §259-i(c)(A). Respondent argues that there is no requirement that the parole board give equal

---

[2] 7 NYCRR §280.5 indicates that the effect of merit time is as follows:
(a) Any inmate who is granted a merit time allowance will appear before the Board of Parole for possible release on parole at a date computed by subtracting the merit time allowance from his or her parole eligibility date.
(b) If the Board of Parole grants the inmate parole, he or she will be released to parole supervision.
(c) If parole is withheld by the board, the inmate will again be considered by the board for possible release when he or she reaches the original parole eligibility date.

weight to each factor nor does an inmate's exemplary institutional record compel parole release. Respondent further asserts that the denial of parole is not akin to double jeopardy and there is no "right" to discretionary parole release. The respondent argues that the petitioner's maximum sentence was six years and therefore, the additional time is not excessive, particularly when the parole board considered the petitioner's previous criminal history in conjunction with the petitioner's minimization of his role in the instant offense.

Executive Law §259-i(c)(A), as amended by L 2011, ch 62, part C, subpart A, §§38-f and 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 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 had 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. Dennison*, 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.

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 Montane v. Evans*, 116 AD3d 197; *see also Valentino v Evans*, 92 AD3d 1054 and *Martin v. New York State Division of Parole*, 47 AD3d 1152. 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 (internal citations omitted)." *Comfort v. New York State Division of Parole*, 68 AD3d 1295, 1296.

In the case at bar, reviews of the Parole Board Report and transcript of Petitioner's January 27, 2016 Parole Board appearance reveal that the Board had before it information with respect to the appropriate statutory factors, including Petitioner's educational and institutional programming records. It was noted that the COMPAS ReEntry Risk Assessment Instrument score was relatively low other than the probability of substance abuse after re-entry and a medium risk of criminal involvement. The Parole Board noted that the petitioner was about to test for his GED and encouraged him to do so. The petitioner was able to provide input and answer questions regarding the instant offense, as well as his plans post-release. However, the Parole Board noted that at the time of sentencing and continuing in the interview, the petitioner continued to deny his culpability

[* 7]

in the crime of conviction. Although petitioner admitted that he should not have been involved with the telephone calls that prompted the criminal charge of conspiracy, the petitioner continued to deny that he was part of any conspiracy *per se*. Similarly, the petitioner blamed his previous criminal convictions upon associating with the wrong people.

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 the 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 together with the petitioner's previous lengthy criminal history. *See Neal v. Stanford,* 131 AD3d 1320 and *Confoy v. New York State Division of Parole*, 173 AD2d 1014.

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: March 28, 2017
Indian Lake, New York

____
S. Peter Feldstein
Acting Justice, Supreme Court