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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

Present:

Hon. Maria G. Rosa

Justice

DEXTER ROBINSON,

Petitioner,

DECISION, ORDER AND JUDGMENT

-against-

Index No. 2392/18

TINA M. STANFORD,

Respondent.

The following papers were read on petitioner's motion to reargue:

NOTICE OF MOTION
AFFIDAVIT IN SUPPORT

AFFIRMATION IN OPPOSITION
EXHIBIT 1

REPLY AFFIDAVIT

This is an Article 78 proceeding in which petitioner challenged a determination of the Board of Parole denying his application for parole release. In a decision, order and judgment dated January 14, 2019 this court denied the petition finding that there was a rational basis for the Board's determination. Petitioner now moves for leave to reargue the court's decision.

A motion for leave to reargue shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining a prior motion, but shall not include any matters of fact not offered on the prior motion. Ahmed v. Pannone, 116 AD3d 802 (2nd Dept 2014). While the court has discretion whether to grant leave to reargue, such a motion is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented. Id.

Petitioner maintains that the court overlooked his contention that the challenged determination failed to comply with 9 NYCRR §8002.2(a). That rule requires a Parole Board making a release determination to be guided by an inmate's risk and needs scores as generated by a risk assessment instrument. If the Board's determination in denying release departs from a risk and

needs assessment score, the Board is required to specify any scale within such assessment from which it departed and provide an individualized reason for such departure. See 9 NYCRR §8002.2. Petitioner further maintains that the court overlooked a constitutional claim that he had a protected "liberty interest" in parole release based on 2011 amendments to the Executive Law and 2017 regulatory changes to 9 NYCRR §8002.2.

Executive Law §259-c requires the State Board of Parole to establish written procedures for its use in making parole decisions that incorporate risks and needs principals to measure the rehabilitation of inmates appearing before the Board. That statute also authorizes the Board to make rules governing the conduct of its work. Pursuant to that statute, the Board has issued regulations to determine when inmates serving indeterminate sentences of imprisonment may be released from parole and under what conditions. 9 NYCRR §8002.2 was enacted as part of this statutory scheme.

A Correctional Offender Management Profiling for Alternative Sanctions ("COMPAS") assessment was prepared in connection with petitioner's April 25, 2018 appearance before the Parole Board. That assessment gave the petitioner the lowest possible rating in categories for risk of felony violence, re-arrest, absconding and for criminal involvement and found he was unlikely to have issues with family support or significant financial problems upon release. Petitioner correctly asserts that the Parole Board's finding that discretionary release would not be compatible with the welfare of society directly contradicts these scores in his COMPAS assessment. As the Board's determination denying release departed from these risks and needs assessment scores, pursuant to 9 NYCRR §8002.2 it was required to articulate with specificity the particular scale in any needs and assessment from which it was departing and provide an individualized reason for such departure. The Board's conclusory statement that it considered statutory factors, including petitioner's risk to the community, rehabilitation efforts and needs for successful community re-entry in finding that discretionary release would not be compatible with the welfare of society fails to meet this standard. As such, its determination denying parole release was affected by an error of law. Based on the foregoing, it is

ORDERED that petitioner's motion for leave to reargue is granted. He has demonstrated a matter of law this court overlooked in determining his petition. Upon reargument it is

ORDERED that the Article 78 petition to vacate and annul the April 25, 2018 determination denying him parole release is granted based upon the Board's failure to comply with 9 NYCRR §8002.2 . It is further

ORDERED that a *de novo* parole interview shall be held within sixty days of the date of this decision, order and judgment. The court rejects petitioner's assertion that the denial of parole was a violation of his constitutional rights. There is no inherent constitutional right to parole. See Matter of Russo v. New York State Bd. of Parole, 50 NY2d 69 (1980). Amendments to the Executive Law and regulatory changes to the rules governing parole release interviews merely create a legal framework and standards governing parole interviews. These regulations do not create a legitimate expectation of release and thus a Parole Board's exercise of its discretion to deny parole

does not implicate a constitutionally protected liberty interest. See Barna v. Travis, 239 F.3d 169 (2nd Cir.2001).

The foregoing constitutes the decision, order and judgment of the Court.

Dated: March 13 2019
Poughkeepsie, New York

ENTER:

MARIA G. ROSA, J.S.C.

Pursuant to CPLR §5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

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