

Matter of Kirkwood v New York State Bd. of Parole
2024 NY Slip Op 35457(U)
March 27, 2024
Supreme Court, Dutchess County
Docket Number: Index No. 2023-55121
Judge: Michael G. Hayes
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

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In the Matter of the Application of
RICHARD KIRKWOOD,

Petitioner,

DECISION, ORDER AND JUDGMENT

Index No. 2023-55121

-against-

NEW YORK STATE BOARD OF PAROLE,
DARRYL C. TOWNS, CHAIRMAN and
NEW YORK STATE DEPARTMENT OF
CORRECTIONS,

Respondents,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules.

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HAYES, M.G., Acting Supreme Court Justice

The Court read and considered the following documents upon
this petition:

PAPERS NUMBERED

Notice of Petition.....	1
Verified Petition.....	2
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In this Article 78 proceeding, the petitioner requests a
judgment reversing the respondent's decision of May 23, 2023
which denied petitioner parole. Petitioner seeks an Order
reversing the decision of the Board and directing a *de novo*
hearing.

By way of background, petitioner was convicted of five counts of Murder in the Second Degree, five counts of Criminally Negligent Homicide and one count of Arson in the Second Degree.

This conviction stemmed from the petitioner's action in August 1986 when he set fire to a three-story boarding house causing the death of five individuals.

The petitioner, a former resident of the boarding house, started a fire in the early morning hours by igniting a couch on the porch of the building, which engulfed the home and trapped the victims inside. The fire destroyed the home, injured four others, including two of the seventy-five responding firefighters, who attempted to rescue the trapped individuals from the inferno.

The petitioner set the building ablaze and walked to a nearby store to purchase a cup of coffee. He purchased the coffee, called the fire department and returned to the scene to watch the ensuing chaos. Petitioner was recognized at the scene and confessed under questioning by an officer who was investigating his involvement with a series of earlier suspicious fires. Petitioner was identified as a spectator at five of the previous fires and many of the earlier arson locations were residences where the petitioner had lived for some time in the years since his childhood.

Petitioner appeared at his most recent Board interview on

May 23, 2023. The Board ultimately denied discretionary release and imposed a 12-month hold on reconsideration. Petitioner perfected his administrative appeal on August 15, 2023, however, no decision has been rendered by the Appeals Unit.

The Board's release decisions are discretionary, and if made in accordance with statutory requirements, they are not subject to judicial review (see *Matter of Banks v Stanford*, 159 AD3d 134 [2nd Dept 2018]). The petitioner bears the heavy burden of proving that this Court must intervene. Judicial intervention is only appropriate in rare instances when the Board has acted in a manner that demonstrates a showing of irrationality bordering on impropriety (see *Silmon v Travis*, 95 NY2d 470 [2000]). Accordingly, a court may only review a parole board's denial of parole when such a denial is arbitrary and capricious (*id.*).

The submission before this Court discloses that the Board rendered its determination after considering the full record, including the petitioner's hearing testimony, institutional background, criminal history and release plans. The Board was plainly aware of the petitioner's institutional and educational achievements, including program completions. The importance of these achievements was not diminished by the Board. Rather, the Board found that they were outweighed by the gravity of the crimes committed and lack of remorse for the victims by the

petitioner.

The record indicates that the Board acted in accordance with the statutory requirements, and therefore there is no basis to disturb its determination in this Article 78 proceeding (*see Matter of Silmon v Travis*, 266 AD2d 296 [2nd Dept 1999] affirmed by 95 NY2d 470).

As to petitioner's contention that the Board failed to independently consider petitioner's COMPAS risk scores, remorse, insight into the crime, the Board stated that:

"...The Panel has weighed and considered the results of your COMPAS Risk Assessment and the low risk scores therein. The Panel does not depart from your low risk scores, moreover, concur that your release at this time is not warranted. Your low risk scores fail to outweigh the gravity and disregard for the deaths of five victims. In the interview, when questioned, you were unable to express viable reasoning as to why you were compelled to ignite that dwelling. You claimed being angry given your being removed from residing therein. Said anger was at one individual and you set the residence afire. The Panel was not persuaded of your remorse. Your interview failed to consider the victims even after being prodded.

Despite your positive work and accomplishments while confined, the Panel was disturbed that you focused on yourself, accomplishments and works more than the harm and devastation you caused. Your release will not be granted merely as a reward for good conduct and efficient use of time while confined. The Panel strongly suggests that you spend time wholly considering the lasting and devastating impact on all of your victims as opposed to your repeated 'I' statements. Ultimately, the Panel was moved by the repeated submissions and strong language as featured in official opposition to your release..."

This record establishes that the Board did not deny parole to the petitioner solely on the basis of the seriousness of his offense (*compare Huntley v. Evans*, 77 AD3d 945 [2nd Dept 2010]).

While the Board examined the nature of the crime committed and petitioner's focus on himself rather than the victims, it also looked at the petitioner's accomplishments, disciplinary records and COMPAS risk assessment and made the required findings of fact as to why his release would be incompatible with society's welfare and safety.

The Court finds that the Board set forth in adequate detail the reasons for its denial of his request for release (see *Matter of Burress v Evans*, 107 AD3d 1216 [3rd Dept 2013]).

Accordingly, the petitioner has failed to establish that the Board's determination evinced irrationality bordering on impropriety (see *Goldberg v New York State Bd. of Parole*, 103 AD3d 634 [2nd Dept 2013]).

Petitioner's remaining contention concerning the respondent's alleged application of a random, opaque and unauthorized system of weights and that the Board's findings was "utterly belied by the record", are without merit.

It is therefore:

ORDERED, that the Petition is dismissed.

This constitutes the Decision, Order and Judgment of the Court.

Dated: March 27, 2024
Poughkeepsie, New York



HON. MICHAEL G. HAYES, AJSC