

Tineo v Towns

2025 NY Slip Op 33921(U)

October 9, 2025

Supreme Court, New York County

Docket Number: Index No. 451615/2025

Judge: Jeffrey H. Pearlman

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JEFFREY H. PEARLMAN PART 44M

Justice

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MICHAEL TINEO,

Petitioner,

- v -

DARRYL TOWNS,

Respondent.

-----X

INDEX NO. 451615/2025

MOTION DATE 05/13/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 13, 14, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Petitioner brings this Article 78 proceeding challenging the July 2024 determination of the New York State Board of Parole (“the Board”), which denied his application for discretionary parole release. Petitioner seeks to:

- 1) set aside, as arbitrary and capricious, an abuse of discretion, and contrary to law, the July 30, 2024 denial of his application for release on parole;
- 2) direct the Parole Board to afford Mr. Tineo an de novo parole release interview within 30 days of this order, before a new panel that does not include any commissioner who has previously denied Mr. Tineo release, at which Respondent shall consider all appropriate statutory factors governing parole release determinations;
- 3) direct Respondent to disclose, prior to that interview, all documents relied upon by the Board; and
- 4) direct Respondent, under threat of contempt, to either grant Mr. Tineo parole or, if it is determined to again deny his application, “specify” each and every scale in the COMPAS assessment¹ from which it is departing and provide an “individualized reason” for why it is doing so, as required by 9 NYCRR 8002.2(a). NYSCEF Doc. No. 1.

¹ The COMPAS (Correctional Offender Management Profiling for Alternative Sanctions) is a risk and needs assessment tool used in the criminal justice system to evaluate offenders' likelihood of recidivism and identify their rehabilitation needs.

Respondent denies the allegations presented and respectfully requests that the court grant the following:

- a. Judgment confirming Respondent's determination and dismissing the Petition;
- b. Judgment denying Petitioner's request for records and other information;
- c. Such other relief as this Court deems just and proper.

In an Article 78 motion, "judicial review is limited to whether the determination was irrational, arbitrary and capricious or contrary to law." *Matter of Madison County Indus. Dev. Agency v State of N.Y. Auths. Budget Off.*, 33 NY3d 131, 135. Article 78 of the CPLR allows a challenge to state administrative law where "a determination was... as arbitrary and capricious or an abuse of discretion." CPLR 7803(3). "Administrative action is irrational or arbitrary and capricious if 'it is taken without sound basis in reason or regard to the facts.'" *Matter of Madison County Indus. Dev. Agency v State of N.Y. Auths. Budget Off.*, 33 NY3d 131, 135, quoting *Matter of Wooley v New York State Dept. of Correctional Servs.*, 15 NY3d 275, 280 (2010). "If a determination is rational it must be sustained even if ... another result would also have been rational." *Matter of Madison County Indus. Dev. Agency v State of N.Y. Auths. Budget Off.*, 33 NY3d at 135. Further, the determination must be sustained "even if the court concludes that it would have reached a different result than the one reached by the agency." *Matter of Peckham v. Calogero*, 12 N.Y.3d 424, 431 (citing *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222). Upon careful review of the record and relevant law, the petition is hereby denied for the reasons set forth below.

BACKGROUND

Petitioner is a 42-year-old man who has been incarcerated for over twenty years for his guilty plea to Murder in the Second Degree. At the time of the Board's decision, Petitioner had served approximately 19 years of his sentence.

In its decision, the Board acknowledged Petitioner's favorable institutional record, including completion of rehabilitative programs, positive work evaluations, and the absence of

recent disciplinary infractions. The Board also considered Petitioner's COMPAS risk and needs assessment, which indicated a low risk of recidivism.

Nevertheless, the Board denied parole, citing the seriousness of the underlying offense, the impact on the victim's family, and concerns that release would so deprecate the seriousness of the crime as to undermine respect for the law.

DISCUSSION

It is well settled that “[i]n New York, the Parole Board holds the power to decide whether to release a sentenced prisoner on parole.” *Silmon v. Travis*, 95 N.Y.2d 470, 476 (2000). This power is discretionary, and the Board may grant parole only when it determines that:

1. There is a reasonable probability that, if released, the inmate will live and remain at liberty without violating the law;
2. Release is not incompatible with the welfare of society; and
3. Release will not so deprecate the seriousness of the offense as to undermine respect for the law.

See N.Y. Exec. Law § 259-i(2)(c)(A); *Silmon*, 95 N.Y.2d at 477.

A conclusion that an incarcerated individual fails to satisfy any of the above considerations constitutes an independent basis to deny parole. *Id.*

While Petitioner argues that the Board failed to give adequate weight to his rehabilitation and low COMPAS risk scores, the law is clear that “[t]he weight to be accorded to each of the factors lies solely within the Board's discretion.” *Siao-Pao v. Dennison*, 51 A.D.3d 105, 108 (1st Dep't 2008), *aff'd*, 11 N.Y.3d 777 (2008). The Board is not required to give equal weight to each statutory factor, nor is it obligated to explicitly reference every consideration in its written decision. *Campbell v. Stanford*, 173 A.D.3d 1012, 1015 (2d Dep't 2019). Furthermore, the Board is presumed to have acted in accordance with its statutory obligations unless a petitioner makes a “convincing demonstration to the contrary.” *Jackson v. Evans*, 118 A.D.3d 701, 702 (2d Dep't 2014). Here, Petitioner has not made such a showing.

While Petitioner’s record of rehabilitation and program participation is commendable, the Board was within its discretion to find that the serious nature of the crime and other factors weighed against release. As long as the Board considers the relevant statutory factors and articulates a rational basis for its decision, judicial intervention is unwarranted. *Silmon*, 95 N.Y.2d at 476–77.

CONCLUSION

Petitioner has failed to establish that the Parole Board’s decision was arbitrary, capricious, or affected by an error of law. The record reflects that the Board considered the relevant statutory and regulatory factors and reached a decision within its discretion.

Accordingly, for the aforementioned reasons it is hereby:


ORDERED that branch 1 of the petition is **DENIED**; and it is further

ORDERED that branch 2 of the Petition is **DENIED**; and it is further

ORDERED that branch 3 of the Petition is **DENIED**; and it is further

Ordered that the proceeding is **DISMISSED**.

October 9, 2025
DATE


HON. JEFFREY H. PEARLMAN
JEFFREY H. PEARLMAN, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE