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SUPREME COURT- STATE OF NEW YORK
DUTCHESS COUNTY

Present: Hon. THOMAS R. DAVIS, J.S.C.

SUPREME COURT: DUTCHESS COUNTY
----------X
In the Matter of the Application of
JOSHUA HOREIN,

Petitioner

-against-

NEW YORK STATE DEPARTMENT OF
CORRECTIONS AND COMMUNITY SUPERVISION,
DANIEL F. MARTUSCELLO, III, COMMISSIONER
AND DARRYL C. TOWNS, CHAIRMAN,
BOARD OF PAROLE,

Respondents.
----------X

DECISION AND ORDER
(Motion Seq. #1 & 3)

Index No.: 2023-53520

This is a proceeding pursuant to CPLR Article 78 challenging Respondents' denial of Petitioner's application for discretionary parole. The Respondents also move to reargue an earlier decision and order of the Court dated December 6, 2023 denying a motion for dismissal of the proceeding. The following papers were read and considered in determining the petition and motion:

NYSCEF document numbers 1 through 65.

Submitted *in camera,* were unredacted versions of the following: [1]

Parole Board report

Pre-Sentence Investigation

COMPAS score.

[1] A criminal history of another individual, along with Mr. Horein's criminal history, was apparently inadvertently included with the submission.

Factual and Procedural Background

In this proceeding, Petitioner seeks an order annulling the Respondent's December 20, 2022 decision denying him parole which was overturned by the Appeals Unit on July 17, 2023. Petitioner seeks an order granting him a *de novo* parole interview before a different Board panel than that which presided at the interview of that day and that such review be done in accordance with the law.

The petition alleges the Parole Board: (1) departed from the results of Mr. Horein's COMPAS assessment without providing a justification; (2) made its decision based on mischaracterizations of the record; (3) made its decision exclusively on the basis of the seriousness of the offense; (4) rendered a conclusory decision that evades judicial review; (5) failed to meaningfully consider Mr. Horein's age at the time of the offense; and (6) made its decision prior to the interview, making his denial a foregone conclusion.

The Petitioner was an inmate at the Fishkill Correctional Facility serving an indeterminate term of twenty years to life at the time of his interview.

Mr. Horein was convicted of the murder of Amber Brockway, who was 15-years-old. Mr. Horein was in a relationship with Ms. Brockway. He killed her by beating her to death with two pieces of wood, resorting to the second after the first broke. He disfigured her to such a degree that she was difficult to identify. He then left her for dead. The murder occurred only a few days after Mr. Horein turned 16-years-old. He admitted his crime when interviewed by police two days later. He pled guilty to the murder and was sentenced on April 6, 2001 to 20-years to life by Schuyler County Court Judge Argetsinger.

Petitioner is now 39-years old having been incarcerated for approximately 23 years (including pretrial detention).

He appeared for the instant parole board release interview on December 20, 2022. The board denied his request for parole.

Parole Board Decision

The Parole Board's decision reads as follows:

"A REVIEW OF YOUR RECORD, INTERVIEW AND DELIBERATION LEAD THE PANEL TO CONCLUDE THAT YOU WOULD NOT LIVE AND REMAIN AT LIBERTY WITHOUT AGAIN VIOLATING THE LAW AND 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.

REQUIRED STATUTORY FACTORS HAVE BEEN CONSIDERED, TOGETHER WITH YOUR INSTITUTIONAL ADJUSTMENT INCLUDING DISCIPLINE AND PROGRAM PARTICIPATION, YOUR RISK AND NEEDS ASSESSMENT AND YOUR NEEDS FOR SUCCESSFUL RE-ENTRY INTO THE COMMUNITY.

IN THE INSTANT OFFENSE YOU WERE CONVICTED OF MURDER 2ND. YOU STRUCK THE 15 YEAR OLD VICTIM ABOUT THE HEAD AND FACE WITH A BLUNT OBJECT REPEATEDLY CAUSING HER DEATH. DURING THE INTERVIEW, YOU CONVEYED THAT YOU AND THE VICTIM WERE IN A RELATIONSHIP AND AFTER MEETING AT A DESIGNATED LOCATION YOU ARGUED WITH RESULTED IN YOU BECOMING ENRAGED AND KILLING HER. THE PANEL ACKNOWLEDGES THAT YOU WERE 16 YEARS OLD AT THE TIME OF THE OFFENSE AND YOU HAD A DIFFICULT TIME ADJUSTING DUE TO YOU BEING NEW TO YOUR SCHOOL AND AREA AS YOU EXPRESSED. HOWEVER, YOUR ACTIONS OF BEATING YOUR VICT1M PROFUSELY FOR NO APPARENT REASON UNTIL SHE DIED WAS SENSELESS AND A TOTAL DISREGARD FOR HUMAN LIFE. IN ADDITION, THE COURSE OF YOUR CONDUCT AFTER WHEN YOU SAID YOU LEFT HER ON THE FLOOR AND WENT HOME AND WASHED YOUR HANDS AND THEN WENT TO A CARNIVAL WAS UNCONSCIENABLE. YOU FURTHER CONVEYED THAT YOUR VICTIM'S MOTHER ASKED IF YOU KNEW OF HER WHEREABOUTS AND YOU SAID NO.

THE PANEL NOTES YOUR PAROLE PACKET WITH LETTERS OF SUPPORT, CERTIFICATES AND ACHIEVEMENTS. HOWEVER, DISCRETIONARY RELEASE SHALL NOT BE GRANTED MERELY AS A REWARD FOR GOOD CONDUCT OR EFFICIENT PERFORMANCE OF DUTIES WHILE CONFINED. THOUGH YOU EXPRESS REMORSE IT APPEARS SHALLOW GIVEN YOUR VICTIM WAS A YOUNG WOMAN YOU CLAIMED YOU CARED A GREAT DEAL FOR. THE PAIN AND SUFFERING YOU CAUSED HER FAMILY AND FRIENDS IS IMMEASURABLE. IN ADDITION, THERE IS BOTH COMMUNITY AND OFFICIAL OPPOSITION TO YOUR RELEASE.

THEREFORE, DISCRETIONARY RELEASE IS NOT WARRANTED AT THIS TIME, PAROLE IS DENIED." (NYSCEF document #3).

The Petitioner has appeared before the Parole Board five times. On three different occasions, the Board's Appeals Unit has vacated the Board's decision and ordered a *de novo* review.

Applicable Legal Standards

The Court's role in determining this type of challenge to a Parole Board denial is a limited one. The Board must make decisions based on the appropriate process in the Executive Law and make determinations that are substantively rational. When the Board fails to do so, the remedy is to direct the Parole Board to provide a "do-over" properly.

Specifically, judicial review of a determination of the Parole Board is "narrowly circumscribed." (*Matter of Coleman v. New York State Dept. of Corr. & Community Supervision*, 157 A.D.3d 672 [2d Dep't 2018].) As discussed in *Matter of Campbell v. Stanford*, 173 A.D.3d 1012, 1015 [2d Dep't 2019]:

> "A Parole Board determination to deny early release may be set aside only where it evinces 'irrationality bordering on impropriety' (*Matter of Russo v New York State Bd. of Parole*, 50 NY2d 69, 77 [1980]; *see Matter of Silmon v Travis*, 95 NY2d 470, 476 [2000]; *Matter of Banks v Stanford*, 159 AD3d 134, 142 [2018]; *Matter of LeGeros v New York State Bd. of Parole*, 139 AD3d 1068, 1069 [2016]). The Parole Board is required to consider the relevant statutory factors (*see* Executive Law § 259-i [2] [c] [A]), although it is not required to address each factor in its decision or accord all the factors equal weight (*see Matter of King v New York State Div. of Parole*, 83 NY2d 788, 791 [1994]; *Matter of Coleman v New York State Dept. of Corr. & Community Supervision*, 157 AD3d at 672; *Matter of Marszalek v Stanford*, 152 AD3d 773, 773 [2017]). Whether the Parole Board considered the proper factors and followed the proper guidelines should be assessed based on the written determination evaluated in the context of the parole interview transcript (*see Matter of Siao-Pao v Dennison*, 11 NY3d 777, 778 [2008]; *Matter of Jackson v Evans*, 118 AD3d 701, 702 [2014])."

The statutory factors set forth in Executive Law §259-i(2)(c)(A) are 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 incarcerated individual is released, he or she will live and remain at liberty without violating the law, and that his or her release is not incompatible with the welfare of society and will not so deprecate the seriousness of his or her crime as to undermine respect for law."

The statute further provides, in relevant part:

> "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 incarcerated individuals; (ii) performance, if any, as a participant in a temporary release program; (iii) release plans including community resources, employment, education and training and support services available to the incarcerated individual; (iv) any deportation order issued by the federal government against the incarcerated individual while in the custody of the department and any recommendation regarding deportation made by the commissioner of the department pursuant to section one hundred forty-seven of the correction law; (v) any current or prior statement made to the board by the crime victim or the victim's representative, where the crime victim is deceased or is mentally or physically incapacitated; (vi) the length of the determinate sentence to which the incarcerated individual would be subject had he or she received a sentence pursuant to section 70.70 or section 70.71 of the penal law for a felony defined in article two hundred twenty or article two hundred twenty-one of the penal law; (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 incarcerated individual, the pre-sentence 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."

The Parole Board is not the sentencing court or the state legislature. "The Board may not deny an inmate parole based solely on the seriousness of the offense." *Matter of Ferrante v. Stanford*, 172 AD3d 31 [2d Dept 2019]).

> "The Board is not obligated to refer to each factor, or to give every factor equal weight (*Matter of King v New York State Div. of Parole*, 190 AD2d 423, 431 [1st Dept 1993], *affd* 83 NY2d 788 [1994]). However, as this Court has previously held, 'it is unquestionably the duty of the Board to give fair consideration to each of the applicable statutory factors as to every person who comes before it, and where the record convincingly demonstrates that the Board did in fact fail to consider the proper standards, the courts must intervene' (*id.* at 431). In particular,
>
> > '[t]he role of the Parole Board is not to resentence Petitioner according to the personal opinions of its members as to the appropriate penalty for murder, but to determine whether, as of this moment, given all the relevant statutory factors, he should be released. In that regard, the statute expressly mandates that the prisoner's educational and other achievements affirmatively be taken into

> consideration in determining whether he meets the general criteria relevant to parole release' (*id.* at 432).
>
> The Board may not deny parole based solely on the seriousness of the offense (*Matter of Ramirez v Evans*, 118 AD3d 707 [2d Dept 2014]; *Matter of Gelsomino v New York State Bd. of Parole*, 82 AD3d 1097 [2d Dept 2011]).
>
> Based on the record before us, we conclude that the motion court correctly determined that the Board acted with an irrationality bordering on impropriety in denying Petitioner parole."
>
> *Rossakis v New York State Bd. of Parole*, 146 AD3d 22, 27 [1st Dept 2016].

Further,

> "'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' (Executive Law § 259–i[2][c][A]). In making the parole release determination, the Board must consider the relevant statutory factors (*see* Executive Law § 259–i[2][c][A]). The Board is not required to address each factor in its decision or to give all factors equal weight (*see Matter of King v. New York State Div. of Parole*, 83 N.Y.2d 788, 791, 610 N.Y.S.2d 954, 632 N.E.2d 1277; *Matter of Coleman v. New York State Dept. of Corr. & Community Supervision*, 157 A.D.3d 672, 69 N.Y.S.3d 652; *Matter* .892). However, the Board may not deny an inmate parole based solely on the seriousness of the offense (*see Matter of Rossakis v. New York State Bd. of Parole*, 146 A.D.3d 22, 27, 41 N.Y.S.3d 490; *Matter of Ramirez v. Evans*, 118 A.D.3d 707, 707, 987 N.Y.S.2d 415; *Matter of Perfetto v. Evans*, 112 A.D.3d 640, 641, 976 N.Y.S.2d 183; *Matter of Gelsomino v. New York State Bd. of Parole*, 82 A.D.3d at 1098, 918 N.Y.S.2d 892)."
>
> *Ferrante v Stanford*, 172 AD3d 31, 37 [2d Dept 2019].

The prohibition on reliance solely on the underlying crime has been repeatedly noted:

> "[T]he Parole Board focused only on the Petitioner's conduct during the commission of the subject crimes (*see Matter of Ramirez v Evans*, 118 AD3d 707, 707 [2014]). Consequently, the Parole Board's determination to deny parole release to the Petitioner appears to have been solely based on the seriousness of the crimes he committed. We find such analysis, or lack thereof, to be incompatible with the Parole Board's duty.
>
> Thus, the record demonstrates that in light of all of the relevant factors, including, but not limited to, the Petitioner's understanding of and remorse for his crimes, his significant

accomplishments, his leadership, and demonstrated maturity, notwithstanding the seriousness of the underlying offenses, the Parole Board's determination to deny the Petitioner release on parole "evinced irrationality bordering on impropriety" (*Matter* ***877** *of Goldberg v New York State Bd. of Parole*, 103 AD3d 634, 634 [2013] [internal quotations marks omitted]; *see* Executive Law § 259-i [2] [c] [A]; *Matter of Russo v New York State Bd. of Parole*, 50 NY2d 69, 77 [1980]; *Matter of Coleman v New York State Dept. of Corr. & Community Supervision*, 157 AD3d at 673).

Under these circumstances, we deem it appropriate to reverse the judgment that upheld the Parole Board's determination denying the Petitioner's 2016 application to be released on parole and remit the matter to the Parole Board for a de novo interview before a different panel. The Petitioner is entitled to a meaningful opportunity for release in which the Parole Board considers, inter alia, his youth and its attendant characteristics (*see Matter of Putland v New York State Dept. of Corr. & Community Supervision*, 158 AD3d 633, 634 [2018])."

Rivera v Stanford, 172 AD3d 872, 876-77 [2d Dept 2019].

New York state law at the time of Mr. Horein's conviction – and now – is that the *maximum* term of imprisonment for Second-Degree murder (PL 125.25) is 25-years to life. Thus, the most serious penalty in our state for the most depraved circumstances of murder in the second-degree contemplate the eligibility for parole after serving 25-years. After presumably considering all the factors that go into determining a sentence, Mr. Horein was given less than the minimum sentence – 20-years to life. It appears, therefore, that the sentencing Court was not constrained by a statutory maximum penalty, but seriously considered that there may be circumstances where parole may be appropriate earlier.

What the Parole Board cannot do is substitute its judgment for the state legislature's or the sentencing court by determining that someone who has served 20 years should be denied parole because the crime is so depraved that 20 years is not enough *as its sole basis* for parole denial.

The Court's role is also not to determine whether an individual should be paroled. The Court does not interview the inmate. Instead, the Court's role is to determine whether the Parole Board followed the law and rules, and if not, direct that they remedy the deficiency by providing the inmate with a new review by the Board ("*de novo*") in accordance with the law.

The Record of Proceedings Before the Parole Board

In an Article 78 proceeding, it is the responsibility of the government agency to provide the Court with the full record of what transpired in the administrative process and what was considered by the agency. In this case, the Parole Board, through its attorneys, has the responsibility to provide the Court with a transcript of the parole interview and the documents considered by the Parole Board.

Respondent's Objection in Point of Law & Motion to reargue motion to dismiss

Respondent raised an objection in point of law in its answer and also moves by separate motion to reargue the earlier decision denying the motion to dismiss the proceeding on the grounds of mootness.

The Court had denied the earlier motion because it found that the repeated attempts at properly conducting the parole interview and rendering a decision constituted the exception to the mootness doctrine – capable of repetition, but evading review.

The Respondent raises the same argument in their Answer and Return.

The cases cited by the Respondent in support of their argument (*Muggelberg v New York State Bd. of Parole*, 167 AD3d 1181 [3d Dept 2018]; *Adger v Dept. of Corrections and Community Supervision*, 181 AD3d 1120 [3d Dept 2020]; and *Letizia v Fitzpatrick*, 192 AD3d 1283 [3d Dept 2021]) all involve a very different factual scenario than the one here. In those cases, the Parole Board denied parole, and directed a 24-month hold before a new parole review. The denial was upheld on the administrative level. After that, the Supreme Court which heard the petition denied it. By the time the appeal of the Supreme Court decision reached the Appellate Division 3rd Dept., the 24 months of the original parole denial had passed and a new parole interview and determination had taken place.

In the instant matter, the Petitioner has been "ping-ponging" between the Parole Board and the administrative review process. The Parole Board's own administrative process has on three different occasions found the Parole Board's denial faulty. What is happening is that the Parole Board's action *are* evading review because the Parole Board keeps making some of the same mistakes – as found by its own internal reviews. The question the court is examining is *not* whether Mr. Horein should be paroled. This is a matter of the Parole Board's repeatedly being unable to make a decision pursuant to the laws and regulations that apply, a problem that has had a regrettable impact on the victim's survivors as well.

Thus, the motion to reargue and point of law are rejected.

Petitioner's Arguments

1. ***The Parole Board departed from the results of Mr. Horein's COMPAS assessment without providing a justification***;

The Petitioner argues that the Board's reference to future violations of the law if released represents a departure from the COMPAS score without justification or explanation. Indeed, the Petitioner's "risk of felony violence," "arrest risk" and "abscond risk" are all scored low. Clearly, the Board's determination that "A REVIEW OF YOUR RECORD, INTERVIEW AND DELIBERATION LEAD THE PANEL TO CONCLUDE THAT YOU WOULD NOT LIVE AND REMAIN AT LIBERTY WITHOUT AGAIN VIOLATING THE LAW [...]." is belied by the COMPAS scores. No explanation is offered by the Board in this regard. The Appeals Unit has already found the Board's decision is improper in this regard as well. The Petitioner's argument is a meritorious one. The Appeals Unit has also found in previous reviews of parole denials that the Board deviated from the Petitioner's COMPAS scores without justification.

"If the Board's decision denying release "departs" from these scores, it must "specify any [such] scale ... from which it departed and provide an individualized reason for such departure." *See* N.Y. Comp. Codes R. & Regs. tit. 9, § 8002.2(a) (2021)." *Flores v Stanford*, 18CIV02468VBJCM, 2021 WL 4441614, at *6 [SDNY Sept. 28, 2021]. It should be noted that the failure to abide by this regulation is enough by itself to grant a *de novo* review.

2. ***The Parole Board made its decision based on mischaracterizations of the record;***

The Petitioner maintains that the Board's determination of his remorse being "shallow" is belied by the record. In fact, the interview transcript and accompanying documentation evince an individual who has gained insight, is remorseful and forthcoming regarding his guilt. Although questioned in a manner about the underlying crime is such a way as to make it appear that the commissioner was interested in little else, the Petitioner answered all the questions and took responsibility for his actions. His personal statement equally is characterized by deep regret and acceptance of responsibility.

Here again, the Petitioner's claims are meritorious.

3. The Parole Board made its decision exclusively on the basis of the seriousness of the offense;

Other than the improperly cited risk of re-offense, the Parole Board cites *nothing but* the seriousness of the crime as to the reason to deny parole except community and official opposition. A review of the transcript of the interview also indicates very little else was of concern to the Board.

It is of course, established that the Board may not make its decision solely on the basis of the seriousness of the crime. "Consequently, the Parole Board's determination to deny parole release to the Petitioner appears to have been solely based on the seriousness of the crimes he committed. We find such analysis, or lack thereof, to be incompatible with the Parole Board's duty." *Rivera v Stanford*, 172 AD3d 872, 874 [2d Dept 2019].

The only other mention in the Board's decision as to a basis for a denial of parole is "THERE IS BOTH COMMUNITY AND OFFICIAL OPPOSITION TO YOUR RELEASE." While community opposition may be considered by the Board (*Applewhite v New York State Bd. of Parole*, 167 AD3d 1380 [3d Dept 2018]) it is not a listed statutory factor. Certainly, it cannot be argued that community opposition should be a deciding factor in a parole decision. As for official opposition, there are only two submissions in this regard. The first is from the sentencing judge, now retired, who expresses the sentiment that the 20-year sentence was appropriate instead of the maximum of 25-years as to avoid "possible disparate application of justice" given the sentences he had imposed in other murder cases. His sentiment is that "approval of this application would be appropriate." The other is from the District Attorney who unabashedly suggests that the Parole Board ignore the law. The District Attorney also suggests that the sentencing judge had a personal bias in favor of the Petitioner's family, an accusation which he admits is based on conjecture.

While the official and community opposition are factors the Board may consider, they cannot become factors on which the Board solely relies or for that matter even coupled with the serious of the crime becomes the sole bases for denial. Official and community opposition would allow a degree of arbitrariness into the decision that would not be tolerable. There may be more or less community opposition because of such arbitrary factors as whether the victim had survivors; lived in a particular community for years versus a short time period; was from a large or small community; the crime was covered in the press; the potential parolee has extended

family or friends; whether officials are inclined to take a position, and if so, what bases they offer to do so.

While "any current or prior statement made to the board by the crime victim or the victim's representative" is a listed item to be considered by the Board and such a statement was part of the Parole Board file, there is no mention of it in the decision denying parole.

It is also noteworthy that the record before the board concerning Mr. Horein's actions since his incarceration – his behavior, educational efforts, programming activity and the like -- lend themselves to no other conclusion than those post-incarceration actions are almost completely devoid of any basis to deny parole.

Again, the Petitioner's claims in this regard are meritorious.

4. The Parole Board rendered a conclusory decision that evades judicial review;

Here, the Petitioner faults the board for failing to detail its reasons for denying parole, thus evading judicial review.

While the Board did detail some reasons for denying parole, it did so based on improper reasons (i.e. the seriousness of the crime). Other than that, no legitimate detail is provided justifying denial. Accordingly, the Petitioner's claim here is meritorious.

5. The Board failed to meaningfully consider Mr. Horein's age at the time of the offense;

The Petitioner alleges that the Board failed to consider Mr. Horein's age at the time of the crime – 16-years-old. The Board's decision contains the following as the only reference to the Petitioner's age:

> "THE PANEL ACKNOWLEDGES THAT YOU WERE 16 YEARS OLD AT THE TIME OF THE OFFENSE AND YOU HAD A DIFFICULT TIME ADJUSTING DUE TO YOU BEING NEW TO YOUR SCHOOL AND AREA AS YOU EXPRESSED."

While it is a minimal reference to the issue, it cannot be said that the Board failed to consider the factor. Giving the Board the deference required in an Article 78 proceeding, the Petitioner's challenge in this regard is not sustained.

6. The Board made its decision prior to the interview, making his denial a foregone conclusion.

The Petitioner argues that the record is indicative of a Parole Board that had predetermined the denial of parole before even meeting with Mr. Horein. He relies on many of the same arguments concerning the board having only considered the seriousness of the underlying crime.

Some of the questioning by the commissioners is concerning – particularly the question about animal abuse which seems to arise from thin air.

However, as the Court will direct a hearing before a different panel based on the other findings in this Decision and Order, any determination on this issue would be largely academic.

Conclusion

The Court finds as indicated above that the December 2022 Parole Board decision was not in compliance and relief is warranted.

For the foregoing reasons, therefore, it is hereby,

ORDERED that the relief requested in the petition is granted, and the December 20, 2022 decision of the Parole Board is vacated and set aside; and it is further

ORDERED that the Respondent shall grant a *de novo* parole review to the Petitioner before a different Parole Board panel than that which presided at the December 20, 2022 interview and that such *de novo* hearing take place within 30 days of the date of this order; and it is further,

ORDERED, that should the Parole Board at the *de novo* review granted herein deviate from any COMPAS score, it shall specify which score it is deviating from and cite to specific items in the record justifying such deviation and provide an explanation to justify such deviation, and it is further,

ORDERED, that the Parole Board shall render a decision in conformity with the applicable law and take into consideration all of the mandated statutory, regulatory and legally required factors, and it is further,

ORDERED, that the Parole Board shall articulate the basis or bases for any determination made at the *de novo* review.

Dated: March 15, 2024
Poughkeepsie, NY

ENTER:

Hon. Thomas R. Davis, J.S.C.

Pursuant to CPLR Section 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.