

seriousness of the offense, the Parole Board indicated that the family of the victim opposed the granting of parole. The rationale for each parole determination made by the Board are as follows:

1. The Board minutes of June 15, 2004 reflect the reason for parole denial as follows: “to parole him at this time would depreciate the seriousness of the criminal offense.”²
2. The Board minutes of June 18, 2008 reflect the reason for denial as “due to the serious nature of the crime.”
3. The Board minutes of June 15, 2011 reflect the reason for parole denial as, “due to the serious nature of Mr. Rocheleau’s crime. It should be noted that the victim’s family did appear and opposed parole.”
4. The Board minutes of June 18, 2014 reflect the reason for parole denial as follows: “due to the nature of Mr. Rocheleau’s offense, length of his sentence, and the trauma caused to the victim’s family.”

Petitioner filed the instant Petition alleging that the Parole Board denied him his due process rights based upon the manner and reasons given for parole denial. Specifically, Petitioner has alleged that by providing the only reason for denial as the “seriousness of the offense,” the Parole Board violated Petitioner’s due process rights because their reasoning was a static factor which lacked specificity and was not weighed against any mitigating factors.

II

STANDARD OF REVIEW

Our Supreme Court has held that objections to Parole Board proceedings are reviewable in Superior Court by way of a petition for post-conviction relief. State v. Ouimette, 117 R.I. 361, 365-66, 367 A.2d 704, 707 (1977). This Court notes that the applicant for post-conviction relief

² It should be noted that the parole determination in June 2004 was made before the effective date of G. L. 1956 § 13-8-14.1.

bears the burden of proving, by a preponderance of the evidence, that post-conviction relief is warranted in his case. Hazard v. State, 64 A.3d 749, 756 (R.I. 2013).

III

ANALYSIS

The gravamen of the Petition is that in each instance of parole denial, the Board minutes do not reflect a finding or a score with respect to the likelihood of recidivism, as determined by a “risk assessment.” Petitioner avers that the failure to refer to the likelihood of recidivism and risk assessment in the Board minutes runs afoul of § 13-8-14.1, and results in a denial of due process. Section 13-8-14.1 provides, in pertinent part:

“(a) At least once each calendar year the parole board shall adopt standards to be utilized by the board in evaluating applications for parole. . . . These standards . . . the portion of a sentence which should be served depending on the likelihood of recidivism determined by a risk assessment, and shall serve as guidelines for the board in making individual parole determinations.” (emphasis added).

The effective date for the statute was May 1, 2008. In addition, the statute requires that when the board denies parole it shall set forth in writing the rationale for its determination. Sec. 13-8-14.1(c).

In accordance with the statute, the Board adopted guidelines on May 6, 2014 (“the 2014 Guidelines”), which were in effect on the date of Petitioner’s most recent parole determination that took place in June 2014. The guidelines provide in pertinent part:

“The revised parole guidelines consist of two major components that interact to provide an actuarial based risk score. The first is a Risk Assessment Instrument that weighs both static and dynamic factors associated with the offender’s record. The other component is the Offense Severity class.”

See Rhode Island Parole Board 2014 Guidelines at 2 (May 6, 2014). The risk assessment, which weighs both static and dynamic factors, is calculated using a scoring system based on the degree of risk. Id. at 2-3. The guidelines provide some guidance as to the nature of both static and dynamic factors: “Static factors are those associated with the offender’s prior criminal record. They will not change over time. Dynamic factors reflect characteristics the offender has demonstrated since being incarcerated and are factors that can change over time.” Id. at 2. Subsequent to the risk assessment, the Parole Board will utilize the Rhode Island Department of Corrections Offense Severity scale. Id. at 3. Offense Severity classes range from “Low” for non-violent crimes to “Highest” for capital crimes. Id. After the Parole Risk Instrument and Department of Corrections Offense Severity scale have been considered, the two components are then merged into a matrix that creates the offender’s Severity Risk Matrix. Id.

The guidelines also contain a policy statement that lists factors the Board may consider in addition to the considerations under the offender’s Severity Risk Matrix. Id. at 3. Among the additional criteria used by the Board in its determination of parole consideration is the seriousness of the offense.³ As to this policy, the guidelines provide that “it is not Board policy to deny parole solely on the basis of the nature and circumstances of the offense; there are, however, certain instances where denial on this basis may be warranted.” Id. at 4.

In reviewing the 2014 Guidelines, it is clear that the Board is called upon to consider a myriad of factors in reaching a parole determination that go beyond the score determined by the

³ This Court also notes that § 13-8-14(a)(2) states in pertinent part:

“(a) A permit [to be at liberty upon parole] shall not be issued to any prisoner under the authority of §§ 13-8-9 – 13-8-13 unless it shall appear to the parole board:

...

(2) That release would not depreciate the seriousness of the prisoner’s offense or promote disrespect for the law.”

actuarially determined risk assessment of the Parole Board Risk Instrument,⁴ and specifically contemplate consideration of the severity of the offense. Moreover, the statute concerning Parole standards does not require reliance solely on a risk assessment score, but states that such a consideration is a “guideline” in making individual parole determinations. See § 13-8-14.1(a).

At the hearing on this Petition, counsel for the Petitioner emphasized the lack of risk assessment analysis in each of the decisions to deny parole, and the failure to refer to the risk assessment instrument or score. The Petitioner avers that the failure to refer to an actuarially determined risk assessment analysis amounts to a denial of constitutionally protected due process rights. This Court recognizes that, in each instance of parole denial in this case, the record contains no evidence that the Parole Board considered any of the dynamic factors listed in the guidelines, such as the offender’s current age, training programs completed during present incarceration, any disciplinary conduct during the prior twenty-four months while in prison, or the Petitioner’s current custody level.

Nevertheless, this Court disagrees with the claim made by Petitioner that the absence of reference to a particular risk assessment score violates both the statute and constitutional due process. It seems clear to the Court that when the Board considers the seriousness of the offense, they are looking to such a factor as suggestive of the likelihood of recidivism, even without reference to a specific risk assessment score. This Court acknowledges that “the Parole Board, because of its special expertise, has been granted an extraordinarily broad amount of discretion to make decisions regarding parole release. These decisions, in reality, are based on predictions of the future behavior of prospective parolees.” Quimette, 117 R.I. at 369-70, 367 A.2d at 709. Within the exercise of such discretion, defendant’s criminal record and seriousness of the crime

⁴ The Guidelines specifically state that the parole score is not presumptive as to whether an offender will be paroled.

are certainly factors to be considered in determining likelihood of future lawful behavior. See Ouimette, 117 R.I. at 372, 367 A.2d at 711 (citing Roach v. Board of Pardons & Paroles, 503 F.2d 1367 (8th Cir. 1974)).

Furthermore, our Supreme Court has considered the language in §13-8-14.1(c) that requires the Board to state in writing its reasons for parole denial. In its consideration, the Court has held that an inmate must be informed as to the reasons for denial to satisfy minimum due process standards. See Ouimette, 117 R.I. at 372, 367 A.2d at 711. In fact, the Supreme Court has referred to the opportunity to be heard and advised of the reasons for parole denial as an inmate's only constitutional entitlements with respect to parole. Lyons v. State, 43 A.3d 62, 67 (R.I. 2012). Still, the failure to give a detailed explanation of the reasons for parole denial, or failure to refer to the risk assessment score, is not a ground for entitlement to post-conviction relief. See Estrada v. Walker, 743 A.2d 1026, 1031 (R.I. 1999).

In the case presently before the Court, it is clear the Parole Board stated in writing the rationale for parole denial in each instance. Notwithstanding providing a reason for parole denial in each instance, the Petitioner avers that the seriousness of the offense should not be solely determinative of parole eligibility, especially if not accompanied by an actuarially accurate risk assessment analysis. In Ouimette, the Court noted that past criminal conduct and the seriousness of the crime are relevant factors to be considered by the Parole Board because, as the Court reasoned, such factors go to the very heart of risk analysis, in that they go to the likelihood of future lawful behavior. 117 R.I. at 372, 367 A.2d at 711. Therefore, this Court believes that the Board's consideration of the seriousness of the offense is relevant specifically because it speaks to the likelihood of recidivism.

The Court rejects the argument of Petitioner that the failure to articulate the results of a more scientifically determined risk score renders the Parole Board's decision constitutionally infirm. The Court is mindful of the statement made by the Supreme Court that with respect to parole, an inmate is constitutionally entitled to the opportunity to be heard and to be advised of the reasons for parole denial. Lyons, 43 A.2d at 67. Nevertheless, our Supreme Court has also held that the failure to give a detailed explanation of the reasons for parole denial is not a ground for entitlement to post-conviction relief. Estrada, 743 A.2d at 1031.

This Court believes that the Parole Board's statement that the seriousness of the offense, and the objection to parole by the victim or his family, are entirely consistent with its constitutional and statutory obligation to provide a written statement of the reason for parole denial, and are in substantial compliance with its obligations as set forth in §13-8-14.1. The Court specifically rejects the position that the failure to articulate the results of a specific risk "matrix" renders the Parole Board's decision constitutionally infirm. By considering the seriousness of the offense as a predictor of future criminal behavior, the Board considered likelihood of recidivism, as required by § 13-8-14.1. This Court finds that use of the criteria as stated to be seriousness of the offense, even if not tested by an actuarially determined analysis or score, does not result in denial of due process. Petitioner should be reminded that although he is entitled to question the criteria used by the Board in its parole denial decision in an action for post-conviction relief, there is no constitutional or inherent right of a convicted person to release before the expiration of his sentence. See Greenholtz v. Inmates of the Nebraska Penal & Correctional Complex, 442 U.S. 1, 7 (1979); Pine v. Clark, 636 A.2d 1319 (R.I. 1994); Hingham v. State, 45 A.3d 1180, 1185 (R.I. 2012). The failure to provide a detailed explanation

of the reasons for parole denial is not a proper basis for post-conviction relief. See Estrada, 743 A.2d at 1031.

IV

CONCLUSION

For the above cited reasons, the Petition for post-conviction relief is denied.⁵

⁵ This Court would echo the observation made by the Supreme Court in Estrada, 743 A.2d at 1031:

“We might agree with the trial justice’s implied suggestion that, although not necessary, it might be better practice for the parole board to provide a more detailed explanation for its denial of a parole application even when it is adhering to the clear guidelines, but we reiterate, however, that failure to provide such an explanation is not ground that warrants the grant of an application for post-conviction relief.”



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Christopher Rocheleau v. State of Rhode Island

CASE NO: KM 2014-0812

COURT: Kent County Superior Court

DATE DECISION FILED: May 4, 2015

JUSTICE/MAGISTRATE: Rubine, J.

ATTORNEYS:

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