

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: August 19, 2016)

LANCE DELLAY, :  
Petitioner :  
V. :  
RHODE ISLAND PAROLE BOARD, :  
Respondent :

C.A. No. PM-2015-0081

DECISION

VAN COUYGHEN, J. Before this Court is the Rhode Island Parole Board’s (Respondent, Parole Board, or State) motion for summary judgment<sup>1</sup> on a petition for postconviction relief. Petitioner Lance Dellay (Petitioner or Mr. Dellay) opposes the State’s motion for summary judgment and has filed a cross-motion for summary judgment.

The Parole Board denied Mr. Dellay’s application for parole on October 21, 2013. Thereafter, Mr. Dellay filed a petition for postconviction relief on January 7, 2015, arguing that the Parole Board violated his procedural due process rights and is requesting that this Court remand the case to the Parole Board for a new hearing. The Court exercises jurisdiction pursuant to G.L. 1956 §§ 10-9.1-1, et seq. and Rule 56 of the Rhode Island Superior Court Rules of Civil Procedure.

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<sup>1</sup> The motion was originally filed as a motion to dismiss but was converted by the Court to summary judgment pursuant to Super. R. Civ. P. 12(b).

## I

### Facts

The parties entered into an agreed statement of facts, which are summarized as follows: On September 30, 1994, Mr. Dellay was sentenced after being convicted by a jury of second degree murder and larceny over \$500 (P1-1992-3293A<sup>2</sup>). (Joint Stipulation of Undisputed Facts, ¶ 1.) The Court sentenced him to sixty years at the Adult Correctional Institution, with fifty years to serve, and ten years suspended with probation. *Id.* at ¶ 2. Mr. Dellay also received a sentence of ten years to serve for the larceny conviction to run concurrent with the murder sentence.

On October 21, 2013, the Parole Board unanimously denied Mr. Dellay's request for parole after a hearing. *Id.* at ¶¶ 3-4. The minutes of the Parole Board's meeting state, "The Board votes to deny parole. The reason for the denial is due to the violent nature of Mr. Dellay's

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<sup>2</sup> A jury found Mr. Dellay guilty of murder in the second degree and felony larceny after a two-day trial in April of 1994. *State v. Dellay*, 687 A.2d 435, 436 (R.I. 1996). Mr. Dellay unsuccessfully appealed his conviction to the Rhode Island Supreme Court arguing that the trial justice improperly excluded evidence. *Id.* at 435. The Court takes judicial notice of the Supreme Court's opinion. *See In re Michael A.*, 552 A.2d 368, 369 (R.I. 1989) ("a court may take judicial notice of its own records"). The Court's opinion reflects that Mr. Dellay killed Todd Ricci (Mr. Ricci) with a baseball bat in the basement of the apartment that he shared with Mr. Ricci and Stacey Lonsdale (Ms. Lonsdale). *Dellay*, 687 A.2d at 436. Ms. Lonsdale testified that on the date in question Mr. Dellay returned to the apartment covered in blood and carrying a baseball bat. *Id.* Mr. Dellay informed Ms. Lonsdale that he had killed Mr. Ricci in the basement. *Id.* Ms. Lonsdale ran to the basement to find Mr. Ricci conscious but covered in blood, with a bump on his head, and muttering for help. *Id.* Ms. Lonsdale then witnessed Mr. Dellay reenter the basement and strike Mr. Ricci on the head and ribs with a baseball bat. *Id.* Ms. Lonsdale recalled that she ran back to the apartment and Mr. Dellay returned holding Mr. Ricci's wallet. *Id.*

That afternoon, Mr. Dellay and another friend, Keith Allard (Mr. Allard), disposed of Mr. Ricci's body. *Id.* Another witness, Carrie Bestwick (Ms. Bestwick), testified that she met Mr. Dellay, who informed her that he killed Mr. Ricci. *Id.* Ms. Bestwick, Mr. Dellay, Mr. Allard, and three others drove to Montreal, where Mr. Dellay was arrested and returned to the United States. *Id.*

offense and the length of his sentence. We will see him again in October 2016.” Department of Corrections, Inmate Parole Information (Parole Board’s Minutes). Petitioner filed a petition for postconviction relief on January 7, 2015 challenging the sufficiency of the content of the Parole Board’s written decision.

## II

### Standard of Review

Postconviction relief cases are civil proceedings; thus, Rule 56 of the Superior Court Rules of Civil Procedure is applicable to the present case. Doyle v. State, 122 R.I. 590, 593, 411 A.2d 907, 909 (1980). In reviewing a motion for summary judgment, the trial judge must review the evidence “in the light most favorable to the nonmoving party.” Long v. Dell, Inc., 93 A.3d 988, 995 (R.I. 2014). During this inquiry, the trial judge “must refrain from weighing the evidence or passing upon issues of credibility.” DeMaio v. Ciccone, 59 A.3d 125, 130 (R.I. 2013) (citing Doe v. Gelineau, 732 A.2d 43, 48 (R.I. 1999)). Summary judgment is appropriate when there “is no genuine issue of material fact to be decided . . .” Id. at 129 (quoting Pereira v. Fitzgerald, 21 A.3d 369, 372 (R.I. 2011)).

In this case, Petitioner and Respondent have stipulated to the pertinent facts. Therefore, there are no genuine issues of material fact to be decided. See DeMaio, 59 A.3d at 130. Thus, the matter is ripe for summary judgment.

Postconviction remedies are set forth in §§ 10-9.1-1, et. seq., and provide that “one who has been convicted of a crime may seek collateral review of that conviction based on alleged violations of his or her constitutional rights.” Brown v. State, 32 A.3d 901, 907 (R.I. 2011) (quoting Lynch v. State, 13 A.3d 603, 605 (R.I. 2011)). “[P]ost-conviction relief is available to a defendant convicted of a crime who contends that his original conviction or sentence violated rights that the state or federal constitutions secured to him.” State v. Laurence, 18 A.3d 512, 521

(R.I. 2011) (quoting Otero v. State, 996 A.2d 667, 670 (R.I. 2010) (internal quotation marks omitted)). The applicant bears “the burden of proving, by a preponderance of the evidence, that [postconviction] relief is warranted . . .” Hazard v. State, 64 A.3d 749, 756 (R.I. 2013) (quoting Anderson v. State, 45 A.3d 594, 601 (R.I. 2012)). Our Supreme Court has held that postconviction relief is an appropriate vehicle for inmates who challenge decisions of the Parole Board. State v. Ouimette, 117 R.I. 361, 363, 367 A.2d 704, 706 (1976). However, the Superior Court’s review of a Parole Board’s decision is limited to whether or not the petitioner’s due process rights were violated. Id.

### III

#### Parties’ Arguments

Mr. Dellay essentially sets forth two arguments as to why the Parole Board’s written decision violated his due process rights under both the Rhode Island and United States Constitutions: First, the decision did not address an individualized risk assessment, which he argues is mandatory pursuant to G.L. 1956 § 13-8-14.1. Second, the decision failed to sufficiently state the grounds and supporting factors in its written decision denying Mr. Dellay’s application. Petitioner argues that the failure to provide sufficient grounds for the denial deprives him of a factual basis by which he is informed of his shortcomings. Petitioner also argues that failure to provide sufficient grounds prevents this Court from being able to competently review the Parole Board’s decision.

The State contends that the Parole Board did not violate Mr. Dellay’s due process rights because the Parole Board’s decision fulfills statutory and due process requirements as articulated in Bernard v. Vose, 730 A.2d 30, 32 (R.I. 1999) (“due process only entitles the parole applicant an opportunity to be heard and to be informed in what respects the applicant falls short of qualifying for parole”). Further, the State contends § 13-8-14.1 does not require the Parole

Board to reference an individualized risk assessment in its decision. The State also argues that the minutes of the meeting sufficiently set forth the Parole Board's reasons for denial, which provides a sufficient basis for judicial review. Thus, the State avers that Mr. Dellay's due process rights were not violated.

#### IV

#### Analysis

#### A

#### Statutory Construction and Risk Assessment

Whether or not § 13-8-14.1 mandates that the Parole Board reference the risk assessment in its decision is essentially a matter of statutory construction. When statutes are clear on their face judicial review is at an end. Chambers v. Ormiston, 935 A.2d 956, 960 (R.I. 2007). In cases where a statute is ambiguous, the Court must then utilize the canons of statutory construction to determine the General Assembly's intention. Id. One of the canons of statutory construction the Court utilizes is in pari materia, which stands for the proposition that "statutes on the same subject \* \* \* are, when enacted by the same jurisdiction, to be read in relation to each other." Horn v. S. Union Co., 927 A.2d 292, 294 n.5 (R.I. 2007) (quoting Reed Dickerson, The Interpretation and Application of Statutes 233 (1975)). In pari materia is utilized in an attempt to harmonize inconsistencies or ambiguities within statutory provisions relating to the same subject matter. Narragansett Food Servs., Inc. v. R.I. Dep't of Labor, 420 A.2d 805, 807 (R.I. 1980) (citing Berthiaume v. Sch. Comm. of Woonsocket, R.I., 397 A.2d 889, 893 (1979)).

Petitioner urges the Court to interpret § 13-8-14.1 as mandating that the Parole Board include reference to consideration of his individual risk assessment in its written decision. However, when reading § 13-8-14.1 in conjunction with § 13-8-14, it is clear to this Court that Petitioner's argument is without merit.

Section 13-8-14 states as follows:

“(a) A permit shall not be issued to any prisoner under the authority of sections 13-8-9--13-8-13 unless it shall appear to the parole board:

“(1) That the prisoner has substantially observed the rules of the institution in which confined, as evidenced by reports submitted to the board by the director of the department of corrections, or his or her designated representatives, in a form to be prescribed by the director;

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

“(3) That there is a reasonable probability that the prisoner, if released, would live and remain at liberty without violating the law;

“(4) That the prisoner can properly assume a role in the city or town in which he or she is to reside. In assessing the prisoner’s role in the community the board shall consider:

(i) Whether or not the prisoner has employment;

(ii) The location of his or her residence and place of employment; and

(iii) The needs of the prisoner for special services, including but not limited to, specialized medical care and rehabilitative services; and

“(5) That any and all restitution imposed pursuant to section 12-19-32 has been paid in full, or satisfactory arrangements have been made with the court if the person has the ability to pay. Any agreement shall be in writing and it is the burden of the person seeking parole to satisfy the parole board that this requirement has been met. Any person subject to the provisions of this section may request an ability to pay hearing, by filing the request with the court which imposed the original sentence.” Sec. 13-8-14(a) (emphasis added).

Section 13-8-14.1 states as follows:

“(a) At least once each calendar year the parole board shall adopt standards to be utilized by the board in evaluating applications for parole of persons convicted of a criminal offense and sentenced to the adult correctional institutions. These standards shall establish, with the range of parole eligibility set by statute, the portion of a sentence which should be served depending on the likelihood of recidivism as determined by a risk assessment, and shall serve as guidelines for the board in making individual parole determinations.

“(b) The board shall consider the applicable standard prior to rendering a decision on a parole application, and may make a determination at variance with that standard only upon a finding that the determination is warranted by individualized factors, such as the character and criminal record of the applicant, the nature and circumstances of the offense or offenses for which the applicant was sentenced, the conduct of the applicant while incarcerated, and the criteria set forth in § 13-8-14.

“(c) In each case where the board grants an application prior to the time set by the applicable standard or denies an application on or after the time set by that standard, the board shall set forth in writing the rationale for its determination.” Sec. 13-8-14.1

Reading §§ 13-8-14 and 13-8-14.1 together, this Court finds that the provisions of § 13-8-14.1 are not triggered unless the Parole Board finds that the criteria set forth in § 13-8-14 are met. As compliance with § 13-8-14 is a mandatory prerequisite to an applicant’s qualification for parole, the Parole Board has no discretion to grant parole unless the criteria contained in § 13-8-14 are met. State v. Tillinghast, 609 A.2d 217, 218 (R.I. 1992) (“the discretion conferred on the board in § 13-8-14.1 is limited by § 13-8-14”) (internal citation omitted); Skawinski v. State, 538 A.2d 1006, 1008 (R.I. 1988) (“the parole board is limited in its grant of authority by § 13-8-14”); Goff v. O’Neil, No. CIV. A. 86-0631P, 1990 WL 82703, at \*2 (D.R.I. June 7, 1990) (“Minimum parole release criteria are enumerated in R.I. Gen. Laws Section 13–8–14, but that section does not mandate a parole permit when those elements are met; rather, it precludes parole where one or more of those elements have not been met.”).

The Parole Board denied Mr. Dellay’s application based on the violent nature of the offense and the length of his sentence. This directly correlates with the requirement that the Parole Board find “[t]hat release would not depreciate the seriousness of the prisoner’s offense or promote disrespect for the law.” Sec. 13-8-14(a)(2); Parole Board’s Minutes. Therefore, regardless of the result of the risk assessment, the Parole Board could not release Mr. Dellay on

parole because the requirements of § 13-8-14 were not satisfied. Thus, the risk assessment analysis is not relevant because the requirements of § 13-8-14 were not met.

Furthermore, under the facts and circumstances of this case, the literal reading of § 13-8-14.1 does not mandate that the risk assessment be included in the Parole Board's decision. Section 13-8-14.1(a) directs the parole board to establish standards when considering parole applications. The standards include consideration of the likelihood of recidivism as determined by a risk assessment.<sup>3</sup> However, § 13-8-14.1(a) specifically says that the standards "shall serve as guidelines for the board in making individual parole determinations." Sec. 13-8-14.1(a) (emphasis added). In addition, § 13-8-14.1(b) contains other individual factors that the Parole Board may consider when granting or denying parole. Nowhere does § 13-8-14.1 say that the risk assessment analysis or the other individualized factors are determinative of the ultimate decision by the Parole Board. In fact, the guidelines for the risk assessment state that they "are not automatic nor is the parole risk score presumptive as to whether an offender will be paroled." 2013 Guidelines at 3; Skawinski, 538 A.2d at 1010<sup>4</sup> ("parole standards at issue are merely procedural guidelines that are used in the exercise of discretion of the parole board in evaluating a prisoner's petition for parole"). In fact, § 13-8-14.1(b) clearly gives the Parole Board the

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<sup>3</sup> The Risk Assessment considers both static and dynamic factors. Static factors, which include past history or violent or assaultive convictions, the parole/probation status at admission, prior felony convictions, and the commitment offense are associated with the applicant's criminal record and do not change over time. Rhode Island Parole Board 2013 Guidelines (2013 Guidelines) at 2. Dynamic factors, including offender's current age, education level, substance abuse history, vocational training completed during the present incarceration, prison disciplinary record in the last twenty-four months, and current scored custody level reflect characteristics displayed since the applicant has been incarcerated and can change over time. Id. The Offense Severity Class is determined using the Department of Corrections Offense Severity scale, which ranges from low for non-violent crimes to high for capital crimes. Id. at 3. The Parole Board then inputs scores from the Risk Assessment and Offense Severity Class into a matrix to create the offender's Severity Risk Matrix. Id.

<sup>4</sup> In 1988, the risk assessment language was not present in § 13-8-14.1; however, the Court's analysis in Skawinski still applies to the interpretation of § 13-8-14.1 as a whole.

authority to “make a determination at variance with that standard . . . [based on] individualized factors . . . and the criteria set forth in § 13-8-14.” Sec. 13-8-14.1(b). There is no evidence that the legislature intended the Parole Board to include such an analysis in its decision unless the Parole Board was satisfied that the applicant qualified under § 13-8-14. In addition, some of the factors that are considered in § 13-8-14.1 are dynamic, thus subject to change in subsequent applications for parole. Therefore, if an applicant is not eligible for parole by virtue of § 13-8-14, the current risk assessment analysis may become irrelevant depending on the inmate’s future behavior. It is non sequitur to find that the legislature intended to require that the Parole Board reference a risk assessment that may become obsolete based upon the inmate’s future behavior. The Court will not interpret a statute in such a way as to render an illogical result. See Morse v. Emps. Ret. Sys. of Providence, No. 2013-252-M.P., 2016 WL 3141754, at \*5 (R.I. June 6, 2016) (“under no circumstances will this Court construe a statute to reach an absurd result” (quoting Berman v. Sitrin, 991 A.2d 1038, 1043 (R.I. 2010) (internal quotation marks omitted))). Consequently, there is no statutory requirement that the Parole Board reference a risk assessment, or its score, in its written decision according to the plain language of § 13-8-14.1.

Furthermore, even if this Court were to find that § 13-8-14 was satisfied because the language of the Parole Board’s minutes does not exactly mirror the language of the statute, the Parole Board could still deny Mr. Dellay’s parole application based on the language of § 13-8-14.1. Section 13-8-14.1(b) provides that the Parole Board can deny a petitioner’s application based on “individualized factors, such as . . . the nature and circumstances of the offense or offenses for which the applicant was sentenced . . .” Sec. 13-8-14.1(b). Regardless, under either scenario, the statute does not require the risk assessment be included in the Parole Board’s minutes unless the risk assessment was the basis for denial.

## B

### **Due Process and Sufficiency of the Parole Board's Decision**

The United States Supreme Court has held that there is no “constitutionally protected liberty interest simply because the state provides the possibility of parole.” Lerner v. Gill, 463 A.2d 1352, 1363 (R.I. 1983) (citing Jago v. Van Curen, 454 U.S. 14 (1981); Greenholtz v. Inmates of Neb. Penal and Corr. Complex, 442 U.S. 1 (1979)). However, a state may create a protected liberty interest in parole if a statute is “phrased in such a way that it creates a legitimate claim of entitlement and not just a unilateral hope for parole.” Lerner, 463 A.2d at 1363. Rhode Island has recognized that, based on § 13-8-14.1, parole applicants “have a constitutionally protected liberty interest in this state’s parole system . . .” Bishop v. State, 667 A.2d 275, 276 (R.I. 1995) (citing Greenholtz, 442 U.S. 1; Petrarca v. State of R.I., 583 F. Supp. 297 (D.R.I. 1984); and Tillinghast, 609 A.2d 217). However, the due process protections are minimal. Estrada v. Walker, 743 A.2d 1026, 1031 (R.I. 1999); see infra.

The Rhode Island Supreme Court has opined that a parole petitioner is afforded minimal due process protections. The statute “only entitles the parole applicant an opportunity to be heard and to be informed in what respects the applicant falls short of qualifying for parole.” Estrada, 743 A.2d at 1031 (quoting Bernard, 730 A.2d at 32); Lyons v. State, 43 A.3d 62, 67 (R.I. 2012). In providing its reason<sup>5</sup> for denying parole, the Parole Board must merely “set forth in writing the rationale for its determination,” and the decision does not need to present an

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<sup>5</sup> However, this Court mirrors the sentiment expressed in Estrada that although due process does not require an applicant to be given a detailed explanation of the reasons for the Parole Board’s denial, it would be a better practice to do so. Estrada, 743 A.2d at 1031 (“[I]t 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 postconviction relief.”).

“onerous burden of proof.” Estrada, 743 A.2d at 1031. One of the purposes of providing a written explanation is to “enable a reviewing court to determine if parole has been denied for permissible reasons.” Ouimette, 117 R.I. at 372, 367 A.2d at 710. Further, the Parole Board’s written decision need only include the “essential elements,” which include “[t]he grounds for the decision and the underlying factors supporting those grounds . . .” Id. The Parole Board need only provide a “succinct” explanation as to why an applicant is denied. Higham, 45 A.3d at 1186. Therefore, as long as an applicant for parole is afforded an opportunity to be heard and given a succinct written reason for his or her denial, due process is satisfied.

Here, Petitioner contends that the Parole Board’s written decision was inadequate for two reasons: First, it did not reference a risk assessment. Second, it did not provide a constitutionally sufficient explanation to inform Mr. Dellay as to why his parole was denied in order for the court to review the decision. As such, Petitioner argues that because the Parole Board’s decision was inadequate, his due process rights were violated.

In Estrada, the Court reviewed the Parole Board’s written decision<sup>6</sup> and found it to be sufficient under the requirements of due process when its reasoning provided that it denied parole because it would “depreciate the seriousness of the offense.” Estrada, 743 A.2d at 1030. Moreover, in Tillinghast, the Parole Board’s reasons for denying parole included the nature of the crime committed, the length of the sentence imposed, and referenced the newly adopted parole guideline, which satisfied due process. 609 A.2d at 217. The reasons provided in

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<sup>6</sup> “He is serving a very lengthy sentence and the Board feels that to parole him at this time would depreciate the seriousness of the offense. These robberies involved the use of firearms. However, the Board would like to commend Mr. Estrada for setting goals and one-by-one meeting them successfully. The Board would like to see him work through the system and obtain some work release and furlough experience as well. He will be seen again in 2 years.” Estrada, 743 A.2d at 1030.

Tillinghast and Estrada are similar to those provided in Mr. Dellay’s case—because of the “violent nature of Mr. Dellay’s offense and the length of his sentence.” Parole Board Minutes. Thus, this Court finds that the written decision of the Parole Board sufficiently explained its reasons for denial and provided the Court with a reviewable written decision; therefore, it met the requirements of due process.

This Court finds that Mr. Dellay was provided with a sufficiently detailed explanation as to why the Parole Board denied his application. See Lyons, 43 A.3d at 67. The decision contained sufficient detail to conduct a judicial review by noting the violent nature of the crime and lengthy sentence. Id. To find otherwise would lead to a litany of cases filed with the Court to review highly discretionary Parole Board decisions on semantics. Furthermore, in the previous section, this Court held that there was no statutory requirement for the Parole Board to reference a risk assessment in its written decision. Thus, failure to address the risk assessment in its decision did not violate Petitioner’s due process rights.

## V

### **Conclusion**

Sections 13-8-14 and 13-8-14.1, when read together, do not mandate that the Parole Board’s written decision include a reference to a risk assessment. Moreover, the decision of the Parole Board in Mr. Dellay’s case sufficiently provided reasons for denial to satisfy the requirements of due process as established by the Rhode Island Supreme Court. Consequently, this Court holds that the Parole Board’s decision satisfied the statutory and due process requirements in conformance with Rhode Island law. The State’s motion for summary judgment is granted. Petitioner’s motion for summary judgment is denied.

Counsel for the State shall prepare the appropriate order.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**TITLE OF CASE:** Lance Dellay v. Rhode Island Parole Board

**CASE NO:** PM-2015-0081

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** August 19, 2016

**JUSTICE/MAGISTRATE:** Van Couyghen, J.

**ATTORNEYS:**

**For Plaintiff:** Noah J. Kilroy, Esq.

**For Defendant:** Paul A. Carnes, Esq.