**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**KENT, SC.** **SUPERIOR COURT**

**[Filed: June 7, 2016]**

| | | |
|---|---|---|
| **JAY YOUNG** | : | |
| | : | |
| **VS.** | : | **C.A. No. KM-2015-0962** |
| | : | |
| **STATE OF RHODE ISLAND** | : | |

## DECISION

**RUBINE, J.** This petition for post-conviction relief is brought by Jay Young (Petitioner) pursuant to the provisions of G.L.1956 § 10-9.1-1, et seq. Petitioner claims that the Rhode Island Parole Board (Board) denied him due process by denying him parole without providing adequate justification or explanation of the reason or reasons therefore. The State of Rhode Island (State) opposes this petition and urges the Court to sustain the Board's determination. The facts and arguments of this case are strikingly similar to those pertaining to a petition for post-conviction relief resolved in Christopher Rocheleau v. State of Rhode Island, C.A. No. KM-2014-0812 (R.I. Super. Ct. May 4, 2015) (Rubine, J.). In Rocheleau, this Court denied a petition for post-conviction relief presenting an identical claim—that a petitioner was denied parole without adequate justification. The same result should be applied in this case for the same reasons relief was denied in Rocheleau. Accordingly, the petition for post-conviction relief is denied. Petitioner makes no attempt to distinguish the Rocheleau decision or its rationale. In the absence of binding appellate authority to the contrary, this Court must decide like cases in like fashion.

## I

## Facts and Travel

The following facts are gleaned from the verified petition filed by Young. On March 31, 1998, Petitioner pled nolo contendere to one count of second degree murder and one count of conspiracy. Following the plea, Young was sentenced to a term of sixty years imprisonment, with forty years to serve and the remainder suspended with probation on the second degree murder count, and ten years imprisonment on the conspiracy count. Both sentences were set to run concurrently.

On June 22, 2015, Petitioner appeared for the first time before the Board and was denied parole. In the minutes prepared by the Board, the reason given for the denial was stated as follows:

> "the Board acknowledges Mr. Young's remorse and efforts at programming but must balance this with his involvement in the purposeful beating and murder of an innocent person, conspiracy to commit the murder, his going to great lengths to conceal it[,] and significant victim impact on the family. The Board believes that to parole him at this time would promote disrespect for the law. Accordingly we will deny him but will reconsider him in five years." Pet'r's Ex. A.

This language is alleged to be an insufficient statement of the reasons for denying Petitioner's parole request as a matter of law. There do not appear to be any disputes of fact; the sole question submitted is the legal sufficiency of the Board's reasons for the denial of Petitioner's probation request.

## 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 (1976). This Court notes that the applicant for post-conviction relief 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

Relying on G.L. 1956 § 13-8-14.1, which establishes parole standards and the requirement that the Board set forth in writing the reasons for its determination, and Ouimette, which sets forth standards for due process at parole hearings, Petitioner seeks relief as a result of the Board allegedly denying him due process by not stating in its decision of denial reference to an individualized determination of the likelihood of recidivism based upon a risk assessment analysis. Petitioner argues that the Board's minutes reflect only a consideration of "the seriousness of the offense" as the sole basis for parole denial, without reference to a risk assessment analysis. As a result, Petitioner argues, the decision of the Board violates both statutory and constitutional standards. Petitioner seeks relief in the form of a remand to the Board for reconsideration of his parole application under appropriate standards.

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 as determined by a risk assessment, and shall serve as guidelines for the board in making individual parole determinations."

Pursuant to this authority, the Board adopted guidelines on May 6, 2014, which were the guidelines in effect on the date of Petitioner's hearing, June 22, 2015.[1]

[1] Guidelines for the 2015 calendar year were not promulgated until December 5, 2015.

In Rocheleau, this Court faced the issue of whether a parole denial predicated solely upon the seriousness of the offense violated Rhode Island's statutory standard or the Due Process clause of the Fourteenth Amendment to the United States Constitution. This Court referred to guidelines promulgated by the Board,[2] which provide for consideration of a risk assessment instrument. However, the guidelines also provide that "the Rhode Island Parole Board Guidelines are not automatic nor is the parole risk score presumptive as to whether an offender will be paroled. Board members retain the discretion to vote outside the guidelines when the circumstances of an individual case merit." Rhode Island Parole Board 2014 Guidelines at 3 (effective May 6, 2014). The guidelines also refer to "seriousness of the offense" as one of the "major criteria" in whether to grant or deny parole Id. The Board must also consider statutory "release criteria" such as those listed in § 13-8-14, which require the Board to consider whether "[the] release would not depreciate the seriousness of the prisoner's offense or promote disrespect for the law." G.L.13-8-14(a)(2).

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—including factors that go beyond the score actuarially determined by the Board's risk assessment instrument. And the Board must specifically consider the severity of the offense, and is clearly statutorily proscribed from granting a parole request in the event that release would "depreciate the seriousness . . . of the offense or promote disrespect for the law." Moreover, the statute concerning parole standards

[2] In Rocheleau, this Court made reference to the probation guidelines then in effect at the time of the petitioner's parole consideration. Since that time the guidelines have been amended. However, the guidelines promulgated in 2014 were those in effect at the time of Mr. Young's parole consideration (June 22, 2015) and, in any event, the 2015 guidelines now in effect (from December 5, 2015 forward) do not materially differ with respect to risk assessment, consideration of the seriousness of an underlying offense, and the great discretion afforded to the Parole Board.

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).

It is clear to this Court that when the Board considers the seriousness of the offense, it is looking to such a factor as suggestive of the likelihood of recidivism, even without reference to a specific risk assessment score. This Court acknowledges our Supreme Court's instruction that "[t]he 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." Ouimette, 117 R.I. at 369-70, 367 A.2d at 709. Within the exercise of such discretion, an incarcerated defendant's criminal record and the seriousness of the crime are legitimately considered factors to be weighed in making individualized parole determinations. The guidelines themselves reflect this reality, as they contain a policy statement that, while listing factors the Board may consider in addition to the considerations under the offender's severity risk matrix, also note that the score should neither be considered neither presumptive nor dispositive of the question of parole. Rhode Island Parole Board 2014 Guidelines at 3; see also Rhode Island Parole Board 2015 Guidelines at 3 ("[T]he guidelines are not automatic nor is the parole risk assessment instrument score presumptive as to whether an offender will be paroled."). Of particular note, the guidelines in force at the time of Petitioner's parole hearing specifically provided 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." Rhode Island Parole Board 2014 Guidelines at 4.

Having reviewed the applicable guidelines, relevant law, and the particular circumstances of Petitioner, this Court concludes that there is no merit to Petitioner's argument that the failure

to articulate the results of a more scientifically determined risk score renders the Board's decision violative of Rhode Island law or is otherwise constitutionally infirm. The Court is mindful of the statement made by the Supreme Court that with respect to parole, an inmate is constitutionally entitled only to the opportunity to be heard and to be advised of the reasons for parole denial. Lyons v. State, 43 A.3d 62, 67 (R.I. 2012). 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 v. Walker, 743 A.2d 1026, 1031 (R.I. 1999). This Court concludes, as it did in Rocheleau, that the Board's statement concerning the seriousness of the offense and the significant victim impact on the victim's family are entirely consistent with its constitutional and statutory obligations to provide a written statement of the reason for parole denial. Furthermore, the Board's reasons for denying Petitioner parole are in substantial compliance with its obligations as set forth in § 13-8-14.1.

Although he may disagree with this determination, this Court is constrained to remind Petitioner that although he is entitled to question the criteria used by the Board in its parole denial decision, there is no constitutional or other inherent right of a convicted person to release before the expiration of his sentence. See Greenholtz v. Inmates of the Nebraska Penal & Corr. Complex, 442 U.S. 1, 7 (1979); Hingham v. State, 45 A.3d 1180, 1185 (R.I. 2012); Pine v. Clark, 636 A.2d 1319 (R.I. 1994).

## IV

## Conclusion

For the above-cited reasons, the petition for post-conviction relief is denied.[3]

[3] This Court would echo the observation made by our Supreme Court in Estrada v. Walker, 743 A.2d at 1031:

> "[w]e 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 postconviction relief."

**RHODE ISLAND SUPERIOR COURT**

***Decision Addendum Sheet***

---

| | |
|---|---|
| **TITLE OF CASE:** | Jay Young v. State of Rhode Island |
| **CASE NO:** | KM-2015-0962 |
| **COURT:** | Kent County Superior Court |
| **DATE DECISION FILED:** | June 7, 2016 |
| **JUSTICE/MAGISTRATE:** | Rubine, J. |
| **ATTORNEYS:** | |
| For Plaintiff: | Noah J. Kilroy, Esq. |
| For Defendant: | Jay Sullivan, Esq. |