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Commonwealth of Massachusetts

Suffolk, ss.

Superior Court No. 2184-CV-2007-D

Khalid Ali Mustafa,

Petitioner

v.

Gloriann Moroney,
As Chairperson of Massachusetts Parole Board,

Respondent.

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
2022 DEC -9 A 11:59
MICHAEL JOSEPH DONOFRIO
CLERK / MANAGER

Petitioner's Corrected Motion for Judgment on the Pleadings

Petitioner, Khalid Ali Mustafa, pursuant to Superior Court standing order 1-96, Rule 4 and Mass. R. Civ. P. 12(c), hereby files this motion for judgment on the pleadings asking this Court to reverse the decision of Respondent, the Chairperson of Massachusetts Parole Board, and terminate his parole.¹

Introduction

Khalid Mustafa is a 66-year-old man who lives in Boston. He has been on parole for more than 31 years, without incident. In December of 2020, with the support of his parole officer, Mr. Mustafa petitioned the Massachusetts Parole Board for termination of his parole pursuant to G.L. c.127, §130A. Without giving any reason, the Parole Board denied his request. AR 1.² Mr. Mustafa appealed to this Court in September of 2021. On July 6, 2022, this Court denied the respondent's

¹ A prior version of this motion, sent to the defendant on November 21, 2022, incorrectly stated in the body of the motion that the respondent was the Department of Correction.

² The Administrative Record ("AR") was filed by the Board on September 28, 2022, and supplemented on October 31, 2022.

motion to dismiss, finding that Mr. Mustafa he could challenge the Chairwoman's decision in Court. See Doc. 6 ("Memorandum and Order on Plaintiff's Motion to Dismiss").

Standard of Review

The certiorari statute, G.L. c.249, §4, gives a Superior Court the power to "correct errors in proceedings which are not according to the course of the common law" by "such ... judgment as justice may require." G.L. c. 249 § 4. The standard of judicial review is context specific: it "may vary according to the nature of the action for which review is sought." Frawley v. Police Commissioner of Cambridge, 473 Mass. 716, 729 (2016); City of Revere v. Massachusetts Gaming Commission, 476 Mass. 591, 604-05 (2017).

As this Court has suggested, and as far as counsel is aware, no appellate Court (nor Superior Court) has reviewed an appeal from the denial of a termination petition under G.L. c.127, §130A. See Doc. 6 at n. 5. The law is therefore silent on this issue, for now. Nonetheless, there are analogous contexts which are instructive. For instance, the arbitrary and capricious standard has been used when evaluating a decision of the parole board: "... In reviewing the decisions of administrative bodies which, like the parole board, are accorded considerable deference, . . . the arbitrary and capricious standard of review applies." Doucette v. Parole Board, 86 Mass. App. Ct. 531, 540-41 (2014). "A decision is arbitrary or capricious such that it constitutes an abuse of discretion where it lacks any rational explanation that reasonable persons might support." Frawley, 473 Mass. at 729. Said another way, "[a]rbitrary and capricious action on the part of an executive officer is willful and unreasoning action without consideration and in disregard of facts and circumstances." Long v. Comm'r of Pub. Safety, 26 Mass. App. Ct. 61, 65 (1988); Smith v. Wheatley, 99 Mass. App. Ct. 1128 (2021) (unpublished).

Procedural and Factual Background

A. Mr. Mustafa's Record

On November 13, 1976, when he was just 18 years, 8 months old, Mr. Mustafa took the life of Troy Willis. Mr. Mustafa – then “Wilbert Haywood” – was walking to a store when a group of people on a porch threw a bottle towards him and went inside. He waited outside the store until the person who had thrown the bottle came out with another boy. In the ensuing confrontation, Mr. Mustafa stabbed 15-year-old Troy Willis. Afterward, Mr. Mustafa lowered the knife and did not attack Anthony Willis, who had thrown the bottle. Troy Willis died later in the hospital of a single stab wound. Mr. Mustafa's first trial ended in a mistrial. At his second trial, he was found guilty of stabbing Mr. Willis once in the stomach, leading to his death. Mr. Mustafa was not found to have acted with deliberate premeditation or extreme cruelty and atrocity. See Commonwealth v. Haywood, 377 Mass. 755, 756 (1979).

Mr. Mustafa was committed on January 30, 1977. He continues to take responsibility for the murder, as he has for many years, including at a parole hearing in front of this Board 30 years ago, in 1991. Mr. Mustafa was released on parole supervision on March 13, 1992.

Mr. Mustafa was provisionally revoked on April 29, 1997. But finding no evidence for revocation, the Board allowed Mr. Mustafa to stay on parole. Mr. Mustafa's record as a juvenile included two other cases: larceny when he was 14 years old and use of a vehicle without authority when he was 16. Both were dismissed. The last violence in his record is a disciplinary report dated December 26, 1979, more than 40 years ago. This is his only incarceration. See AR 11-14 (BOP).

B. Request for Termination.

On or around October 13, 2020, Mr. Mustafa's Parole Officer, Salvador Bolanos, recommended approval for termination of Mr. Mustafa's parole. AR 2-5. Soon thereafter, Mr. Bolanos's supervisor, Debra Warnum, also recommended approval. Id. Soon after that, the Deputy

Chief Parole Supervisor, Angelo Gomez, also recommended approval. *Id.* Mr. Mustafa then filed a memorandum in support of termination with the respondent on January 14, 2021. AR 123-128.

His request for termination was denied.³ AR 1. As reason therefor, the Chairwoman wrote:

“Request denied. No further review by Full Board. Subject meeting requirements of parole supervision but does not establish compelling reason why termination of parole supervision is in the public interest per M.G.L. c. 127 § 130A.”

C. Mr. Mustafa’s Institutional Adjustment

Mr. Mustafa’s record in prison was excellent. He was committed to the DOC in 1977. Even early on in his incarceration, Mr. Mustafa received few disciplinary tickets, and ultimately received only 5 disciplinary reports in 15 years. AR 131. Mr. Mustafa was cleared to work “outside the walls” by 1979. In the 1980s Mr. Mustafa learned to be a computer programmer, which he still is. He went on more than 100 furloughs, was placed in the Cadre program, and tutored fellow inmates. AR 158, 160. His many years of institutional accomplishment speak to his success in prison. See AR 170-209. In 1987 he went to pre-release and got a job at Morgan Memorial Goodwill Industries in Boston. AR 212. He saw the Board in 1991 and was released as soon as he was eligible, on March 13, 1992. A letter from his then-lawyer, Richi Reddy, is included at AR 290. Even in 1992 it was clear that Mr. Mustafa was “a decent and honest man” who would become a leader and a model for others.

D. False Accusations

Two incidents must be addressed concerning Mr. Mustafa’s record. He has twice been falsely accused of abuse by the same person – his first ex-wife: first in 1997 and again in 2000. In April of 1997, his ex-wife falsely accused Mr. Mustafa of violating a restraining order. Around the time, Mr. Mustafa’s parole officer noted that for his first 5 years on parole Mr. Mustafa had incurred no infractions, and that his parole period had been “abnormally incident free” in regard to employment,

³ Counsel was advised by counsel for the Parole Board on August 3, 2021. The decision was dated July 8, 2021. See AR 296.

counseling, and any criminal activity.” AR 4. Although Mr. Mustafa was provisionally revoked, the Board later found there was not sufficient evidence against him and he was released on June 18, 1997.

In May of 2000, the same woman again took out a temporary restraining order against Mr. Mustafa. There were also criminal charges in Dorchester District Court. 0007-CR-3969A-B. But, again, she retracted her allegations. The restraining order was vacated in June of 2000 when she did not come to Court. Criminal charges arising from that incident were dismissed in 2001.⁴

In February of 1999 and again in 2000, Mr. Mustafa’s then-wife wrote letters to Board stating that Mr. Mustafa was never violent. Many other witnesses submitted letter to this Board and the Courts verifying that Mr. Mustafa was not violent towards his then-wife. If anything, this incident demonstrates that a man who was wrongly accused did not get angry, but allowed the system to work as it should, and eventually exonerate him.

E. Work

At work, Mr. Mustafa has succeeded better than most. As noted above, Mr. Mustafa had a job at Goodwill Industries even while he was still in prison. There he thrived, eventually becoming Plant Manager. His professional life has continued to grow. He began taking classes at South End Technology Center and Roxbury Community College, a member organization of the Timothy Smith Network. In 2010, the Timothy Smith Network hired him as a trainer. AR 162, 220. As recently as 2020, the Executive Director of EOPSS’s School of Reentry at Boston Pre-Release Center, Lisa Millwood called Mr. Mustafa, “an instrumental partner and influence in our program’s design.” AR

⁴ Mr. Mustafa’s first wife appears to have suffered from mental health problems. In the associated police report, the Officer Jason Smith writes, “[she] went on to state that she has had dreams of Mr. Mustafa cutting off her hair and burying the hair in a grave. [She] also stated that the dream actually came true and that is the reason that her and [the petitioner] are no longer together. Officers dispatched health and hospitals for an evaluation of [her]. Boston EMS unit A-12 responded, and [she] agreed to be evaluated without incident. [She] was transported to the Carney Hospital. Mr. Mustafa was instructed on the proper procedure of how to obtain a restraining order and of his rights and privileges under 209A from Officer Smith.” AR 262-63.

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