

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

906

CA 16-00935

PRESENT: WHALEN, P.J., CARNI, LINDLEY, CURRAN, AND SCUDDER, JJ.

IN THE MATTER OF WILLIAM HOLMES,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

ANTHONY ANNUCCI, ACTING COMMISSIONER, NEW YORK
STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY
SUPERVISION, RESPONDENT-RESPONDENT.

WYOMING COUNTY-ATTICA LEGAL AID BUREAU, WARSAW (ADAM W. KOCH OF
COUNSEL), FOR PETITIONER-APPELLANT.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (KATE H. NEPVEU OF
COUNSEL), FOR RESPONDENT-RESPONDENT.

Appeal from a judgment of the Supreme Court, Wyoming County
(Michael M. Mohun, A.J.), entered May 6, 2016 in a proceeding pursuant
to CPLR article 78. The judgment dismissed the petition.

It is hereby ORDERED that the judgment so appealed from is
unanimously affirmed without costs.

Memorandum: Petitioner appeals from a judgment dismissing his
petition pursuant to CPLR article 78 seeking to annul the
determination of the Parole Board (Board) denying him parole release.
"It is well settled that parole release decisions are discretionary
and will not be disturbed so long as the Board complied with the
statutory requirements enumerated in Executive Law § 259-i" (*Matter of*
Gssime v New York State Div. of Parole, 84 AD3d 1630, 1631, lv
dismissed 17 NY3d 847; see *Matter of Johnson v New York State Div. of*
Parole, 65 AD3d 838, 839). Contrary to petitioner's contention, we
conclude that the Board did not rely on incorrect information in
making its determination, specifically that petitioner had not
completed the alcohol and substance abuse program (ASAT). Petitioner
admitted that ASAT had been recommended to him, and his statement that
his counselor did not think he needed ASAT because he had already
taken it previously does not make that information erroneous. We
reject petitioner's further contentions that the Board looked
exclusively to past-focused factors and failed to consider all of the
factors in a fair manner. The record establishes that the Board
appropriately considered the relevant factors in denying petitioner's
application for release, including, inter alia, the underlying
offense, petitioner's criminal history and prior violations of parole,
his institutional adjustment, and his plans upon release (see *Matter*

of Kenefick v Sticht, 139 AD3d 1380, 1381, *lv denied* 28 NY3d 902).

Entered: June 30, 2017

Frances E. Cafarell
Clerk of the Court