

The Law of Parole: Stop Punishing Good Behavior

David Lenefsky addresses the question: Does denial of parole make any sense after an inmate has an impeccable institutional record for 15, 20 or 25 years?

By **David Lenefsky** | January 30, 2018 at 02:45 PM

Serving as pro bono counsel to inmate David Coleman has dramatized the irreconcilability of two basic principles of New York parole law. Namely, parole cannot be granted solely for good conduct while incarcerated (Executive Law §259-i(c)(A)), yet parole cannot be denied solely on the basis of the underlying crime (*Anthony v. New York State Div. of Parole*, No. 06 Civ. 180, 83 N.Y.2d 788).

The latter makes sense; otherwise, why have a judge impose sentence either as part of a plea negotiation or after trial? In short, the Parole Board is statutorily not an appellate sentencing court.

The former makes some sense when dealing with short-term sentences. For example, an inmate serving a two- to six-year sentence might deceptively behave for two years in order to obtain parole—and then, as planned, commit additional crime.

But, does denial of parole make any sense after an inmate has an impeccable institutional record for 15, 20 or 25 years? When I argued Mr. Coleman’s case before the Appellate Division, Second Department, in December 2017, Mr. Coleman had an exemplary institutional record, having served 39 years on a sentence of 25 years to life for an especially brutal murder he committed when he was 17 years old. During his incarceration, while denied parole nine times, he earned three college degrees, had an unprecedented 13 commendations from correctional staff, including seven from a superintendent for, among other reasons, “helping to save a life” and for protecting a female correctional employee from a threatened physical assault by other inmates—

something which Mr. Coleman said surely did not endear him to his fellow inmates. He also became an accomplished painter and guitarist.

Executive Law §259 provides the Parole Board with broad discretion related to parole release, and prescribes the limits of that discretion. The statute mandates that parole must be reasonably predicted on the basis of three qualitative standards: (1) whether, if released, the inmate will live and remain at liberty without violating the law; (2) whether the inmate's release will be incompatible with the welfare of society; and (3) whether release will not so deprecate the seriousness of the crime so as to undermine respect for the law.

The same statute requires the Board to consider several specific factors when determining whether or not the three standards are satisfied. These factors include the seriousness of the underlying offense; any prior criminal record; the inmate's institutional record including academic achievements, vocational training, therapy and interpersonal relationships with staff and other inmates; release plans; and any statements made to the Board by the crime victim or the victim's representative.

Two important statutory and regulatory changes to the Board's decision-making process have been made in recent years. The Board is now required to have risk and needs principles, known as COMPAS, to measure the rehabilitation of an inmate and the likelihood of success if paroled (Executive Law §259-i(c)(4)).

The Board must also consider a current case plan which sets forth the living conditions of a potential parolee (9 CRRNY §8002.3(11)). These changes, in effect, require the Board to change its focus from a backward historical approach to a forward thinking framework when evaluating whether an inmate is ready for parole. They are intended to bring a methodical process to determining whether an inmate has met the three release standards set forth in the Executive Law. Said differently, risk and needs principles, and a case plan, are intended to replace the best guess of a Board in determining whether there is a reasonable probability a parolee will live peacefully.

So, here, finally, is the point: Is not an exemplary institutional record for 15 or more years sufficient demonstration that there is a reasonable probability that an inmate will live without violating the law, and that release is not incompatible with the welfare of society, and that release will not so deprecate the seriousness of the crime as to undermine respect for the law? Of course it is.

Basic psychology requires that good behavior, if not rewarded, not be punished. Furthermore, as is well documented, the recidivism rate steadily declines as the age of the parolee increases (See Report, New York State Department of Corrections and Community Service, "[2010 Inmate Releases: Three Year Post Release Follow-Up](#)"). Contrary to legislative intent and case law, the Parole Board in reality acts as an appellate sentencing court when they deny parole to inmates who have demonstrated exemplary long-term behavior.

On Jan. 10, 2018, the Appellate Division unanimously reversed the judgment of the lower court and annulled the Board's parole denial, holding that the finding that there was a reasonable probability Mr. Coleman would not satisfy the three standards for parole is "without support in the record" and that denial "evinced irrationality bordering on impropriety." (*Matter of Goldberg v. New York State Bd. Of Parole*, 103 A.D.3d 634).

On January 23rd, Mr. Coleman had his de novo parole hearing before two Board members who did not sit on his prior hearing.

Parole was granted.

Hallelujah!

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