

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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In the Matter of the Application of:

DIANE PIAGENTINI,

Petitioner,

For a Judgment Pursuant to Article 78 of the Civil
Practice Law and Rules,

VERIFIED PETITION

- against -

Index #:

NEW YORK STATE BOARD OF PAROLE, and
TINA M. STANFORD, in her official capacity as
Chairwoman of the Board of Parole,

Respondents.

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TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Petitioner, Diane Piagentini by her attorneys, WORTH, LONGWORTH & LONDON, LLP,
Mitchell Garber, of counsel, respectfully shows to the Court and alleges as follows:

PRELIMINARY STATEMENT

1. Petitioner brings this proceeding pursuant to Article 78 of the Civil Practice Laws and Rules (“CPLR”), as a result of the New York State Board of Parole’s (“Board”) determination to release inmate Herman Bell, DIN:79C0262, the convicted murderer of her husband, New York City Police Officer Joseph Piagentini, from the custody and supervision of the New York State Department of Corrections and Community Supervision (“DOCCS”) to parole; to stay the pending release of Bell until such time as the Court can conduct a full hearing on the petition; and to compel the Board to conduct a new hearing before a new Board fully considering all of the factors in accordance with Executive Law 259-i(2)(c)(A).

THE PARTIES TO THIS PROCEEDING

2. Diane Piagentini is the widow of New York City Police Officer Joseph Piagentini, who, along with fellow New York City Police Officer Waverly Jones, was executed on May 21, 1971, by Herman Bell after responding to a bogus 911 call for help.

3. Mrs. Piagentini has registered with the DOCCS Office of Victim Assistance and has consistently provided updated Victim Impact Statements to DOCCS, as provided by law.

4. Respondent, New York State Board of Parole (“Board”), is a state “body or officer” with the meaning of Section 7802 of the CPLR.

5. Respondent, Tina M. Stanford, is the Chairwoman of the New York State Board of Parole and is responsible for the management, administration and day-to-day operations of the Board of Parole.

VENUE

6. Venue is proper pursuant to CPLR 506(b) because the causes of action arose within the Third Judicial District.

FACTS

7. On the evening of May 21, 1971, New York City Police Officers Joseph Piagentini and Waverly Jones were called to investigate a disturbance in the Colonial Park Houses on W. 159th St. in New York County, New York.

8. The 911 call was bogus, meant by Herman Bell and his co-conspirators to lure the unsuspecting officers into a trap.

9. Herman Bell traveled from San Francisco, California to New York City for the express purpose of assassinating one or more New York City Police Officers.

9. Officers Piagentini and Jones were ambushed from behind, facing a barrage of gunfire. Officer Jones was struck in the back of the head, neck, lower back and thigh, killing him instantly.

10. Police Officer Waverly Jones was thirty-three (33) years old, the father of three children.

11. Police Officer Piagentini was simultaneously shot, falling to the ground.

12. Herman Bell took Police Officer Piagentini's service revolver from his holster and, as he pleaded for his life, shot him with it.

13. Police Officer Piagentini was shot a total of 13 times, leaving 22 entry and exit wounds in his body.

14. Police Officer Piagentini died en route to the hospital.

15. Police Officer Piagentini was married to his wife, Diane Piagentini, and was the father of two young daughters.

16. Herman Bell left the scene of the ambush, taking Police Officer Piagentini's service revolver as a "trophy."

17. Herman Bell fled to San Francisco, California and killed San Francisco Police Department Sergeant John Young in another targeted assassination of a police officer.

18. Herman Bell was arrested and brought to New York State to stand trial for the murders of Police Officers Piagentini and Jones.

19. Herman Bell was convicted after trial by jury for the Crimes of Murder, Second Degree, Two Counts, for the murders of Police Officers Piagentini and Jones.

20. On May 12, 1975, Herman Bell was sentenced by the Hon. Edward J. Greenfield,

J.S.C., to twenty five (25) years to life imprisonment, the maximum sentence under the law at the time, for the murder of Police Officers Joseph Piagentini and Waverly Jones.

21. Herman Bell was sentenced in San Francisco to twenty five (25) years in prison for a federal armed bank robbery conviction in 1974.

22. In imposing the sentence of Herman Bell for the murders of Police Officers Piagentini and Jones, Justice Greenfield ordered that the sentence run consecutive to any other sentence to be served for other crimes.

23. In 2009 Herman Bell was brought to justice in San Francisco, California and admitted in San Francisco Superior Court to his role in the assassination of Sergeant John Young in 1971.

24. By his own admission, Herman Bell assassinated three police officers, two in New York City and one in San Francisco, the sole reason being the uniforms and badges that they wore.

25. In 1971, the time of the commission of the assassinations of Police Officers Piagentini and Jones, the United States Supreme Court had ruled that the death penalty was unconstitutional, making the sentence of twenty five (25) years to life imprisonment, with eligibility for release to parole after twenty five (25) years, the maximum sentence that could be imposed in New York State.

26. Under present New York State law, Herman Bell would face a mandatory sentence of life imprisonment without the possibility of parole for the conviction of the murders of Police Officers Piagentini and Jones.

27. At sentence, the assistant district attorney representing the People stated that if the death penalty was in effect, the District Attorney's recommendation would be that the death penalty be imposed. (The minutes of the sentence of Herman Bell are attached as Exh. A - pg. 126).

28. The assistant district attorney stated that based on the record of the case, the facts

demonstrate that Bell and his co-defendants are “beyond redemption and can never be rehabilitated.” (Exh. A - pg. 126).

29. The assistant district attorney noted that “[n]othing more clearly demonstrates what was in the minds of these defendants, and in fact they delayed their get-away in order to take their guns off the bodies of the slain patrolmen. They were not guns belonging to two individuals, they were trophies, demonstrating how these defendants had stuck out against law and society.” (Exh. A - pg. 126).

30. Herman Bell expressed no remorse during his statement to the Court at sentencing, stating, “Until we have justice, we will fight. We will fight authority, those who represent authority.” (Exh. A - pg. 132).

31. Herman Bell continued, “I have a lot to say, not to them but to you, the people. I have a lot to say but I am a man of deeds, not words.” (Exh. A - pg. 132).

32. Herman Bell stated, “They didn’t know that we existed, but here we are and more is to come until justice’ [sic] is administered to all the people of the land, the wealth is distributed to all the people of the land, not just for a select few.” (Exh. A - pg. 134).

33. One of the defense attorneys, William Mogulescu, Esq., recognized the futility of expecting that the defendants would be rehabilitated while serving their sentences in prison, stating at sentence: “These men [referring to Bell and his co-defendants] perceive that they are at war and men are killed at war. They are beyond rehabilitation. There is no question of that because they feel unless our society is restructured and overthrown, that there is no justice, that there is no hope, that there is no way.” (Exh. A - pp. 170-171).

34. The sentencing Judge stated: “The law, as it stood at the time of the commission of

these acts, does not permit of [sic] capital punishment. The Supreme Court of the United States has declared that given the way that capital punishment was applied at the time it violated due process because it was random and arbitrary. But these defendants, although they are spared the risks of capital punishment, had no aversion to inflicting capital punishment upon others in a fashion which was random and arbitrary.” (Exh. A - pp. 174-175)

35. The sentencing Court continued. “And they inflicted that capital punishment not for the crime of murder but because Patrolman Waverly Jones and Patrolman Joseph Piagentini, a black man and a white man, were guilty of representing the People as members of the police department of their municipality.” (Id.)

36. The sentencing Court: “They [referring to Officers Piagentini and Jones] were guilty of the crime of coming to the aid of an injured woman who had called for help.” (Id.)

37. The sentencing Court: “They [referring to Officers Piagentini and Jones] had committed no wrong, real or fanciful, against these defendants. These defendants, who came from California for the purpose of shooting police officers, Patrolman Jones and Patrolman Piagentini weren’t trying to destroy their political activities in California, They were doing their job in New York. And they met their death on a call to help someone.” (Id.)

38. The sentencing Court: “How was it done [referring to the execution of Officers Piagentini and Jones]? There were no charges preferred against them. No trial. They had no defense and they will never be afforded the opportunity of an appeal.”

“What they faced was the instantaneous snuffing out of their lives, coldly, impersonally and savagely. Acts which were then followed by a celebration that the enemy, unaware, had been slain. That is what we are dealing with here.” (Exh. A - pg. 175).

39. The sentencing Court: “The Court notes ... that Bell is facing a charge of 25 years, having been convicted in Federal Court in California.” (Exh. A - pp. 180-181).

40. The sentencing Court: “With respect to any and all such charges, as to which the defendants have previously been convicted, the sentences here imposed will be consecutive to any sentences imposed in any other jurisdiction, and consecutive to any sentences imposed for any other crime.” (Exh. A - pg. 181).

41. After serving the minimum sentence, Herman Bell would appear every two years before the Respondent Board.

42. Although Bell appeared at least four previous times before the Board, he did not accept responsibility for the murder of Police Officers Piagentini and Jones until 2010.

43. A review of the record of his appearances before the Board shows less than unequivocal admissions to the facts or a genuine acceptance of responsibility, leading to the inescapable conclusion that Bell’s statements were tailored to fit the Board’s rehabilitation guidelines.

44. Additionally, Bell’s statements to the Board show of a pattern of lack of remorse for his other crimes, including the targeted assassination of Sgt. John Young and California State and federal convictions for offenses that are considered armed violent felony offenses under New York State law.

45. On February 18, 2018, convicted murderer Herman Bell appeared for the eighth time before the Board, again seeking release to parole supervision.

46. On or about March 19, 2018, Petitioner, Diane Piagentini, was advised by DOCCS that the Respondent Board had voted in a 2-1 decision to release Herman Bell, the murderer of Police

Officers Piagentini and Jones, to parole supervision, no earlier than April 17, 2018.

47. The Board decision indicates that “[t]he file features no sentencing minutes. (Exh. B is a copy of the Board Decision).

48. Although noting that they reviewed “local, statewide and national opposition” to Bell’s release, the Decision fails to state that they reviewed Petitioner Diane Piagentini’s Victim Impact Statement, timely made to DOCCS. (Exh. B).

49. Under the law, release on parole shall not be granted if “incompatible with the welfare of society” and will “so depreciate the seriousness of his crime as to undermine respect for the law” and shall not be granted merely as a reward for good conduct.”

50. As set forth in the accompanying Affirmation of Mitchell Garber in Support of Temporary Restraining Order and Preliminary Injunction, Memorandum of Law and exhibits, the Decision of the Respondent Board is incompatible with the law, mandating the relief requested.

AND AS FOR A FIRST CAUSE OF ACTION

51. The Petitioner repeats and realleges the allegations set forth in paragraphs 1-50, as though fully set forth herein.

52. On February 18, 2018, a panel of the Respondent Board voted to release Herman Bell to parole supervision.

53. The file considered by the Board did not contain a copy of the minutes of the sentence of Herman Bell on May 12, 1975, wherein he was sentenced in Supreme Court, New York County to twenty five (25) years to life imprisonment, two counts, for the murder of Police Officers Piagentini and Jones. (Exh. B).

54. In failing to have and consider the sentencing minutes of Herman Bell, Respondent

Board violated Executive Law section 259(i)(2)(c)(A)(vii) which requires the Board to consider “the seriousness of the offense with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court, the district attorney, the attorney for the inmate, ... as well as consideration of any mitigating and aggravating factors, and activities following arrest prior to confinement.”

AND AS FOR A SECOND CAUSE OF ACTION

55. The Petitioner repeats and realleges the allegations set forth in paragraphs 1-54, as though fully set forth herein.

56. In failing to have and consider Petitioner Diane Piagentini’s Victim Impact Statement, Respondent Board violated Executive Law section 259(i)(2)(c)(A)(v) which requires the Board to consider “any current or prior statement made to the board by the crime victim or the victim's representative.”

AND AS FOR A THIRD CAUSE OF ACTION

57. The Petitioner repeats and realleges the allegations set forth in paragraphs 1-56, as though fully set forth herein.

58. In granting the release of Herman Bell, the convicted murderer of Police Officers Piagentini and Jones, the Respondent Board acted contrary to the law and the Board’s Decision demonstrates “irrationality bordering on impropriety, as follows:

a. Under the law and the rules of Respondent Board, release on parole shall not be granted if “incompatible with the welfare of society” and will “so depreciate the seriousness of his crime as to undermine respect for the law.”

b. Under the law and the rules of Respondent Board, release on parole shall not be

granted merely as a reward for good conduct while imprisoned.

c. By failing to adequately consider the gravity of the crime committed by Bell; namely, the targeted assassination of two on-duty Police Officers, Joseph Piagentini and Waverly Jones, murdered solely because of the uniforms that they were wearing.

d. By failing to adequately consider the other violent crimes committed by Bell, namely the targeted murder of San Francisco Police Department Sergeant Joseph Young and the armed robbery of a bank in San Francisco, taking place months after the instant crimes while Bell was a fugitive from justice.

e. By failing to adequately consider that Herman Bell failed to accept responsibility for the murders of Police Officers Piagentini and Jones until he had appeared at least four times before the Respondent Board and that his statements to the present Board were tailored to fit the Board's rehabilitation guidelines.

f. By failing to properly weigh the aggravating factors balancing against the release of Herman Bell to parole supervision.

WHEREFORE, Petitioner, Diane Piagentini respectfully requests that this Court accept jurisdiction; vacate the Decision of Respondent Board to release Herman Bell; stay the pending April 17, 2018 release of Herman Bell; and award any other affirmative relief deemed appropriate by the Court, together with costs and reimbursements of this action.

Dated: New York, New York
April 4, 2018

Respectfully submitted,

WORTH, LONGWORTH & LONDON, LLP
Attorneys for Petitioner

By: _____/s/_____
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VERIFICATION

Diane Piagentini, being duly sworn, states: I am the Petitioner in this action. I have read the annexed Verified Petition, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

Diane Piagentini

Sworn to before me this
____ day of April, 2018

Notary Public

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Mitchell Garber, Esq., does hereby certify pursuant to subdivision (a) of Section 130-1.1a, which took effect on March 1, 1998, that the annexed Verified Petition and the other pleadings of which this certification is a part are to the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of these papers or the contentions herein are not frivolous as defined in section (c) of Section 130-1.1.

_____/s/_____
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