

2021 WL 1779904 (Mass.Super.) (Trial Order)
Superior Court of Massachusetts.
Suffolk County

Gerard J. CASEY, JR., Plaintiff,

v.

Carol MICI, Commissioner of the Massachusetts Department of Correction, Defendant.

No. 2084GV01551-D.
February 5, 2021.

Order on Plaintiff's Motion for Judgment on the Pleadings

Heidi E. Brieger, Judge.

***1** After a Zoom hearing and after careful review of the parties' written submissions and attachments, Plaintiff's Motion is **Denied** in part as **Moot**, and further **Denied** for the reasons that follow.

To the extent that Plaintiff's instant motion seeks medical parole, the Commissioner has granted Plaintiff's petition, so that aspect of the instant motion is moot. Plaintiff further requests this court to remand the matter to the Commissioner for further proceedings on the ground that the Commissioner was arbitrary and capricious in refusing to permit Plaintiff to reside with his wife on medical parole. In addition, Plaintiff argues that the Commissioner's release plan (which includes his placement in a nursing facility) is an improper exercise of her authority under the Medical Parole statute. The Court disagrees.

A review of the record indicates that in granting Plaintiff's petition for medical parole, the Commissioner evaluated a number of statutory factors, including plaintiff's potential risk of harm to himself and the community, and concluded that Plaintiff's request to reside with his wife with whom he resided when he committed a murder - was not appropriate. This Court, in its limited review of the Commissioner's findings, *Diatchenko v. District Attorney For Suffolk County*, 471 Mass. 12, 33 (2015), does not conclude that the Commissioner's preparation of a release plan – even if Plaintiff objects to its contours – was arbitrary and capricious, or not based on substantial evidence in the record. *Buckman v. Commissioner of Correction*, 484 Mass. 14, 29 (2020). Accordingly, to the extent this motion requests the Court to remand this matter to the

Commissioner for further proceedings, it is **DENIED**.

SO ORDERED, at Boston, Massachusetts, this 5TH day of February , 2021.

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Heidi E. Brieger

Justice of the Superior Court