

2021 WL 5238470 (Mass.Super.) (Trial Order)
Superior Court of Massachusetts.
Essex County

Louis LAURORE,

v.

Carol MICI & others¹.

No. 2082CV00732.

August 12, 2021.

**Memorandum of Decision and Order on Plaintiff's Motion for Judgment on
the Pleadings and Defendant's Cross-Motion for Judgment on the Pleadings**

Mark A. Hallal, Judge.

*1 Petitioner Louis Laurore ("Laurore") seeks relief from this court pursuant to [G. L. c. 127, § 119A\(g\)](#) and [G. L. c. 249, § 4](#), after the Commissioner of the Massachusetts Department of Corrections ("DOC"), Carol Mici ("Commissioner"), denied Laurore's petition for medical parole. In his motion for judgment on the pleadings, Laurore requests, among other things, that he be granted medical parole. The respondents, which include the Commissioner, Steven Silva, Superintendent of Massachusetts Correctional Institution in Norfolk ("Superintendent"), and Thomas A. Turco, III, Secretary of the Executive Office of Public Safety and Security ("Secretary"), filed an opposition and cross-motion for judgment on the pleadings. For the reasons discussed below, Laurore's motion is **DENIED**, and the respondents' cross-motion is **ALLOWED**. Judgment will enter in favor of the respondents.

BACKGROUND

Laurore is presently serving a life sentence, without the possibility of parole, for a first-degree murder and armed assault with intent to murder conviction. Laurore petitioned for release on medical parole pursuant to the medical parole statute, [G. L. c. 127, § 119A](#), on April 10, 2020.

Consequently, two medical evaluations of Laurore were conducted in April of 2020, one by Dr. Michael Moore ("Moore"), the medical director at the Massachusetts Correctional Institution at Norfolk ("MCI Norfolk"), and an additional evaluation conducted by Dr. Steven Descoteaux ("Descoteaux"), the statewide medical director for Wellpath, the DOC's medical provider.

Moore opined that Laurore had severe cardiomyopathy that necessitated the placement of a pacemaker to treat cardiac arrhythmias and episodes of congestive heart failure associated with the disease. Moore also opined that Laurore had gastroesophageal reflux disease, hypertension, and was pre-diabetic. Moore advised Laurore to avoid strenuous activity due to his cardiac condition and *estimated* that Laurore's life expectancy was less than eighteen months due to his cardiomyopathy, congestive heart failure, and hypertension. Moore did not give a specific opinion whether Laurore was "permanently incapacitated" within the meaning of the medical parole statute.

Descoteaux's medical evaluation was more detailed. While Descoteaux did not disagree with Moore's diagnoses, he provided more information on Laurore's life expectancy. Descoteaux specifically cited multiple studies showing that only seven to fifteen

percent of individuals with the same diagnosis as Laurore had a mortality rate of twenty months. Additionally, Descoteaux asserted that the implantation of a defibrillator into Laurore had increased his chances of surviving a serious cardiac event by ninety percent. Descoteaux opined that Laurore did not meet the definition of “permanently incapacitated,” and that Laurore’s degree of heart failure did not predict death within eighteen months.

Additionally, correctional staff reported that Laurore had been able to ambulate, dress, toilet, shower, and eat without assistance. Correctional staff also reported that Laurore had attended Toastmaster meetings at the CSD building and worked in the Correctional Industries clothing shop.

*2 On May 1, 2020, pursuant to the medical parole statute, the Superintendent offered the Commissioner a recommendation on Laurore’s petition. The Superintendent’s recommendation included a risk assessment, medical background, and medical parole plan, in accordance with the requirements of *G. L. c. 127, § 119A(c)(l)*. The Superintendent stated that Laurore did not meet the medical parole statute’s requirements of being either “permanently incapacitated” or “terminally ill”; Laurore’s medical condition was not so debilitating that he would cease to pose a risk to public safety if released on medical parole; and Laurore may not abide by the law if released on medical parole as evidenced by the fact that he has been found guilty of fighting twice while he was incarcerated. Additionally, the Superintendent noted that Laurore had not taken responsibility for the murder of his wife in front of his daughter and the shooting of his brother-in-law.

On June 15, 2020, the Commissioner denied Laurore’s petition for release on medical parole finding that Laurore was neither “permanently incapacitated” nor “terminally ill” as required under the medical parole statute. The Commissioner based her determination on Descoteaux’s medical evaluation and the observations of the correctional staff. Additionally, the Commissioner determined that Laurore’s release on medical parole would be incompatible with the welfare of society because she believed Laurore would not refrain from breaking the law.

The Commissioner also took into consideration a written statement from Middlesex District Attorney, Marian Ryan (“Ryan”), pursuant to *G. L. c. 127, § 119A(c)(2)*. Ryan opposed Laurore being released on medical parole and stated that she believed Laurore did not satisfy the medical parole statute’s foundational requirements. Additionally, Ryan asserted that the surviving victim of Laurore’s crime, as well as the Somerville Police Chief, strongly opposed Laurore’s release.

The Commissioner did not give weight to the April 10, 2020 affidavit of New York epidemiologist, Danielle Ompad, PhD (“Ompad”), that Laurore relied upon for the issue of COVID-19 in correctional settings. The Commissioner reasoned that Ompad’s affidavit was based on old information and catastrophic hypotheticals that had not actually taken place. Additionally, the Commissioner asserted that the affidavit lacked an actual assessment of *Laurore’s* medical condition.

Laurore filed this action in the nature of certiorari on August 3, 2020.

DISCUSSION

I. Standard of Review

General Laws c. 127, § 119A(g) states that a “prisoner ... aggrieved by a decision denying ... medical parole made under this section may petition for relief pursuant to [section 4 of chapter 249](#).”⁵ Under certiorari review, the court thus examines the record and reviews the Commissioner’s decision to determine whether there was an abuse of discretion. See *Diatchenko v. District Attorney for the Suffolk Dist.*, 471 Mass. 12, 31 (2015) (applying an abuse of discretion standard in an action for judicial review of a decision denying parole to a juvenile homicide offender under *G. L. c. 249, § 4*, as “the decision whether to grant parole to a particular ... offender is a discretionary determination by the board”); *Doucette v. Massachusetts Parole Bd.*, 86 Mass. App. Ct. 531, 534 (2014) (stating that “[c]ertiorari review of the merits of the board’s decision pursuant to *G. L. c. 249, § 4*, is based on general principles of certiorari review and the administrative record”). “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 v. Police Comm’r of Cambridge*, 473 Mass. 716, 729 (2016) (internal quotation marks omitted). Because “the power to grant parole, being fundamentally related to the execution of a prisoner’s sentence, lies exclusively within” the province of the executive branch,” *Diatchenko*, 471 Mass. at 28, the court’s role is limited to ensuring that the Commissioner “constitutionally exercised” such power. *Id.* at 33. The court may not substitute its own opinion for that of the commissioner. See *Frawley*, 473 Mass. at 729; *Diatchenko*, 471 Mass. at 30.

II. Medical Parole Statute

*3 General Laws c. 127, § 119A established a “compassionate release program ... available to all prisoners” *Sharris v. Commonwealth*, 480 Mass. 586, 601 n.10 (2018). It “allows a prisoner who suffers from a terminal illness or permanent incapacitation that is so debilitating that the prisoner does not pose a public safety risk to be released on medical parole.” *Id.* (internal quotation marks omitted). The process begins when a prisoner submits a written petition to the superintendent⁶ See § 119A(c)(1). The superintendent must review the petition and “develop a recommendation” as to whether the prisoner should be released. *Id.* Within twenty-one days of receiving the petition, the superintendent is required to transmit the following items to the commissioner: (1) the petition; (2) the superintendent’s recommendation; (3) a medical parole plan;⁷ (4) a written diagnosis by a licensed physician; and (5) “an assessment of the risk for violence that the prisoner poses to society.” *Id.* Such items must be transmitted “[w]hether or not the superintendent recommends in favor of medical parole” *Id.*

Once the commissioner receives the petition and recommendation, the commissioner must provide written notification to various individuals that the prisoner is being considered for medical parole.⁸ See § 119A(c)(2). Those individuals may provide written statements or, if applicable, may request a hearing. See *id.*

Within forty-five days of receiving the petition, the commissioner “shall issue a written decision ... accompanied by a statement of reasons for the ... decision.” § 119A(e). The prisoner “shall be released on medical parole” only if “the commissioner determines that [the] prisoner is terminally ill or permanently incapacitated such that if the prisoner is released the prisoner will live and remain at liberty without violating the law and that the release will not be incompatible with the welfare of society” *Id.* See *Buckman v. Commissioner of Correction*, 484 Mass. 14, 19 (2020). A “terminal illness” is defined in the statute as “a condition that appears incurable, as determined by a licensed physician, that will likely cause the death of the prisoner in not more than 18 months and that is so debilitating that the prisoner does not pose a public safety risk.” § 119A(a). A “permanent incapacitation” is defined as “a physical or cognitive incapacitation that appears irreversible, as determined by a licensed physician, and that is so debilitating that the prisoner does not pose a public safety risk.” *Id.* Any prisoner released is subject to terms and conditions imposed by the parole board. See § 119A(e).

III. Commissioner’s Denial of Medical Parole

Here, the Commissioner did not abuse her discretion in denying Laurore medical parole. The Commissioner’s decision was supported by evidence of the record and is not arbitrary and capricious. Section 119 A(e) required the Commissioner to grant Laurore medical parole only if she determined that Laurore was “terminally ill or permanently incapacitated such that if [Laurore were] released [he would] live and remain at liberty without violating the law and that the release [would] not be incompatible with the welfare of society” See *Buckman*, 484 Mass. at 19. The Commissioner’s decision was adequately supported.

*4 Under the arbitrary and capricious standard of review, the Commissioner’s decision is afforded considerable deference. The Commissioner’s decision that Laurore was neither “permanently incapacitated” nor “terminally ill” does not constitute an abuse of discretion because she relied on the medical evaluation of Descoteaux—which was grounded in relevant medical studies—and upon the correctional staff’s observations of Laurore’s physical capabilities.

Descoteaux performed a medical evaluation of Laurore on April 26, 2020, and opined that Laurore did not meet the definition of “permanently incapacitated” and that Laurore’s degree of heart failure would not likely result in death within eighteen months.

Descoteaux grounded his assertion in medical studies and specific medical findings. Conversely, Moore's opinion of Laurore's life expectancy being less than eighteen months was an estimate and not grounded in medical studies or specific medical findings.

The Commissioner's determination that Laurore would pose a threat to public safety was also supported by evidence in the administrative record. The Superintendent's recommendation included a risk assessment, medical background, and medical parole plan. The Superintendent also opined that Laurore's medical condition was not so debilitating that he would cease to pose a risk to public safety if released. Moreover, the Superintendent opined that Laurore may not abide by the law if released as he had two fighting incidents while incarcerated. Finally, the Superintendent took into account the fact that Laurore had never taken responsibility for the murder of his wife and shooting of his brother-in-law in front of his daughter.

To the extent that Laurore claims that the Commissioner abused her discretion by disregarding the impact of COVID-19, the Appeals Court has held that it is appropriate for the Parole Board to consider the increased risk of harm to a prisoner due to COVID-19, but it is within its discretion to not do so. See *Ayala v. Massachusetts Parole Board*, 98 Mass. App. Ct. 1114, 2020 WL 6140482 at *2 (2020) (Rule 23.0 Decision).

In light of the Commissioner's reasons as set forth above, the court cannot conclude that the Commissioner's decision to deny Laurore medical parole "lacks any rational explanation that reasonable persons might support." *Frawley*, 473 Mass. at 729 (citation omitted). Because the Commissioner's determination was not arbitrary and capricious, the court affirms the Commissioner's denial of medical parole.

IV. The Plaintiffs Constitutional Claims

Laurore claims that the respondents, by their acts and omissions, have violated his due process rights under the Massachusetts Declaration of Rights and the Fourteenth Amendment to the United States Constitution, as well as his right to be free from cruel and unusual punishment under Article 26 of the Massachusetts Declaration of Rights and the Eighth Amendment to the United States Constitution. Laurore has failed to sufficiently allege facts to support these claims.

Laurore claims federal and state due process violations as the result of the Commissioner's denial of medical parole. These claims are premised on Laurore's assertion that the denial of medical parole is punishment. For due process to be implicated, this punishment must intrude upon a protected liberty interest, imposing an atypical and significant hardship. See *Sandin v. Conner*, 515 U.S. 472, 484 (1995). The defendants correctly assert that the granting of parole generally is not a protected liberty interest. See *Greenman v. Massachusetts Parole Bd.*, 405 Mass. 384, 388 n.3 (1989). Without a protected liberty interest, there can be no due process violation.

*5 Moreover, Laurore's claim that his procedural due process rights were violated must fail. Laurore brings the present action under G. L. c. 249, § 4 as an appeal from a state agency decision. The ability to bring such a suit is an adequate post-deprivation remedy. See *LaFortune v. City of Biddeford*, 142 Fed. Appx. 471, 473-474 (1st Cir. 2005); *Gonzalez v. Dooling*, 98 F. Supp. 3d 135, 144 (D. Mass. 2015).

Laurore also contends that the Commissioner's failure to grant him medical parole amounts to violations of his state and federal rights to be free from cruel and unusual punishment. The Supreme Judicial Court has made it clear that Article 26 does not provide greater protections than the Eighth Amendment to the United States Constitution. See *Foster v. Commissioner of Correction*, 484 Mass. 698, 716 (2020). In analyzing a prisoner's alleged violation of the Eighth Amendment claim, the court conducts an objective and subjective test to determine whether he/she was subjected to a substantial risk of serious harm and that a defendant acted with deliberate indifference to the conditions of the prisoner's confinement. See *Farmer v. Brennan*, 511 U.S. 825, 833-835, 837 (1994); *Wilson v. Setter*, 501 U.S. 294, 297, 304-305 (1991).

Laurore has pleaded no facts suggesting that either the Commissioner or the Superintendent acted with deliberate indifference. Moreover, Laurore has not pleaded any facts that any of his medical care while incarcerated has been inadequate.

Accordingly, Laurore's claims under Article 26 and the Eighth Amendment must be dismissed.

ORDER

For the foregoing reasons, it is hereby **ORDERED** that Laurore's motion for judgment on the pleadings is **DENIED** and the respondents' cross motion is **ALLOWED**. Judgment shall enter in favor of the respondents.

<<signature>>

Mark A. Hallal

Justice of the Superior Court

Dated: 8-10-21

Footnotes

- 1 Steven Silva and Thomas A. Turco, III.
- 5 [General Laws c. 249, § 4](#) provides that: “A civil action in the nature of certiorari to correct errors in proceedings which are not according to the course of the common law, which proceedings are not otherwise reviewable by motion or by appeal, may be brought in the supreme judicial or superior court.... Such action shall be commenced within sixty days next after the proceeding complained of. Where such an action is brought against a body or officer exercising judicial or quasi-judicial functions to prevent the body or officer from proceeding in favor of another party, or is brought with relation to proceedings already taken, such other party may be joined as a party defendant by the plaintiff or on motion of the defendant body or officer or by application to intervene. Such other party may file a separate answer or adopt the pleadings of the body or officer. The court may at any time after the commencement of the action issue an injunction and order the record of the proceedings complained of brought before it. The court may enter judgment quashing or affirming such proceedings or such other judgment as justice may require.”
- 6 More specifically, a petition can be submitted by “the prisoner, the prisoner's attorney, the prisoner's next of kin, a medical provider of the correctional facility or a member of the department's staff.” [§ 119A\(c\)\(1\)](#).
- 7 A “medical parole plan” is defined as “a comprehensive written medical and psychosocial care plan specific to a prisoner and including, but not limited to: (i) the proposed course of treatment; (ii) the proposed site for treatment and post-treatment care; (iii) documentation that medical providers qualified to provide the medical services identified in the medical parole plan are prepared to provide such services; and (iv) the financial program in place to cover the cost of the plan for the duration of the medical parole, which shall include eligibility for enrollment in commercial insurance, Medicare or Medicaid or access to other adequate financial resources for the duration of the medical parole.” [§ 119A\(a\)](#).
- 8 Such individuals include “the district attorney for the jurisdiction where the offense resulting in the prisoner being committed to the correctional facility occurred, the prisoner, the person who petitioned for medical parole, if not the prisoner and, if applicable under chapter 258B, the victim or the victim's family” [§ 119A\(c\)\(2\)](#).

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