

2021 WL 4571112 (Mass.Super.) (Trial Order)
Superior Court of Massachusetts.
Suffolk County

Willie ROBINSON,

v.

Carol A. MICI, Commissioner of the Department of Correction, et al.

No. 2084CV02674.

August 12, 2021.

Memorandum of Decision and Order on Cross Motions for Judgment on the Pleadings

Maureen Mulligan, Judge.

*1 Plaintiff Willie Robinson filed this certiorari petition under [G.L. c. 249, § 4](#) for review of a decision by the Commissioner of the Department of Correction (“the Commissioner”) denying his petition, and subsequent request for reconsideration, for medical parole under [G.L. c. 127, § 119A](#). For the reasons set out below, Plaintiff’s Motion for Judgment on the Pleadings is **DENIED**, and Defendant’s Cross-Motion is **ALLOWED**.

LEGAL FRAMEWORK

As part of the comprehensive criminal justice reform legislation enacted in 2018, the Legislature established a medical parole program for prisoners in State and county custody who are terminally ill or permanently incapacitated. See [G.L. c. 127, § 119A](#); [Buckman v. Commissioner of Correction](#), 484 Mass. 14, 17 (2020). “The purpose of the statute ... [is] both to reduce significant health care expenditures for aging and ill prisoners who are unlikely to reoffend and to show compassion to sick and disabled prisoners.” [Harmon v. Commissioner of Correction](#), 487 Mass. 470, 477 (2021).

The Statute. Under the statute, “terminally ill” means “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 the prisoner does not pose a public safety risk.” [G.L. c. 127, § 119A\(a\)](#). “Permanent Incapacitation” means 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.” [G.L. c. 127, § 119A\(a\)](#). A “debilitating” condition (as referenced above) is defined by the Department of Correction’s medical parole regulations as:

A physical or cognitive condition that appears irreversible, resulting from illness, trauma, and/or age, which causes a prisoner significant and serious impairment of strength or ability to perform daily life functions such as eating, breathing, toileting, walking or bathing so as to minimize the prisoner’s ability to commit a crime if released on medical parole, and requires the prisoner’s placement in a facility or a home with access to specialized medical care.

[501 Code Mass. Regs. § 17.02](#).

The Process for Requesting Relief Under the Statute. To request release under the Medical Parole Statute, a prisoner or his or her designee submits a written petition to the superintendent of the correctional facility where the prisoner resides. [G.L. c. 127, § 119A\(c\)\(1\)](#). Upon submission of the petition for medical parole, the superintendent must promptly consider the petition and develop a recommendation as to the release of the prisoner. [Buckman](#), 484 Mass. at 18, citing [G.L. c. 127, § 119A\(a\)](#). “Whether

or not the superintendent is in favor of medical parole,” the superintendent shall send to the Commissioner the petition and a recommendation as to whether medical parole should be granted, along with a medical parole plan, a written diagnosis by a physician licensed to practice medicine, and an assessment of the risk for violence that the prisoner poses to society. *Id.*, citing G.L. c. 127, § 119A(c)(1). The Commissioner reviews the superintendent's recommendation and supporting materials, provides notice to interested parties and reviews any written statements from those parties. G.L. c. 127, § 119A(c)(2). Based upon the information provided:

*2 If the commissioner determines that a 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, the prisoner *shall* be released on medical parole. The parole board *shall* impose terms and conditions for medical parole that shall apply through the date upon which the prisoner's sentence would have expired.

G.L. c. 127, § 119A(e) (emphasis added).

A prisoner who has been denied medical parole may petition for relief under G.L. c. 249, § 4. See G.L. c. 127, § 119A(g).

FACTS IN RECORD¹

1. Background

Mr. Robinson is currently serving a life sentence for second degree Murder. On June 23, 1980, Mr. Robinson, who suffers from schizophrenia, threw drain cleaner at his wife and granddaughter. He then took a boning knife out of his back pocket and stabbed his wife. Mr. Robinson's wife and granddaughter escaped to a neighbor's house and were transferred to a hospital where they were treated for their injuries. Mr. Robinson also went to the hospital and when he arrived, he attacked several people in the emergency room with a knife. Mr. Robinson then chased a five-year old boy and his mother out to the parking lot where he repeatedly stabbed the five-year old who died from his injuries. Five people were wounded.²

Mr. Robinson was sentenced to prison on March 4, 1981, and then transferred to the Bridgewater State Hospital where he remained housed for nine years due to a long-standing history of mental illness. In 1990, he was transferred to a state prison and is currently housed in the general population on a Residential Treatment Unit (“RTU”).³ Mr. Robinson is monitored closely due to his advanced age and ongoing mental health issues. He remains medicated for schizophrenia.

Mr. Robinson has appeared before the Parole Board five times. Four of those times, including on the most recent occasion, parole was denied. On one occasion, a minority of the Board voted to reserve to a DMH facility, but it is reported that Mr. Robinson was turned down by DMH for services.

2. Medical Record

a. Record Submitted with First Petition

On July 6, 2020, Mr. Robinson, through his attorney, submitted a Medical Parole Petition to the Superintendent of the relevant state prison seeking release pursuant to the medical parole statute, G.L. c. 127, § 119A. The one-page Petition states that Mr. Robinson is an 81-year-old man with a history of “prostate cancer, strokes, dyspnea or labored breathing, high blood pressure, high blood sugar levels, high creatin levels and possible kidney or liver problems.” The Petition referred the Superintendent to Mr. Robinson's medical records on file with the prison for confirmation of his medical status and concludes that Mr. Robinson's physical debilitating conditions qualify him for medical parole.

*3 In response to the Petition, Dr. Steven Descoteaux, Statewide Director for Wellpath, the Department's medical provider, assessed Mr. Robinson's medical condition. On July 7, 2020, Dr. Descoteaux reported that Mr. Robinson has high blood pressure,

acid reflux and chronic low back pain all of which are controlled with medications. Dr. Descoteaux also reported that Mr. Robinson's prostate cancer has been treated and is stable; and that Mr. Robinson has ischemic colitis which has remained stable. Dr. Descoteaux concluded that, although Mr. Robinson has several medical issues and some physical limitations, he does not meet the definition of permanently incapacitated nor is he expected to die from any of his current medical conditions within the next 18 months. At the time of the July examination, Mr. Robinson did not have any medical restrictions. In addition, the Housing Officer at RTU indicated that Mr. Robinson can perform all daily functions, like dressing, without assistance and did not need assistance in other daily activities.

In August 2020, Mr. Robinson submitted a proposed medical release plan prepared by Social Worker Suzanne Kresiak. Ms. Kresiak reviewed Mr. Robinson's medical and mental health records from the state prison. She interviewed Mr. Robinson twice and also interviewed Mr. Robinson's daughter and his case manager. In her review of Mr. Robinson's mental health records from 8/13/20, 3/9/20 and 8/14/20, Ms. Kresiak comments on his monthly treatment plan for his mental health issues and states that his mental status exam showed he was well within the normal range in almost all areas: "he was alert, appropriate, appearance was normal, he was oriented and his mood and affect were positive." Ms. Kresiak also notes that while the records stated that his "speech was fluent, memory and conversation did show some cognitive difficulties and impaired judgment," these issues were not elaborated on in the records. It was noted that Tardive Dyskinesia causes Mr. Robinson to have some difficulty coordinating movements. Ms. Kresiak reported that Mr. Robinson said he is in good health for his age, but is unsteady on his feet and needs to lean against a wall or hold onto something to dress himself. Mr. Robinson reports that he does not need assistance in dressing, bathing, eating toileting or ambulating although he has difficulty with stairs. Mr. Robinson denies any psychotic symptoms and reports using effective distraction techniques such as watching TV, listening to the radio, taking a walk and going to group. He self-reported that he attends check in, exercise, meditation, schizophrenia, open art and healthy habits group. The notes indicate that Mr. Robinson is an active participant in each of his groups, maintains excellent hygiene and takes pride in keeping his cell clean.

No care provider concluded that Mr. Robinson is terminally ill or permanently disabled. Further, the record contains numerous concerns regarding Mr. Robinson's ability to live without violating the law if released on medical parole. The District Attorney's office does not support the release.

b. Supplemental Record on Request for Reconsideration

The Plaintiff did not submit any additional health information for the reconsideration request. He did, however, present two medical articles suggesting that both incarceration and schizophrenia shorten a person's life span.

Dr. Descoteaux conducted an updated medical examination in connection with the request for reconsideration. He identified a number of changes in status and those include that (1) Mr. Robinson is now on feed-in status (which means food is brought to him, rather than Mr. Robinson eating in the cafeteria); and (2) he has an elevator pass because he has some difficulty navigating inclines and declines (i.e., stairs). Dr. Descoteaux concluded that Mr. Robinson was not permanently incapacitated or terminally ill. A nurse's report referenced that Mr. Robinson is "now fed by others," but counsel for both parties indicated at the hearing on these motions that this refers to Mr. Robinson's tray being brought to him, not that he is being physically fed by another person.

DISCUSSION

*4 Certiorari review under [G.L. c. 249, § 4](#) is available to correct substantial errors of law apparent on the record that adversely affects material rights. [Doucette v. Massachusetts Parole Bd.](#), 86 Mass. App. Ct. 531, 540-541 (2014). The court reviews parole decisions to ensure that they are not arbitrary and capricious or based on an error of law. *Id.* at 541. "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 Commissioner of Cambridge](#), 473 Mass. 716, 729 (2016), quoting [Doe v. Superintendent of Schools of Stoughton](#), 437 Mass. 1, 6 (2002). The court reviews the Commissioner's decision solely to ensure that it is reasonable in light

of the facts and circumstances shown in the record. Certiorari relief is warranted, however, where Plaintiff shows substantial material errors that if allowed to stand will result in manifest injustice to a petitioner who is without another available remedy. [Johnson Products, Inc. v. City Council of Medford](#), 353 Mass. 540, 541 n.2 (1968). This court may not substitute its own opinion for that of the Commissioner. [Frawley](#), 473 Mass. at 729.

The court concludes that the Commissioner did not abuse her discretion in declining to allow Plaintiff's petition for medical parole. At the time of the initial petition, Mr. Robinson had no medical restrictions, he could ambulate to meals and conduct daily living skills, such as showering, dressing himself and using the bathroom. Although Mr. Robinson now has his meals delivered to his cell, he eats without assistance. In addition, Mr. Robinson self-reported that he attends check in, exercise, meditation, schizophrenia, open art and healthy habits groups. The notes in the record indicate that Mr. Robinson is an active participant in each of his groups. There is nothing in the supplemental petition to show that this activity has changed. In connection with Mr. Robinson's petition for reconsideration, the only new materials submitted by counsel were two medical articles suggesting that both incarceration and schizophrenia shorten a person's lifetime. But there was nothing in the record to tie the information in these two articles to any specific infirmity of Mr. Robinson, other than the general fact that he suffers from schizophrenia.

Based on this record, there is no evidence that the Commissioner's finding that Mr. Robinson was not terminally ill or permanently incapacitated was arbitrary or capricious. Her decision to decline to recommend medical parole release does not lack "any rational explanation that reasonable persons might support," [Frawley](#), 473 Mass. at 729, and is reasonable in light of the facts and circumstances shown in the record.

ORDER

For the reasons stated above, Mr. Robinson's Motion for Judgment on the Pleadings is **DENIED**. The Defendants' Motion for Judgment on the Pleadings is **ALLOWED**. The Commissioner's denial of Mr. Robinson's request for medical parole is **AFFIRMED**.

<<signature>>

Maureen Mulligan

Justice of the Superior Court

Date: August 12, 2021

Footnotes

- 1 The Administrative Record, certified on January 14, 2021, contains the records for the July 6, 2020 Parole Petition submitted on behalf of Mr. Robinson and the records for the October 15, 2020 Reconsideration of Mr. Robinson's Petition.
- 2 Mr. Robinson suffers from schizophrenia. The day before the attacks, Mr. Robinson's sisters took him to the emergency room. They were concerned about his behavior which included statements to them that his wife "wants me to kill her." The staff doctor who saw Mr. Robinson told him to increase the dosages of the medications he was taking and to return in the morning if he was not better. However, Mr. Robinson had stopped taking his psychotropic medicines some two months earlier, unbeknown to his doctor.
- 3 The RTU "is a specialized unit in the prison that houses and provides services to inmates who are 'mentally disabled' by chronic mental health issues."