

Judge Finds Parole Board in Contempt for Ignoring Order

[Joel Stashenko](#), New York Law Journal June 1, 2016

A judge has held the state Board of Parole in contempt for ignoring a directive to give greater weight to factors other than those underlying the 1975 murder of a police officer when deciding whether to release the man who killed him.

It was the second time in a year that the parole board was found in contempt of a court order related to the reasons it denied an inmate's parole.

State Supreme Court Justice Maria Rosa said prisoner John MacKenzie made a prima facie showing of contempt. She said the parole board held a new hearing for MacKenzie in October 2015, per her direction, but used the same flawed determination to deny him release two months later without considering all the factors demanded under state Executive Law §259-c.

Rosa, ruling from Poughkeepsie in [Matter of MacKenzie v. Stanford](#), 2789/15, ordered a newly composed parole board to decide his case anew. She said she would fine the state \$500 a day starting June 7 for each day that MacKenzie does not get a hearing that comports with state law.

“It is undisputed that it is unlawful for the parole board to deny parole solely on the basis of the underlying conviction,” the judge wrote. “Yet the court can reach no other conclusion but that this is exactly what the parole board did in this case. No other basis has been stated by the parole board for the denial of parole in either of its determinations in December 2014 or December of 2015.”

She said the state was given the opportunity to shed more light on the December 2015 decision and why it was not markedly different than the one in December 2014 as she considered the contempt charge, but that it failed to do so.

“At the [May 20] hearing on the contempt application, the respondent offered no proof whatsoever,” she wrote. “Remarkably, **no one testified on behalf of the respondent**. No new documents were offered into evidence on behalf of the respondent.”

The December 2014 ruling said MacKenzie's release would not be “compatible with the welfare of society and would so deprecate the seriousness of his crimes of conviction as to undermine respect for the law.” The December 2015 decision, while making new references to MacKenzie's rehabilitative efforts while imprisoned, similarly concluded that, “Your release would be incompatible with the welfare of society and would so deprecate the serious nature of the offense as to undermine respect for the law,” Rosa wrote.

MacKenzie, who is now 69, has served 40 years of a 25-year-to-life sentence for the Dec. 16, 1975, death of Officer Matthew Giglio, who was shot as he chased MacKenzie following the burglary of a West Hempstead boutique.

A jury convicted him of second-degree murder, second-degree manslaughter, grand larceny, burglary and criminal possession of a weapon. After his initial conviction was thrown out on appeal, he was tried and convicted a second time.

MacKenzie said he was high on several kinds of pills at the time of the killing, including Valium, Darvon and Melhoral, and has no memory of the shooting. But he acknowledged responsibility

for Giglio's death, saying "It's my fault, 100 percent my fault" and other similar statements during his 2015 hearing.

Despite evidence of post-conviction good behavior and contrition, Rosa said the parole board failed to base its December 2015 determination on anything other than the fact he was imprisoned for slaying a police officer.

"It is undisputed that this petitioner has a perfect institutional record for the past 35 years," the judge wrote. "This case begs the question, if parole isn't granted to this petitioner, when and under what circumstances would it be granted?"

MacKenzie's requests for freedom have been turned down eight times since 2000.

In her ruling, Rosa said MacKenzie's post-conviction accomplishments have been noteworthy and are not being given sufficient weight by parole boards focusing on the underlying nature of the crime. In addition to maintaining an "unblemished" disciplinary record, Rosa noted that MacKenzie has received two associate's degrees and a bachelor's degree since his incarceration.

In addition, Rosa said MacKenzie established a victims impact program while at Green Haven Correctional Facility, named after Giglio to teach prisoners the effects of crime and incarceration on victims and offenders.

Giglio had a wife and three children. His survivors have opposed his release each time he was eligible, and the Nassau County Police Benevolent Association has sponsored letter-writing campaigns to the parole board and public demonstrations opposing his release.

The state Department of Corrections and Community Supervision, which contains the state Board of Parole, declined to comment on the ruling.

Assistant Attorney General J. Gardner Ryan defended the board.

Albany attorney Kathy Manley, who is representing MacKenzie, said she patterned her challenge to the parole denial on a case brought in Orange County Supreme Court on behalf inmate Michael Cassidy. In that matter, the parole board also was found in contempt for issuing a ruling that contained the "usual and predictable" language to which the court had objected when it ordered a new parole hearing ([NYLJ, June 1, 2015](#)).

Arguments in that case, *Matter of Cassidy v. New York State Board of Parole*, 2015-06927, were heard by an Appellate Division, Second Department, panel on May 10.

Manley said the outcome of *Cassidy* may affect MacKenzie's bid for freedom, since Dutchess County is also in the Second Department.

MacKenzie has spent his four decades in prison as productively and peaceably as an inmate can, while repeatedly showing his contrition for his crime, Manley said.

"He has changed into a totally different person and there is no reason he should not be released," she said.