

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: January 5, 2006

98544

In the Matter of FERMIN
FLORES,

Appellant,

v

MEMORANDUM AND ORDER

ROBERT DENNISON, as Chair of
the New York State Board
of Parole,

Respondent.

Calendar Date: November 28, 2005

Before: Mercure, J.P., Crew III, Peters, Spain and Rose, JJ.

Fermin Flores, Stormville, appellant pro se.

Eliot Spitzer, Attorney General, Albany (Jennifer Grace Miller of counsel), for respondent.

Appeal from a judgment of the Supreme Court (Bradley, J.), entered July 11, 2005 in Albany County, which dismissed petitioner's application, in a proceeding pursuant to CPLR article 78, to review a determination of the Board of Parole denying petitioner's request for parole release.

As the result of his involvement in the robbery and shooting of an off-duty transit police officer, petitioner was convicted of attempted murder in the first degree and criminal possession of a weapon in the second degree. He was sentenced, respectively, to concurrent prison terms of 15 years to life and 5 to 20 years. He made his first appearance before the Board of Parole in February 2004 at which time his request for release on parole was denied. After this decision was affirmed on

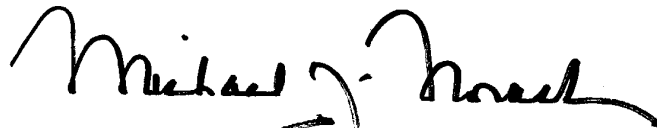
administrative appeal, he commenced this CPLR article 78 proceeding. Following joinder of issue, Supreme Court dismissed the petition and this appeal ensued.

Petitioner's sole contention on appeal is that the Board relied upon inaccurate factual information in denying his request. He points specifically to a statement made by one of the Commissioners during the hearing indicating that the robbery victim was shot three times. We find petitioner's argument to be unpersuasive. The Commissioner's misstatement was promptly corrected on the record by another Commissioner who indicated that three shots were fired, with one striking the victim. In addition, the inmate status report, containing an accurate description of the incident, was read into the record at the hearing. In view of this, and given that the Board considered the statutory factors set forth in Executive Law § 259-i in making its decision, we do not find that the decision demonstrates "'irrationality bordering upon impropriety'" such as to warrant annulment (Matter of Silmon v Travis, 95 NY2d 470, 476 [2000], quoting Matter of Russo v New York State Bd. of Parole, 50 NY2d 69, 77 [1980]).

Mercure, J.P., Crew III, Peters, Spain and Rose, JJ.,
concur.

ORDERED that the judgment is affirmed, without costs.

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is written in a cursive style with a large, looping initial "M".

Michael J. Novack
Clerk of the Court