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Administrative Appeal Decision - Aguayo, Cesar

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Administrative Appeal Decision Notice

Inmate Name: Aguayo, Cesar

Facility: Attica Correctional Facility

NYSID No.: 04949302-Q

Appeal Control No.: 10-244-15 B

DIN: 85-B-0047

Appearances:

For the Board, the Appeals Unit

For Appellant:

Norman Effman
Executive Director
Wyoming County-Attica Legal Aid Bureau
18 Linwood Ave
Warsaw, NY 14569

Board Member(s) who participated in appealed from decision: Smith, W., Crangle.

Decision appealed from: 10/2015 Denial of Discretionary Release/w 24 month hold.

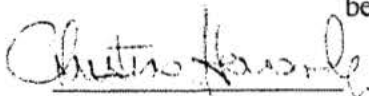
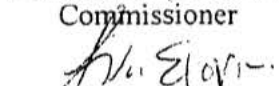
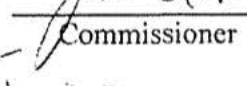
Pleadings considered:

Brief on behalf of the Appellant submitted on: March 25, 2016.
Statement of the Appeals Unit's Findings and Recommendation.

Documents relied upon:

Pre-Sentence Investigation Report, Parole Board Report, Interview Transcript, Parole Board Release Decision Notice (Form 9026), COMPAS instrument, Offender Case Plan.

Final Determination: The undersigned have determined that the decision from which this appeal was taken be and the same is hereby

 Commissioner	___ Affirmed	<input checked="" type="checkbox"/> Reversed for De Novo Interview	___ Modified to _____
 Commissioner	___ Affirmed	<input checked="" type="checkbox"/> Reversed for De Novo Interview	___ Modified to _____
 Commissioner	___ Affirmed	<input checked="" type="checkbox"/> Reversed for De Novo Interview	___ Modified to _____

If the Final Determination is at variance with Findings and Recommendation of Appeals Unit, written reasons for the Parole Board's determination must be annexed hereto.

This Final Determination, the related Statement of the Appeals Unit's Findings and the separate findings of the Parole Board, if any, were mailed to the Inmate and the Inmate's Counsel, if any, on 5/9/16 RF.

Distribution: Appeals Unit - Inmate - Inmate's Counsel - Inst. Parole File - Central File
P-2002(B) (5/2011)

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Aguayo, Cesar

Facility: Attica Correctional Facility

NYSID No.: 04949302-Q

Appeal Control No.: 10-244-15 B

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Findings: (Page 1 of 1)

Appellant challenges the October 2015 Board of Parole decision as arbitrary and capricious, contending that, among other things, the Board failed to consider appellant's TAP/Offender Case Plan.

A review by the Appeals Unit has confirmed that appellant's TAP/Offender Case Plan was not before the Board at the time of appellant's interview. The TAP/Case Plan was required to be considered pursuant to 9 N.Y.C.R.R. 8002.3(a)(12). Consequently, because a mandated document was not considered by the Board, a *de novo* interview is required.

As a *de novo* interview is the entirety of the relief which Appellant may be awarded, his remaining contentions need not be reached.

Recommendation: That the decision of the Board of Parole following the Interview of October 2015 denying appellant parole and imposing a 24 month hold be vacated, and that a *de novo* Parole Board Release Interview with the TAP/Offender Case Plan considered be held in front of a different panel of Commissioners forthwith.