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**ADMINISTRATIVE APPEAL OF
NEW YORK STATE PAROLE DECISION FOR**

DIN: [REDACTED]

Bedford Hills Correctional Facility
250 Harris Road
Bedford Hills, NY 10507

Parole Hearing Date and Denial Date: April 27, 2015

Applicant's Parole Hearing Location: Bedford Hills Correctional Facility

Parole Commissioners' Location: New York, New York

Notice of Administrative Appeal Filed: May 19, 2015

Submitted by:

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Submitted on June 30, 2015

via overnight mail to:

Appeals Unit
New York State Board of Parole
Harriman State Campus
Building #2
1220 Washington Avenue
Albany, NY 12226

Ms. [REDACTED] submits this administrative appeal, of the Parole Board's April 27, 2015 denial of parole, to DOCCS' Parole Appeal Unit. The decision denying parole should be vacated and a new hearing should be held for the following reasons:

1. BY REFUSING TO PERMIT MS. [REDACTED] TO READ HER PERSONAL STATEMENT AT THE PAROLE HEARING, THE BOARD DID NOT PROVIDE A COMPLETE PAROLE INTERVIEW AND DEPRIVED MS. [REDACTED] OF HER RIGHT TO BE HEARD

The Parole Board claimed that Ms. [REDACTED] would "...have an opportunity to make any statements that [she'd] like to make during this [hearing] as well." See Ex. 1, Parole Hearing Transcript, April 27, 2015, at 3. Yet, when the Board then inquired as to whether there was anything more Ms. [REDACTED] wanted to say regarding the offense and Ms. [REDACTED] asked if she could read her statement, the Parole Commissioners then instructed Ms. [REDACTED] not to read it. *Id.* at 7-8. Instead, the Board stated:

I don't see the letter in the file, but what you can do is have the counselor fax it over to us and tell us in sum and substance in your own words without reading it what you'd like us to glean from the essence of the letter.

Id.

Since the Board denied parole based on a claim that Ms. [REDACTED] had callously disregarded her vulnerable young child, *id.* at 12, Ms. [REDACTED] reflections on her crime were critical. Yet, the Board refused to listen to Ms. [REDACTED] full statement. Although the Commissioners' claim to "note" Ms. [REDACTED] "personal statement," *id.* at 13, there is no evidence that the *full* personal statement was provided to and considered by the Board before its decision was made. Moreover, the regulations require the Board to interview the parole applicant. Requiring an applicant to submit her statement in writing does not meet the requirement of an interview. The core reason for this hearing is to hear from Ms. [REDACTED] and the commissioners denied her this opportunity.

2. THE BOARD CLAIMED NOT TO HAVE THE SENTENCING MINUTES, BUT SINCE THE MINUTES WERE IN THE PORTIONS OF THE PAROLE FILE PROVIDED TO MS. [REDACTED], THEY WERE AVAILABLE TO THE BOARD

The Commissioners stated that they did not have the sentencing minutes. *Id.* at 3. This is inaccurate.

In preparation for her parole hearing, Ms. [REDACTED] requested her entire parole file. See Ex. 2, March 11, 2015 letter. On April 20, 2015, Ms. [REDACTED] counsel received a mailing

from DOCCS in response to the request. DOCCS' response included a copy of the sentencing minutes. See Ex. 3, Affirmation of Martha Rayner. In those sentencing minutes, Ms. [REDACTED] discusses her crime and her remorse. See Ex. 4, Sentencing Minutes. Although the copy provided to Ms. [REDACTED] is abruptly cut-off in the middle of her statement to the sentencing court (page eight is missing), there is no question the Board had access to at least the portion provided to Ms. [REDACTED] and most likely the full transcript, yet by the Board's own admission it did not consider the minutes. Id.

3. THE BOARD RELIED ON INFORMATION IN MS. [REDACTED] PAROLE FILE THAT WAS NOT PROVIDED TO HER BEFORE THE PAROLE HEARING

At the hearing, the Board referred to and relied upon an "OMH report" in Ms. [REDACTED] parole file. Ex. 1 at 4. Despite Ms. [REDACTED] making a timely request for her entire parole file, including medical summaries and reports, DOCCS' response to her request did not include an OMH report. See Ex. 3.

4. THE BOARD UNLAWFULLY WITHHELD PORTIONS OF MS. [REDACTED] PAROLE FILE

First, portions of Ms. [REDACTED] COMPAS assessment were inappropriately redacted. See Ex. 5.

Second, she did not receive page two of the ISR/Parole Report/Crime/Sentence Information. See Ex. 3.

Third, she did not receive any medical records or summaries, including the "OMH Report." Id.

Fourth, the Board did provide Ms. [REDACTED] with the October 24, 1997 sentencing minutes, but page eight was missing. See Exs. 3 and 4.

5. THE COMPAS ASSESSMENT CONTAINED ERRONEOUS INFORMATION

The COMPAS assessment dated April 1, 2015 states Ms. [REDACTED] "Prison Release Status" as "Max out." See Ex. 5, COMPAS Risk Assessment, at p.1 of 1. This designation is incorrect. The April 27, 2015 hearing was Ms. [REDACTED] third parole hearing: the first occurred six months before her mandatory minimum based on earning a Limited Credit Time Allowance; the second occurred in 2013, and the third was the instant 2015 hearing on appeal here. Since Ms. [REDACTED] is serving a sentence of 15 years to life, the designation of "max out" does not apply.

The COMPAS assessment also contained inaccurate information because the "History of Violence" assessment, which scored Ms. [REDACTED] as "medium," was placed under the "Criminogenic Needs Scales," but "History of Violence" is not a "need." During the hearing, the

Board noted the score of “medium” on “History of Violence.” *Id.* By placing the category within the criminogenic needs section, however, the COMPAS suggests that Ms. [REDACTED] can change this score when in fact it is based on a wholly static factor—her crime—that cannot be changed.

Finally, the Board relied on erroneous information by considering the results of the COMPAS, a risk assessment instrument the reliability of which has not been validated by the relevant scientific community.

6. THE BOARD FAILED TO PROVIDE DETAILED REASONS FOR DENIAL OF PAROLE

The Board determined that release would be incompatible with the welfare of society and would so deprecate the serious nature of crime as to undermine respect for the law. *See* Ex. 1 at 12. The Board, however, did not provide detailed reasons for reaching this conclusion. The Board only provided information about the “callous disregard” Ms. [REDACTED] had for her “vulnerable young child.” This alone, does not explain, why release would be incompatible with the welfare of society nor why release would undermine respect for the law. This is especially so, in light of the fact that the Board had extensive information from experts detailing the mental illness diagnoses that led Ms. [REDACTED] to engage in “callous disregard.” And, a recent psychological report determining that Ms. [REDACTED] mental illnesses are in full remission and she is at low risk of reoffending. *See* Ex. 1 at 2 (the Commissioners acknowledged receipt of Ms. [REDACTED] counsel’s April 23, 2015 Submission to the Parole Board which included, in exhibit C, a recent, individualized psychological assessment; thus, this submission is now part of the parole file before the Parole Board Appeals Unit).

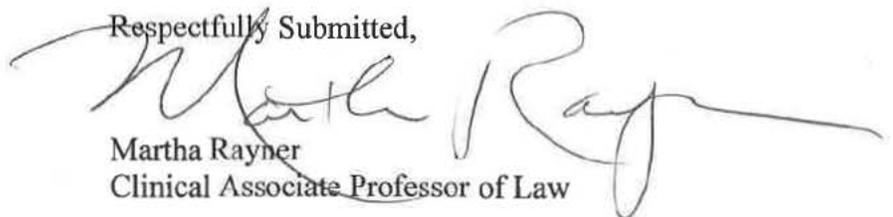
7. THE BOARD’S DECISION WAS ARBITRARY AND CAPRICIOUS BECAUSE IT DID NOT WEIGH ALL RELEVANT STATUTORY FACTORS

The victim of Ms. [REDACTED] crime was her daughter, [REDACTED], [REDACTED] representatives, her siblings, sent statements to the Board before the hearing took place. *See* Ex. 3. The Board did not consider these statements. There is no mention of such statements in the hearing transcript or in the decision denying parole. Even if it was appropriate to keep the contents of such letters confidential, the Board must consider such statements and disclose consideration of such statements.

For each reason stated above, the denial of parole should be vacated and a new hearing held.

DATED: June 30, 2015

Respectfully Submitted,



Martha Rayner
Clinical Associate Professor of Law