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Administrative Appeal Decision Notice

Inmate Name: Copeland, Phillip

Facility: Clinton Correctional Facility

NYSID No.: [REDACTED]

Appeal Control #: 01-018-13-B

Dept. DIN#: 89A5229

Appearances:

For the Board, the Appeals Unit

For Appellant:

Elan Cherney Esq.
383 Broadway
Fort Edward, New York 12828

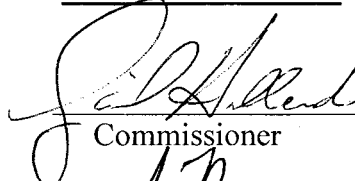

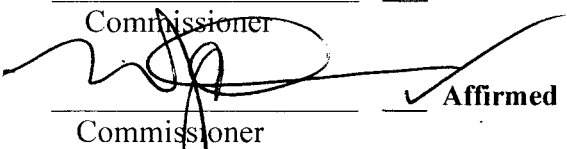
Board Member(s) who participated in appealed from decision: **Evans, Elovich, Alexander**

Decision appealed from: 12/2012-Denial of discretionary release, with imposition of 24 month hold.

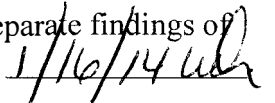
Pleadings considered: Brief on behalf of the appellant received on May 9, 2013.
Statement of the Appeals Unit's Findings and Recommendation

Documents relied upon: Presentence Investigation Report, Inmate Status Report, Interview Transcript,
Parole Board Release Decision (Form 9026)

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

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

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 1/16/14 

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: Copeland, Phillip

Facility: Clinton Correctional Facility

NYSID No.: [REDACTED]

Appeal Control #: 01-018-13-B

Dept. DIN# 89A5229

Findings:

Counsel for the appellant has submitted a brief to serve as the perfected appeal. The brief raises three primary issues.

Appellant's first claim is the decision is arbitrary and capricious, and irrational bordering on impropriety, in that the Board failed to consider and/or properly weigh the required statutory factors. Appellant contends he has an excellent institutional record and release plan, but all the Board did was to look only at the instant offense/criminal history. Appellant alleges the Board failed to make required findings of fact, issued a predetermined decision, and illegally resentenced him.

In response, while not all of the factors to be considered by the Board were actually discussed with the appellant at his interview, it is well settled that the failure to do so does not provide a basis for upsetting the Board's decision. Morel v Travis, 18 A.D.3d 930, 793 N.Y.S.2d 920 (3d Dept. 2005); Matter of Waters v. New York State Division of Parole, 252 A.D.2d 759, 760-61, 676 N.Y.S.2d 279, 280 (3d Dept 1998), lv. denied, 92 N.Y.2d 812, 680 N.Y.S.2d 905 (1998); Matter of Davis v. New York State Div. of Parole, 114 A.D.2d 412, 494 N.Y.S.2d 136 (2d Dept. 1985); Matter of Mackall v. New York State Board of Parole, 91 A.D.2d 1023, 458 N.Y.S.2d 251 (2d Dept. 1983); Charlemagne v New York State Division of Parole, 281 A.D.2d 669, 722 N.Y.S.2d 74, 75 (3d Dept 2001); Larrier v New York State Board of Parole Appeals Unit, 283 A.D.2d 700, 723 N.Y.S.2d 902, 903 (3d Dept 2001). That the Board did not discuss each factor with the inmate at his interview does not constitute convincing evidence that the Board did not consider the factors. In the Matter of Hawkins v. Travis, 259 A.D.2d 813, 686 N.Y.S. 2d 198 (3d Dept. 1999), app. dismiss. 93 N.Y.2d 1033, 697 N.Y.S.2d 556 (1999); In re Garcia v. New York State Division of Parole, 239 A.D.2d 235, 657 N.Y.S.2d 415 (1st Dept. 1997); Matter of Mackall v. NYS Board of Parole, 91 A.D.2d 1023, 1024, 458 N.Y.S.2d 251 (2d Dept 1983); Charlemagne v New York State Division of Parole, 281 A.D.2d 669, 722 N.Y.S.2d 74, 75 (3d Dept 2001). Nor is the Board required to expressly discuss or articulate every factor in its determination. Fraser v Evans, 109 A.D.3d 913, 971 N.Y.S.2d 332 (3d Dept. 2013); Faison v Travis, 260 A.D.2d 866, 688 N.Y.S.2d 782 (3d Dept 1999) lv. dismissed 93 N.Y.2d 1013, 697 N.Y.S.2d 567 (1999); Ward v New York State Division of Parole, 26 A.D.3d 712, 809 N.Y.S.2d 671 (3d Dept. 2006); Gordon v New York State Board of Parole, 81 A.D.3d 1032, 916 N.Y.S.2d 854 (3d Dept. 2011); Martinez v New York State Board of Parole, 83 A.D.3d 1319, 920 N.Y.S.2d 742 (3d Dept. 2011); Davis v Evans, 105 A.D.3d 1305, 963 N.Y.S.2d 485 (3d Dept. 2013); Shark v New York State Division of Parole Chair, 110 A.D.3d 1134, 972 N.Y.S.2d 741 (3rd Dept. 2013).

STATE OF NEW YORK - BOARD OF PAROLE

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Findings: (continued from page 1)

Specifically, pursuant to Executive Law §259-i(2)(c), the Parole Board must consider criteria which is relevant to the specific inmate, including, but not limited to, the inmate's institutional record or criminal behavior, giving whatever emphasis they so choose to each factor. In re Garcia v. New York State Division of Parole, 239 A.D.2d 235, 657 N.Y.S.2d 415 (1st Dept. 1997); People ex rel. Herbert v. New York State Board of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881 (1st Dept. 1983). The Board is not required to give equal weight to each statutory factor. Shark v New York State Division of Parole Chair, 110 A.D.3d 1134, 972 N.Y.S.2d 741 (3rd Dept. 2013); Davis v Evans, 105 A.D.3d 1305, 963 N.Y.S.2d 485 (3d Dept. 2013); Thomches v Evans, 108 A.D.3d 724, 968 N.Y.S.2d 888 (3d Dept. 2013); Rodriguez v Evans, 10 A.D.3d 1049, 958 N.Y.S.2d 529 (3d Dept. 2013); Martinez v New York State Board of Parole, 83 A.D.3d 1319, 920 N.Y.S.2d 742 (3d Dept. 2011); Gordon v New York State Board of Parole, 81 A.D.3d 1032, 916 N.Y.S.2d 854 (3d Dept. 2011); Matos v New York State Board of Parole, 87 A.D.3d 1193, 929 N.Y.S.2d 343 (3d Dept. 2011); Ward v New York State Division of Parole, 26 A.D.3d 712, 809 N.Y.S.2d 671(3d Dept. 2006) lv. den. 7 N.Y.3d 702, 818 N.Y.S.2d 193; Morel v Travis, 18 A.D.3d 930, 793 N.Y.S.2d 920 (3d Dept. 2005); Howithi v Travis, 19 A.D.3d 727, 796 N.Y.S.2d 195 (3d Dept. 2005); Charlemagne v New York State Division of Parole, 281 A.D.2d 669, 722 N.Y.S.2d 74, 75 (3d Dept 2001); Matter of Farid v Travis, 239 A.D.2d 629, 657 N.Y.S.2d 221 (3d Dept 1997); Phillips v Dennison, 41 A.D.3d 17, 834 N.Y.S.2d 121 (1st Dept. 2007); Davis v Lemons, 73 A.D.3d 1354, 899 N.Y.S.2d 919 (3d Dept. 2010); MacKenzie v Evans, 95 A.D.3d 1613, 945 N.Y.S.2d 471 (3d Dept. 2012). That an inmate has numerous achievements within a prison's institutional setting does not automatically entitle him to parole release. Matter of Faison v. Travis, 260 A.D.2d 866, 688 N.Y.S.2d 782 (3d Dept. 1999); Pulliam v Dennison, 38 A.D.3d 963, 832 N.Y.S.2d 304 (3d Dept. 2007). Moreover, per Executive Law §259-i(2)(c), an application for parole release shall not be granted merely as a reward for appellant's good conduct or achievements while incarcerated. Larrier v New York State Board of Parole Appeals Unit, 283 A.D.2d 700, 723 N.Y.S.2d 902, 903 (3d Dept 2001); Vasquez v State of New York Executive Department, Division of Parole, 20 A.D.3d 668, 797 N.Y.S.2d 655 (3d Dept. 2005); Wellman v Dennison, 23 A.D.3d 974, 805 N.Y.S.2d 159 (3d Dept. 2005). A determination that the inmate's achievements are outweighed by the severity of the crimes is within the Board's discretion. Kirkpatrick v Travis, 5 A.D.3d 385, 772 N.Y.S.2d 540 (2d Dept. 2004); Anthony v New York State Division of Parole, 17 A.D.3d 301, 792 N.Y.S.2d 900 (1st Dept. 2005); Cruz v New York State Division of Parole, 23 A.D.3d 974, 805 N.Y.S.2d 159 (3d Dept. 2007); Santos v Evans, 81 A.D.3d 1059, 916 N.Y.S.2d 325 (3d Dept. 2011).

STATE OF NEW YORK - BOARD OF PAROLE

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Findings: (continued from page 2)

The Board may take into account the extremely serious and heinous nature of the inmate's crime. Anthony v New York State Division of Parole, 252 A.D.2d 704, 679 N.Y.S.2d 158 (3d Dept 1998), leave to appeal denied 92 N.Y.2d 812, 680 N.Y.S.2d 905 (1998), cert.den. 525 U.S. 1183, 119 S.Ct. 1125, 143 L.Ed.2d 119 (1999); Carrion v New York State Board of Parole, 210 A.D.2d 403, 620 N.Y.S.2d 420 (2d Dept 1994); Phillips v Travis, 21 A.D.3rd 335, 800 N.Y.S.2d 397 (1st Dept. 2005); Hakim-Zaki v New York State Division of Parole, 29 A.D.3d 1190, 814 N.Y.S.2d 414 (3d Dept. 2006); Ondrizek v Dennison, 39 A.D.3d 1114, 835 N.Y.S.2d 481 (3d Dept. 2007); Marcus v Alexander, 54 A.D.3d 476, 862 N.Y.S.2d 414 (3d Dept. 2008); LaSalle v New York State Division of Parole, 69 A.D.3d 1252, 893 N.Y.S.2d 706 (3d Dept. 2010), lv.den., 14 N.Y.2d 709, 901 N.Y.S.2d 142; Murray v Evans, 83 A.D.3d 1320, 920 N.Y.S.2d 745 (3d Dept. 2011).

The Board's emphasis on the serious nature of the crime does not demonstrate a showing of irrationality bordering on impropriety. Philips v Dennison, 41 A.D.3d 17, 834 N.Y.S.2d 121 (1st Dept. 2007); Larrier v New York State Board of Parole Appeals Unit, 283 A.D.2d 700, 723 N.Y.S.2d 902, 903 (3d Dept 2001); Matter of Silmon v Travis, 95 N.Y.2d 470, 476, 718 N.Y.S.2d 704 (2000); Trobiano v New York State Division of Parole, 285 A.D.2d 812, 728 N.Y.S.2d 269 (3d Dept 2001); DeFino v Travis, 18 A.D.3d 1079, 795 N.Y.S.2d 477 (3d Dept. 2005); Cardenales v Dennison, 26 A.D.3d 614, 810 N.Y.S.2d 233 (1st Dept. 2007); Berry v New York State Division of Parole, 64 A.D.3d 1030, 882 N.Y.S.2d 759 (3d Dept. 2008); Webb v Travis, 26 A.D.3d 614, 810 N.Y.S.2d 233 (3d Dept. 2006); Smith v New York State Division of Parole, 64 A.D.3d 1030, 882 N.Y.S.2d 759 (3d Dept. 2009).

The Board could place greater emphasis on the serious nature of the crime that involved shooting a police officer in the head. Francis v New York State Division of Parole, 89 A.D.3d 1312, 934 N.Y.S.2d 514 (3d Dept. 2011), MacKenzie v Evans, 95 A.D.3d 1613, 945 N.Y.S.2d 471 (3d Dept. 2012).

The Board may consider the probable repercussions of the criminal's actions upon the victims' families. Bottom v New York State Board of Parole, 30 A.D.3d 657, 815 N.Y.S.2d 789 (3d Dept. 2006).

STATE OF NEW YORK - BOARD OF PAROLE

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Findings: (continued from page 3)

The consideration by the Board of prison disciplinary violations is also appropriate. People ex rel. Henson v Miller, 244 A.D.2d 729, 664 N.Y.S.2d 655 (3d Dept 1997), leave to appeal denied 91 N.Y.2d 809, 670 N.Y.S.2d 403 (1998); Warburton v Department of Correctional Services, 254 A.D.2d 659, 680 N.Y.S.2d 26 (3d Dept 1998), appeal dismissed, leave to appeal denied 92 N.Y.2d 1041, 685 N.Y.S.2d 416 (1999); Howithi v Travis, 19 A.D.2d 727, 796 N.Y.S.2d 195 (3d Dept 2005); James v Chairman of the New York State Division of Parole, 19 A.D.3d 857, 796 N.Y.S.2d 735 (3d Dept 2005); Gardiner v New York State Division of Parole, 48 A.D.3d 871, 850 N.Y.S.2d 722 (3d Dept. 2008); Abbas v New York State Division of Parole, 61 A.D.3d 1228, 877 N.Y.S.2d 512 (3d Dept. 2009); Cruz v Alexander, 67 A.D. 3d 1240, 890 N.Y.S.2d 656 (3d Dept. 2009); Smith v New York State Division of Parole, 81 A.D.3d 1026, 916 N.Y.S.2d 285 (3d Dept. 2011); Gssime v New York State Division of Parole, 84 A.D.3d 1630, 923 N.Y.S.2d 307 (3d Dept. 2011); Morrison v Evans, 81 A.D.3d 1073, 916 N.Y.S.2d 655 (3d Dept. 2011); Rivera v New York State Division of Parole, 95 A.D.3d 1586, 944 N.Y.S.2d 807 (3d Dept. 2012); Rodriguez v Evans, 10 A.D.3d 1049, 958 N.Y.S.2d 529 (3d Dept. 2013); Burress v Evans, 107 A.D.3d 1216, 967 N.Y.S.2d 486 (3d Dept. 2013); McCaskell v Evans, 108 A.D.3d 926, 969 N.Y.S.2d 603 (3d Dept. 2013); Lashway v Evans, 110 A.D.3d 1420, 973 N.Y.S.2d 496 (3d Dept. 2013).

There is a presumption of honesty and integrity that attaches to Judges and administrative fact-finders. People ex. rel. Johnson v New York State Board of Parole, 180 A.D.2d 914, 580 N.Y.S.2d 957, 959 (3d Dept 1992). And, Courts presume the Parole Board follows its statutory commands and internal policies in fulfilling its obligations. Garner v Jones, 529 U.S. 244, 120 S.Ct. 1362, 1371, 146 L.Ed2d 236 (2000). The decision was not predetermined. Dean v New York State Division of Parole, 21 A.D.3d 1207, 801 N.Y.S.2d 92 (3d Dept. 2005) lv. den. 6 N.Y.3d 705 (2006); There is no merit to the inmate's contention that the parole interview was improperly conducted or that he was denied a fair interview. Dorato v New York State Division of Parole, 264 A.D.2d 885, 696 N.Y.S.2d 247, 248 (3d Dept. 1999); Smith v New York State Division of Parole, 68 A.D.3d 1766, 890 N.Y.S.2d 861 (3d Dept. 2009). A.D.3d 1190, 814 N.Y.S.2d 414 (3d Dept. 2006); Bonilla v New York State Board of Parole, 32 A.D.3d 1070, 820 N.Y.S.2d 661 (3d Dept. 2006); Black v New York State Board of Parole, 54 A.D.3d 1076, 863 N.Y.S.2d 521 (3d Dept. 2008).

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Findings: (continued from page 4)

A claim that the denial of parole release amounted to a resentencing is without merit. Kalwasinski v Patterson, 80 A.D.3d 1065, 915 N.Y.S.2d 715 (3d Dept. 2011) lv.app.den. 16 N.Y.3d 710, 922 N.Y.S.2d 273 (2011); Marsh v New York State Division of Parole, 31 A.D.3d 898, 818 N.Y.S.2d 356 (3d Dept. 2006); Crews v New York State Executive Department Board of Parole Appeals Unit, 281 A.D.2d 672, 720 N.Y.S.2d 855, 856 (3d Dept 2001); Bonilla v New York State Board of Parole, 32 A.D.3d 1070, 820 N.Y.S.2d 661 (3d Dept. 2006); Borcok v New York State Division of Parole, 34 A.D.3d 961, 823 N.Y.S.2d 310 (3d Dept. 2006) lv.den. 8 N.Y.3d 803, 830 N.Y.S.2d 699; Marnell v Dennison, 35 A.D.3d 995, 824 N.Y.S.2d 812 (3d Dept. 2006) lv.den. 8 N.Y.3d 807, 833 N.Y.S.2d 426; Berry v New York State Division of Parole, 50 A.D.3d 1346, 855 N.Y.S.2d 310 (3d Dept. 2008); Barnes v New York State Board of Parole, 37 A.D.3d 930, 829 N.Y.S.2d 283 (3d Dept. 2008). Smith v New York State Division of Parole, 64 A.D.3d 1030, 882 N.Y.S.2d 759 (3d Dept. 2009); Comfort v New York State Division of Parole, 68 A.D.3d 1295, 890 N.Y.S.2d 700 (3d Dept. 2009); Murray v Evans, 83 A.D.3d 1320, 920 N.Y.S.2d 745 (3d Dept. 2011); Gonzalez v Chair, New York State Board of Parole, 72 A.D.3d 1368, 898 N.Y.S.2d 737 (3d Dept. 2010). The Board was vested with discretion to determine whether release was appropriate, notwithstanding what the minimum period of incarceration which was set by the Court. Cody v Dennison, 33 A.D.3d 1141, 1142 (3d Dept. 2006), lv.den. 8 N.Y.3d 2007; Burress v Dennison, 37 A.D.3d 930, 829 N.Y.S.2d 283 (3d Dept. 2007).

As for the required three part statutory standard, contrary to appellant's claim, the Board is not required to repeat the language of the statute verbatim. Rather, it need merely insure that sufficient facts are in the decision which comply with the standard-which it has clearly done in this case. The factors cited, which were appellant's heinous instant offense of shooting a police officer in the head, impact on the victim's family, and prison disciplinary record, show the required statutory findings were in fact made in this case. Language used in the decision which is only semantically different from the statutory language (e.g. continued incarceration serves the community standards) is permissible. James v Chairman of the New York State Division of Parole, 19 A.D.3d 857, 796 N.Y.S.2d 735 (3d Dept. 2005); Miller v New York State Division of Parole, 72 A.D.3d 690, 897 N.Y.S.2d 726 (2d Dept. 2010). Although the Board's determination could have been stated more artfully, this is insufficient to annul the decision. Ek v Travis, 20 A.D.3d 667, 798 N.Y.S.2d 199 (3d Dept 2005).

STATE OF NEW YORK BOARD OF PAROLE

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Findings: (continued from page 5)

The Board's failure to recite the precise statutory language of the first sentence in support of its conclusion to deny parole release does not undermine its determination. Silvero v Dennison, 28 A.D.3d 859, 811 N.Y.S.2d 822 (3d Dept. 2006); Reed v Evans, 94 A.D.3d 1323, 942 N.Y.S.2d 387 (3d Dept. 2012).

Since the Board's decision was sufficiently detailed to inform the inmate of the reasons for the denial of parole, it satisfied the criteria set out in section 259-i of the Executive Law. Siao Pao v Dennison, 11 N.Y.3d 777, 866 N.Y.S.2d 602 (Ct. App. 2008); Matter of Whitehead v. Russi, 201 A.D.2d 825, 607 N.Y.S.2d 751 (3d Dept. 1993); Matter of Green v. New York State Division of Parole, 199 A.D.2d 677, 605 N.Y.S.2d 148 (3d Dept. 1993). Moreover, the reasons stated by the Parole Board members for holding appellant are sufficient grounds to support their decision. People ex rel. Yates v. Walters, 111 A.D.2d 839, 490 N.Y.S.2d 573 (2d Dept. 1985); Matter of Ganci v Hammock, 99 A.D.2d 546, 471 N.Y.S.2d 630 (2d Dept. 1984); Matter of Vuksanaj v. Hammock, 93 A.D.2d 958, 463 N.Y.S.2d 61 (3d Dept. 1983); Matter of Pina v. Hammock, 89 A.D.2d 799, 453 N.Y.S.2d 479 (4th Dept. 1982). Since the Board's challenged decision was made in accordance with the pertinent statutory requirements, it exercised proper discretion in denying appellant early release on parole. In the Matter of Hawkins v. Travis, 259 A.D.2d 813, 686 N.Y.S.2d 198 (3d Dept. 1999), app. dism. 93 N.Y.2d 1033, 697 N.Y.S.2d 556 (1999); Matter of Barrett v. New York State Division of Parole, 242 A.D.2d 763, 661 N.Y.S.2d 857 (3d Dept. 1997). In the absence of a convincing demonstration that the Board did not consider the statutory factors set out under Executive Law §259-i, it must be presumed that the Board fulfilled its duty. Tomches v Evans, 108 A.D.3d 724, 968 N.Y.S.2d 888 (3d Dept. 2013); Peo. ex rel. Herbert v. New York State Board of Parole, 97 A.D.2d 128, 133, 468 N.Y.S.2d 881 (1st Dept. 1983); People ex rel. Haderxhanji v New York State Board of Parole, 97 A.D.2d 368, 467 N.Y.S.2d 38, 382, (1st Dept 1983); Garner v Jones, 529 U.S. 244, 120 S.Ct. 1362, 1371, 146 L.Ed.2d 236 (2000); McLean v New York State Division of Parole, 204 A.D.2d 456, 611 N.Y.S.2d 629 (2d Dept 1994); Zane v Travis, 231 A.D.2d 848, 647 N.Y.S.2d 886, 887 (4th Dept 1996). Per Executive Law §259 i(5), parole release is a discretionary function of the Board. Anthony v New York State Division of Parole, 252 A.D.2d 704, 679 N.Y.S.2d 158 (3d Dept. 1998), lv.den. 92 N.Y.2d 812 (1998), cert. den. 525 U.S. 1183 (1999); Bottom v New York State Board of Parole, 30 A.D.3d 657, 815 N.Y.S.2d 789 (3d Dept. 2006).

Appellant's second claim is the Board used prohibited information-specifically, co-defendant statements, victim statements, community opposition, etc.

STATE OF NEW YORK BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

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Dept. DIN# 89A5229

Findings: (continued from page 6)

In response, adverse public opinion is a permissible factor which parole officials may properly consider as they relate to whether release is not incompatible with the welfare of society and will not so deprecate the seriousness of the offense as to undermine respect for the law. Krebs v New York State Division of Parole, 2009 WL 2567779 (N.D.N.Y. 2009). And as was cited in a previous paragraph, the Board may consider the impact on the victim's family. As for statements by a co defendant, credibility of an inmates explanation is to be made by the Board. The Board may consider other court decisions involving the inmate's capacity to tell the truth, and how this impacts on the statutory factors. Siao Pao v Dennison, 51 A.D.3d 105, 854 N.Y.S.2d 348 (1st Dept. 2008).

Appellant's final claim is that the 24 month hold is excessive.

In response, the Board's decision to hold the inmate for the maximum period of 24 months is within the Board's discretion and within its authority pursuant to Executive Law § 259-i(2)(a) and 9 NYCRR § 8002.3 (d). Abascal v New York State Board of Parole, 23 A.D.3d 740, 802 N.Y.S. 2d 803 (3d Dept. 2005); Matter of Sinopoli v. New York State Board of Parole, 189 A.D.2d 960, 592 N.Y.S.2d 831 (3d Dept. 1993); Matter of Ganci v. Hammock, 99 A.D.2d 546, 471 N.Y.S.2d 630 (2d Dept. 1984). As such, appellant failed to demonstrate that the hold of 24 months was excessive. Kalwasinski v Patterson, 80 A.D.3d 1065, 915 N.Y.S.2d 715 (3d Dept. 2011) lv.app.den. 16 N.Y.3d 710, 922 N.Y.S.2d 273 (2011); Matter of Madlock v. Russi, 195 A.D.2d 646, 600 N.Y.S.2d 283 (3d Dept. 1993); Confoy v New York State Division of Parole, 173 A.D.2d 1014, 569 N.Y.S.2d 846,848 (3d Dept 1991); Smith v New York State Division of Parole, 64 A.D.3d 1030, 882 N.Y.S.2d 759 (3d Dept. 2009); Smith v New York State Division of Parole, 81 A.D.3d 1026, 916 N.Y.S.2d 285 (3d Dept. 2011); Shark v New York State Division of Parole Chair, 110 A.D.3d 1134, 972 N.Y.S.2d 741 (3rd Dept. 2013).

Recommendation:

Accordingly, it is recommended the decision of the Board be affirmed.