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Administrative Appeal Decision - Schwartz, Jacob

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STATE OF NEW YORK – BOARD OF PAROLE

AMENDED ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Schwartz, Jacob Facility: Gowanda CF
NYSID: 13114322-H Appeal Control No.: 03-152-20 B
DIN: 19-R-1555

Appearances: Arthur Schwartz, Esq.
Advocates for Justice
225 Broadway, Suite 1902
New York, New York 10007

Decision appealed: March 2020 decision, denying discretionary release and imposing a hold of 18 months.


Board Member(s) who participated: **Berliner, Cruse, Mitchell**

Papers considered: Appellant’s Letter-brief received April 16, 2020
Appellant’s Supplemental Letter-brief received June 2, 2020


Appeals Unit Review: Statement of the Appeals Unit’s Findings and Recommendation

Records 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 determine that the decision appealed is hereby:

 Affirmed Vacated, remanded for de novo interview Modified to _____

Commissioner

 Affirmed Vacated, remanded for de novo interview Modified to _____

Commissioner

 Affirmed Vacated, remanded for de novo interview 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 7/28/2020

LB

STATE OF NEW YORK – BOARD OF PAROLE

AMENDED APPEALS UNIT FINDINGS & RECOMMENDATION**Name:** Schwartz, Jacob**DIN:** 19-R-1555**Facility:** Gowanda CF**AC No.:** 03-152-20 B**Findings:** (Page 1 of 1)

Appellant was sentenced to one to three years upon his conviction of Promoting a Sexual Performance by a Child. In the instant appeal, Appellant challenges the March 2020 determination of the Board denying release and imposing a 18-month hold. Among other things, he argues the Board relied on erroneous information about his crime.

Preliminarily, we note the Board is required to consider the pre-sentence investigation report and entitled to rely on the information contained therein. Executive Law § 259-i(2)(c)(A); 9 N.Y.C.R.R. § 8002.2(d)(7); Matter of Carter v. Evans, 81 A.D.3d 1031, 1031, 916 N.Y.S.2d 291, 293 (3d Dept.), lv. denied, 16 N.Y.3d 712, 923 N.Y.S.2d 416 (2011). However, the Board misstated Appellant's offense. That is, the Board indicated Appellant's offense involved (in addition to images of a child under 16) numerous images/videos of children between the ages of 6 months and 12 months while the pre-sentence investigation report reflects they were between the ages of 6 months and 16 years. Under the circumstances, a *de novo* interview is appropriate.

Recommendation: Vacate and remand for de novo interview.