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### Administrative Appeal Brief - FUSL000098 (2022-07-19)

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

**Mr.** [REDACTED]  
**DIN #** [REDACTED] **/NYSID #** [REDACTED]

Parole Hearing Date: April [REDACTED] 2022

Parole Denial Date: April [REDACTED] 2022 (*same day*)

Applicant's Parole Hearing Location: Otisville Correctional Facility

Parole Commissioners' Location: Poughkeepsie, New York

Administrative Appeal #: [REDACTED]

Submitted by:

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Submitted on July 19, 2022

via overnight mail to:

Appeals Unit  
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The Parole Board summarily denied Mr. ██████ parole on the very same day as Mr. ██████ interview and (1) failed to provide the individualized and detailed reasons required by 9 NYCRR 8002.3 (b); (2) failed to provide the detailed reasons for denying parole required by NY Executive Law 259-i(2)(A); (3) failed to explain its departure from Mr. ██████ COMPAS assessment as required by 9 NYCRR § 8002.2; and (4) therefore, seemed to inappropriately base its denial of parole exclusively on the nature of Mr. ██████ long-ago crime.

The Board's decision was therefore "arbitrary and capricious," and "irrational bordering on impropriety" *Russo v. N.Y. State Bd. of Parole*, 50 N.Y.2d 69 (1980), and must be vacated and a new de novo interview must be provided to Mr. ██████

**1. THE BOARD FAILED TO EXPLAIN IN A DETAILED AND FACTUALLY INDIVIDUALIZED MANNER HOW THE REQUIRED STATUTORY FACTORS WERE CONSIDERED IN DENYING PAROLE**

Pursuant to 2017 revisions of the Board's regulations, when denying parole, the Board must comply with the following:

***"Reasons for the denial of parole release shall be given **in detail, and shall, in factually individualized and non-conclusory terms, address how the applicable parole decision-making principles and factors listed in 8002.2 were considered in the individual's case.**"*** 9 NYCRR 8002.3 (b) (emphasis added).

This requirement has been routinely recognized and enforced by the courts. *See, Johnson v. N.Y. State Div. of Parole*, 65 A.D.3d 838 (4th Dep't 2009) ("the record is devoid of any indication that the Parole Board in fact considered the statutory factors that weighed in favor of petitioner's release ... In fact, during the notably truncated hearing, the Parole Board focused on matters unrelated to any statutory factor.") (Emphasis added); *Sullivan v. NYS Bd of Parole*, 100865/18 (Sup. Ct., NY Cty, 2019) ("The decision refers only fleetingly to petitioner's overwhelmingly positive submissions, her plans upon release, and her COMPAS score, the latter of which predicted a low probability of recidivism; and it doesn't explain how these factors weighed in the parole denial decision.") (Emphasis added); *Pulinario v. N.Y. State Dep't of Corr. & Cmty. Supervision*, 42 Misc.3d 1232(A) (Sup. Ct. NY Cty, 2014) ("[T]he Parole Board's overwhelming emphasis was on the offense ... At the hearing, there were only passing references to the contents of petitioner's application. In the decision there was only a perfunctory mention of all the statutory factors that weighed in Pulinario's favor.") (Emphasis added); *Coaxum v. N.Y. State Bd. of Parole*, 14 Misc.3d 661 (2006) (holding "actual consideration of factors means more than acknowledging that evidence of them was before the Board.") (Emphasis added); *Cappiello v. N.Y. State Bd. of Parole*, 6 Misc.3d 1010A (Sup. Ct., NY Cnty, 2004) (finding there was no indication in the record as to whether the commissioners had read materials supporting parole release or considered them in any way and holding: "When the record of the Parole hearing fails to convincingly demonstrate that the Parole Board ... qualitatively weigh[ed] the relevant factors in light of the three statutorily

acceptable standards for denying parole release, the decision is arbitrary and capricious.”) (Emphasis added).

Here, as in *Sullivan* and *Pulinario*, the Board made only passing and fleeting reference (in two sentences) to the factors that favor Mr. ██████ release. See, Ex. 1, at 24.

With respect to the statutorily required factor regarding Mr. ██████ “...institutional record including program goals and accomplishments, academic achievements, vocational education, training, or work assignments...” the Board said simply that it “...commends your personal growth, programmatic achievements and productive use of time...” See, Ex. 1, at 23.

And the Board made absolutely no mention of the statutorily required factor of Mr. ██████ “...release plans including community resources, employment, education and training and support services available...”

Nonetheless, the Board concluded its decision with the unsupported and self-serving statement that “...all required statutory factors in your file [have been] weighed and considered...” Id., at 24.

The Board’s high-level, generic, and summary opinion on the same day as Mr. ██████ interview thereby failed to comply with the requirements of its own regulations (9 NYCRR 8002.3 (b) and should be overturned and Mr. ██████ should be granted a de novo interview.

## **2. THE BOARD FAILED TO PROVIDE DETAILED REASONS FOR DENIAL OF PAROLE AS REQUIRED BY NY EXECUTIVE LAW 259-i(2)(A)**

As stated above, the Board summarily concluded that Mr. ██████ release would be incompatible with the welfare of society. See, Ex. 1 at 23. The Board, however, failed to provide the detailed reasons required to support its summary decision. See, Executive Law 259-i(2)(a), which reads:

“If parole is not granted upon such review, the inmate shall be informed in writing within two weeks of such appearance of the factors and reasons for such denial of parole. *Such reasons shall be given in detail and not in conclusory terms.*” (Emphasis added)

Instead, the Board cited only three general reasons for denying Mr. ██████ parole, none of which supports the Board’s conclusion that Mr. ██████ current release would be incompatible with the welfare of society: (1) Mr. ██████ long-outdated and less-than-relevant criminal history, much of which dates back more than thirty-six years; (2) the Board’s departure from Mr. ██████ “low risk scores” on his COMPAS evaluation without providing the required detailed explanations; and (3) the Board’s professional judgment that Mr. ██████ lacked remorse.

Since it fails to provide sufficient details of its rationale and decision, we are left

to conclude that the Board relied almost exclusively on Mr. [REDACTED] less-than-relevant, long-past criminal history to deny Mr. [REDACTED] current parole application. The Board relied upon records more than thirty-six years old, starting when Mr. [REDACTED] was around 17 years of age. However, the Board totally disregards and neglects to acknowledge that Mr. [REDACTED] is now 53 years of age, a father and grandfather, who has managed during his last twenty-plus years in prison to develop loving relationships with his family, earn his high-school GED, enroll, and earn more than 40 college credits and have an exceptionally good disciplinary record over the past few years.

While the Board in its decision admits that “[Mr. [REDACTED] current and more relevant] COMPAS indicates low risk scores for felony violence, arrest, and absconding,” Ex. 1 at 24, the Board inexplicably goes on to say that “The Panel will depart from the aforementioned low risk scores.” *Id.* The Board’s failure to provide any further explanation of such departure is a clear violation of NY Exec. Law Sec. 259-c (4) and the Board’s own regulations (9 NYCRR Sec. 8002.2(a) (discussed separately in Section 3. below).

Finally, the Board in its “professional judgement” concluded that Mr. [REDACTED] lacked remorse for his crime and the victim. While it is unclear what professional credentials the Board members might possess to make such a “professional judgment,” this judgment was clearly wrong since Mr. [REDACTED] stated that he was “sorry,” “wrong,” “at fault,” “ashamed” or some variation thereof over 22 times during the 22 pages of the parole interview, and his sincerity in this regard comes through to any unbiased reader of the transcript. In addition, as part of his parole packet submitted to the Board, Mr. [REDACTED] included his personal statement (*See*, Ex. 2) as well as his letters of apology to the family of his victim, both of which clearly show that he has accepted responsibility for his actions and is remorseful and sorry. *See*, Ex. 3.

Since the Board failed to provide the required level of detailed explanation for its denial of Mr. [REDACTED] parole, its denial must be overturned, and a *de novo* interview granted. *See, In re McBride v. Evans*, 42 Misc.3d 1230A (Sup. Ct. Dutchess Cnty, 2014) (“While the Board discussed petitioner’s positive activities and accomplishments at the hearing, it then concluded that his release was incompatible with ‘public safety and welfare.’ The Board gave no analysis as to how or why it reached this conclusion. It appears to have focused only on petitioner’s past behavior without articulating a rational basis for reaching its conclusion that his release would be incompatible with the welfare of society at this time”); *Morris v. N.Y. State Dep’t of Corr. & Cmty. Supervision*, 40 Misc.3d 226 (Sup. Ct. Columbia Cnty, 2013) (“the Board failed to explain, other than the facts of the crime, why petitioner’s release was ‘incompatible with the public safety and welfare’ and why there was ‘a reasonable probability [he] would not live and remain at liberty without violating the law.’ ... the Board ‘should be well able to articulate the reasoning’ for its decision, ‘if it were come to reasonably, in a non-arbitrary, uncapricious manner.’”); *Matter of Mitchell v New York State Div. of Parole*, 58 AD3d 742, 742-43 (2d Dept 2009 (must give statutory factors adequate consideration); *Sullivan v. NYS Bd of Parole*, 100865/18 (S. Ct., NY Cnty, 2019)

(“There is no explanation why the 25 year old crime outweighed the voluminous evidence that indicates petitioner would presently be able to lead a quiet and crime-free life in society.”). *Platten v. NYS Bd. of Parole*, 47 Misc. 3d 1059, 1064 (Sup. Ct. Sullivan Cnty. 2015) (finding failure to explain reason for denial in detail: “Based on the record and the lack of specificity in the decision, the court cannot determine what concern the Board had for the public safety and welfare, and why it had that concern at the time of the interview in 2014.”); *Rivera v. Stanford*, 172 A.D.3d 872, 874(3d Dep’t 2019) (“While the Parole Board noted that the petitioner had incurred more than 30 disciplinary violations while imprisoned since the 1980’s, the Parole Board did not discuss the history of these violations or explain how these violations, many of which were decades old, had a bearing upon its determination that the petitioner’s request for release was not compatible with the welfare of society.”).

**3. THE BOARD FAILED TO EXPLAIN ITS DEPARTURE FROM MR. [REDACTED] COMPAS REPORT AS REQUIRED BY LAW AND REGULATION**

As stated above, the Board expressly acknowledged in its decision that “[Mr. [REDACTED] COMPAS indicates low risk scores for felony violence, arrest, and absconding.” See, Ex.1, page 24. The Board also expressly admitted that it was departing from Mr. [REDACTED] low COMPAS scores, Id., but failed to provide any further explanation about which COMPAS scales it was departing from or its reasons for doing so.

This is a clear violation of the law and regulations. See, NY Exec. Law 259-c (4) and NYCRR Sec. 8002.2(a) and requires the Appeal Unit to overturn the parole decision and order a new de novo hearing. See, *George Hill v. New York State Board of Parole*, 2020 WL 6393881 (N.Y. Sup.) (Finding “the Board failed to articulate the reasons for this determination with respect to Mr. Hill’s low COMPAS Risks and Needs Assessment scores or to ‘provide an individualized reason for this departure,’ in accordance with 9 NYCRR 8002.2.5 The Board’s failure to consider this assessment is relevant in light of petitioner’s remorse, accomplishments in prison, his skills, release plans and positive scores on his COMPAS Risk Assessment.”); *Robinson v. Stanford*, No. 2392/2018, at \*2 (Sup. Ct. Dutchess Cty. Mar. 13, 2019) (ordering de novo interview for man with two murder convictions and low COMPAS scores because “the Parole Board’s finding that discretionary release would not be compatible with the welfare of society directly contradicts these scores in his COMPAS assessment. As the Board’s determination denying release departed from these risks and needs assessment scores, pursuant to 9 NYCRR § 8002.2 it was required to articulate with specificity the particular scale in any needs and assessment from which it was departing and provide an individualized reason for such departure. The Board’s conclusory statement that it considered statutory factors, including petitioner’s risk to the community, rehabilitation efforts and needs for successful community re-entry in finding that discretionary release would not be compatible with the welfare of society fails to meet this standard. As such, its determination denying parole release was affected by an error of law.”) (Emphasis added); *Comfort v. Stanford*, 2018/1445 (Sup. Ct. Dutchess Cnty) (finding the Board did not comply with 8002.2(a) by failing to explain its departure from the lowest possible COMPAS risk scores of felony violence, arrest and absconding yet concluding

that there was a reasonable probability the petitioner would not live and remain at liberty without violating the law); *Phillips v. Stanford*, 52579/19 (Sup. Ct., Dutchess Cnty, 2019 (J. Rosa) (Finding that *Board's decision that release would be incompatible with the welfare of society directly contradicted lowest COMPAS scores in risk of felony violence, re-arrest, absconding, criminal involvement, and unlikelihood of issues with family support or significant financial problems upon release. "The Board was thus required to articulate with specificity the particular scales in petitioner's COMPAS assessment from which it was departing and provide an individualized reason for such departures. The Board's conclusory statement that it considered statutory factors, including his institutional adjustment, discipline, program participation and needs for successful re-entry in finding that the discretionary release would not be compatible with the welfare of society fails to meet this standard."*) (Emphasis added); *Stokes v. Stanford*, Slip Op. 50899(U), at \*2 (Sup. Ct. Albany Cty. June 9, 2014) ("In petitioner's interview with the Board, it made note that there were no negatives in his prison disciplinary history since his last appearance, he has made positive efforts towards his rehabilitation, including obtaining his GED, done vocational training, ART, ASAT, Phase I, II and III, would be living with his wife if released, and that his COMPAS risk reveals he is at low risk for violence, re-arrest or absconding. However, and in stark contrast, in its determination the Board denied parole release based only upon the finding that petitioner committed murder during a robbery, and that his plea to the murder charge resolved three pending robberies. The determination simply fails to make any analysis of the steps toward rehabilitation, or his post-release plans, and why and how those factors were dismissed.") Banks, Javon, 96A4152, AC #: 02-068-19 SC (Otisville CF) (vacated and remanded for 2<sup>nd</sup> de novo interview, July 27, 2022) ([https://doccs.ny.gov/system/files/documents/2019/12/02-068-19sc\\_banksjavon\\_96a4152.pdf](https://doccs.ny.gov/system/files/documents/2019/12/02-068-19sc_banksjavon_96a4152.pdf)); Woodburn, Ashton, 95A1877, AC#: 09-079-20 B (Otisville CF) ([https://doccs.ny.gov/system/files/documents/2021/06/09-079-20b\\_woodburnashton\\_95a1877.pdf](https://doccs.ny.gov/system/files/documents/2021/06/09-079-20b_woodburnashton_95a1877.pdf))

#### **4. THE BOARD INAPPROPRIATELY BASED ITS DENIAL OF PAROLE EXCLUSIVELY ON THE NATURE OF MR. ██████████ CRIME AND HIS LONG-PAST CRIMINAL HISTORY**

Since a review of the record indicates that all other factors weighed in favor of granting Mr. ██████████ release on parole, the Board, sitting in Poughkeepsie, Dutchess County, 2<sup>nd</sup> Department, appears to have based its denial of parole decision exclusively on the nature of Mr. ██████████ crime.

This is not permitted under rulings by the 2<sup>nd</sup> Department. See, *Ferrante v. Stanford*, 172 AD3d 31 (2d Dep't 2019) ("the Board may not deny an inmate parole based solely on the seriousness of the offense."); *Coleman v. N.Y.S. Dep't of Corr. & Cmty. Supervision*, 69 N.Y.S.3d 652 (N.Y. App. Div. 2018); *Ramirez v. Evans*, 118 A.D.3d 707 (2d Dept 2014); *Perfetto v. Evans*, 112 A.D.3d 640 (2d Dep't 2013); *Gelsomino v. N.Y. State Bd. of Parole*, 82 A.D.3d 1097 (2d Dep't 2011) ("Here, in denying the petitioner's application for release on parole, the Parole Board cited only the circumstances of the underlying crimes and failed to mention any of the other statutory factors, including his excellent disciplinary record, his record of achievements while incarcerated, as well as positive statements made by the sentencing court."); *Huntley v. Evans*, 77 A.D.3d 945 (2d Dep't 2011) ("Where the Parole Board denies

release to parole solely on the basis of the seriousness of the offense, in the absence of any aggravating circumstance, it acts irrationally.”); *Mitchell v. N.Y. State Div. of Parole*, 58 A.D.3d 742 (2d Dep’t 2009)( While the seriousness of the underlying offense remains acutely relevant in determining whether the petitioner should be released on parole, the record supports the petitioner's contention that the Parole Board failed to take other relevant statutory factors into account.); *O’Connor v. Stanford*, 54/2021 (Dutchess Cnty, J. Rosa, 2021); *Thwaites v. New York State Bd. of Parole*, 34 Misc. 3d 694, 699 (N.Y. Sup. Ct. 2011) ([The Board’s updated risk] procedures .... will rationalize parole decision-making by placing the focus primarily on who the person appearing before the Parole Board is today and on whether that person can succeed in the community after release, rather than—as under the previous “guidelines”—on who the person was many years earlier when she or he committed the crime.)

For this reason, the Board’s decision should be overturned, and a de novo interview granted.

#### **5. THE BOARD’S DECISION TO DENY MR. ██████████ PAROLE IS AN UNLAWFUL RESENTENCING EXCEEDING THE BOARD’S AUTHORITY**

The authority to determine criminal sentences is vested in the legislature and in the judge who imposed the sentence.

In considering whether to grant parole, the Parole Board is limited to determining *whether release at the present time is appropriate* under the statutory standards. *King v. N.Y. State Div. of Parole*, 190 A.D.2d 423 (1st Dep’t 1994) (emphasis added) (“The role of the Parole Board is not to resentence petitioner according to the personal opinions of its members as to the appropriate penalty for murder, but to determine whether, as of this moment, given all the relevant statutory factors, he should be released.”) (emphasis added); *Rossakis v. N.Y. State Bd. of Parole*, 146 A.D.3d 22, 27 (N.Y. App. Div. 2016) (“[t]he role of the Parole Board is not to resentence petitioner according to the personal opinions of its members as to the appropriate penalty for murder, but to determine whether, as of this moment, given all the relevant statutory factors, he should be released. In that regard, the statute expressly mandates that the prisoner's educational and other achievements affirmatively be taken into consideration in determining whether he meets the general criteria relevant to parole release.”) (Emphasis added)

In its decision, the Board focused primarily on the nature of Mr. ██████████ 20-plus year-old crime, citing the details of his offense, his criminal history dating back nearly 37 years, and his perceived lack of remorse to deny Mr. ██████████ parole. With the exception of his perceived lack of remorse, which we have corrected in Section 2., above, the Board’s justifications are clearly historical, backward-looking and retributory, and the antitheses of the required present evaluation of Mr. ██████████ current state of rehabilitation and deservedness of parole.



**6. THE BOARD FAILED TO ADEQUATELY CONSIDER MR. [REDACTED] REENTRY PLAN**

While the Board acknowledged that Mr. [REDACTED] had presented a well-developed “Case Plan” that “...outlined a number of goals to further enhance your rehabilitation...” and thanked him for that (See, Ex. 1, p.13), that is the only mention of Mr. [REDACTED] “Case Plan” during the parole interview.

Moreover, there is absolutely no mention or reference to Mr. [REDACTED] “case plan” or “reentry plan” in the Board’s decision. See, Ex. 1, at 23-24.

Given Mr. [REDACTED] comprehensive and detailed reentry plans, this is a critical oversight as well as a violation of law by the Parole Board. See, Ex. 4, Mr. [REDACTED] Reentry Plans.

Since his incarceration, Mr. [REDACTED] has worked various jobs that have afforded him a wide range of skills that will assist him in securing employment once released. Currently, he is a clerk with the Prison-to-College Pipeline (P2CP) program, assisting new students, managing classroom setup, and organizing the book-lending process. He has also worked as a painter and typist at Otisville. He is a self-taught typist, and proudly states he has improved so much that he no longer has to look at the keys. In addition, he has held jobs as a porter, mess hall cook, and industry tailor.

Mr. [REDACTED] has taken advantage of many courses during his incarceration. Most notably, he received his GED in 2013, which he states was one of the best days of his life. Since then, Mr. [REDACTED] has developed a strong passion for learning and writing. He has served as a teacher’s aide and educational clerk at Bare Hill, at Auburn, and again in Otisville. Mr. [REDACTED] has cherished the opportunity to act as a mentor and establish rapport with others, something he feels he never had the chance to do before entering prison. His academic adviser, Ms. Gittler, encouraged Miles to continue his educational pursuits.

In 2019, he enrolled in John Jay P2CP as an undergraduate and has continued to take classes ever since; he is currently in his fourth semester of the program and is on his way to earning his bachelor’s degree. He has taken classes in sociology, English, creative writing, math, and theater and excelled in them all, making the Dean’s List with a 3.7 GPA. Mr. [REDACTED] believes in education for its own sake, recognizing its transformational potential, and he also sees it as essential to his aspirations as a future social worker. All six of his professors have reflected on his enthusiastic engagement with his assignments and his brilliant coursework; see their enclosed recommendation letters at Ex. 5.

Mr. [REDACTED] has multiple housing options. He has reached out to numerous organizations based in Manhattan and Brooklyn that responded with letters of reasonable assurance in preparation for his release. See, Ex. 6 for Letters of Reasonable Assurance. Exodus Transitional Community are committed to supporting Mr. [REDACTED] reentry by securing a hotel room

placement upon his release. Through a partnership with the NYC Mayor's Office for Criminal Justice, Exodus is operating reentry hotels with private rooms, support staff, and services for individuals released during the pandemic. Miles has already established a connection with Exodus, which will allow Miles to have safe and secure housing as he establishes employment and longer-term plans. For additional potential housing placements, he has received letters from Neighbors Together, Appellate Advocates, and the DOE Fund's "Ready, Willing and Able" program. Mr. [REDACTED] is flexible and ready to work immediately upon release. As a result of his initiative, he already has received a letter of employment from Kyron Brunson and additional letters from the Fortune Society, the Osborne Association, and Network Support Services.

In the longer term, Mr. [REDACTED] is committed to continuing his bachelor's degree at John Jay and plans to obtain a degree in social work. He hopes to start a non-profit called Giving Back/Helping Others. *See*, Ex. 7, Mr. [REDACTED] business plan for Giving Back/Helping Others. Mr. [REDACTED] plans to create programs of support for both youth and older adults in communities similar to where he grew up. Specific services and programs he has outlined include: basic need services for elderly folks, transportation for medical visits, anger management and training facilitation for youth, and space for positive outlets such as art and sports. Along with our assistance as advocates, Miles has developed a strong community of supporters who are eager to see him pursue his dreams.

In short, Mr. [REDACTED] has many goals and aspirations. Over the past three years, he has reconnected with his children (Tamera, Kaheem, and Kory), nieces (Chanelle and Taneen), nephew (Kyron), sister (Karen), and mother-in-law (Ernestine). If released, Mr. [REDACTED] intends to spend time with his children and continue to rebuild those relationships. In a letter to her father, Tamera writes, "I know that we are still getting to know each other and will be getting to know one another for the rest of our lives... I'm here to support you while you're in prison and when you get out because you have proven that you are a good man." *See*, Ex. 8, Letters of Support from Family and Friends. He is looking forward to becoming a father to his children in a way he was not in the past.

Clearly the mere passing reference to Mr. [REDACTED] well-developed and well-thought-out Reentry Plan during the interview and failure to mention it at all in the decision was a failure of the Board to consider these very favorable details of that Plan in its denial of parole, as required by NY Executive Law 259-i(c)(A)(iii) and a failure to give Mr. [REDACTED] the benefit of these favorable and detailed plans.

**7. THE BOARD'S DENIAL OF MR. [REDACTED] CURRENT PAROLE WAS PREDETERMINED AND THEREFORE A VIOLATION OF STATUTE AND MR. [REDACTED] DUE PROCESS RIGHTS**

Given the substance and tenor of Mr. [REDACTED] interview, it appears that the Board had been predetermined to deny Mr. [REDACTED] release on parole. During Mr. [REDACTED] interview, the Board spent approximately 15 of 22 pages of the interview rehashing Mr. [REDACTED] 20-plus year-old crime and sentencing. *See*, Ex. 1 at pp's 1-22. In contrast, the Board spent only about 2 ½ pages on Mr. [REDACTED] more recent, relevant, and favorable rehabilitation efforts and accomplishments.

Id. Early on in the interview, Mr. [REDACTED] was informed by Commissioner Davis that “Right now your presentation appears to be somewhat robotic, somewhat rehearsed, and I don’t want you to come across that way in the interview.” Mr. [REDACTED] also observed the commissioners smirking throughout the interview in response to many of his responses. And, when Mr. [REDACTED] testified that he was asking for another chance in society to make amends and atone and to pay back his debt by helping others, Commissioner Davis callously responded that “There’s a lot you can do in terms of restorative practices while incarcerated. There’s a whole building full of people there who need some restoration and healing, so perhaps your work can start there.”

Indications that the Board’s parole denial was predetermined is a ground for a de novo interview. *See, King v. New York State Div. of Parole*, 190 A.D.2d 423, *affd.* 83 N.Y.2d 788. *See Johnson v. N.Y.Bd. of Parole*, 65 A.D.3d 838 (4th Dep’t 2009) (“We therefore conclude on the record before us that the Parole Board failed to weigh all of the relevant statutory factors and that there is ‘a strong indication that the denial of petitioner's application was a foregone conclusion.’”); *Rabenbauer v. N.Y. State Dep’t of Corr. & Cmty. Supervision*, 46 Misc. 3d 603 (Sup Ct. Sullivan Cty. 2014) (“at least one Commissioner was argumentative and appeared to have made the decision prior to the parole interview.”) *Morris v. N.Y. State Dep’t of Corr. & Cmty. Supervision*, 40 Misc.3d 226 (Sup. Ct. Columbia Cty. 2013) (“When, as here, the Parole Board focuses entirely on the nature of Petitioner's crime, there is a strong indication that the denial of parole is a *foregone conclusion that does not comport with statutory requirements.*”) (Emphasis added.)

### ***CONCLUSION***

For each reason stated above, the Board’s denial of Mr. [REDACTED] parole should be vacated and a new hearing de novo held.

DATED: July 19, 2022,

Respectfully submitted,

Kevin J. Halloran, Esq.

Attorney-at-Law and Pro Bono Counsel