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Administrative Appeal Decision - Johnson, Aaron (2019-05-10)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Johnson, Aaron

Facility: Collins CF

NYSID: [REDACTED]

Appeal Control No.: 09-159-18 R

DIN: 17-B-2396

Appearances: Andrew Brautigam Esq.
32 White Street
P.O. Box 210
Fredonia, New York 14063

Decision appealed: August 14, 2018 revocation of release and imposition of a time assessment of 15 months.


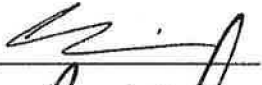

Final Revocation Hearing Date: August 14, 2018

Papers considered: Appellant's Letter-brief received January 31, 2019

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

Records relied upon: Notice of Violation, Violation of Release Report, Final Hearing Transcript, Parole Revocation Decision Notice

Final Determination: The undersigned determine that the decision appealed is hereby:

 Commissioner	<input checked="" type="checkbox"/> Affirmed <input type="checkbox"/> Reversed, remanded for de novo hearing <input type="checkbox"/> Reversed, violation vacated <input type="checkbox"/> Vacated for de novo review of time assessment only <input type="checkbox"/> Modified to _____
 Commissioner	<input checked="" type="checkbox"/> Affirmed <input type="checkbox"/> Reversed, remanded for de novo hearing <input type="checkbox"/> Reversed, violation vacated <input type="checkbox"/> Vacated for de novo review of time assessment only <input type="checkbox"/> Modified to _____
 Commissioner	<input checked="" type="checkbox"/> Affirmed <input type="checkbox"/> Reversed, remanded for de novo hearing <input type="checkbox"/> Reversed, violation vacated <input type="checkbox"/> Vacated for de novo review of time assessment only <input type="checkbox"/> 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 5/10/19 66.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Johnson, Aaron

DIN: 17-B-2396

Facility: Collins CF

AC No.: 09-159-18 R

Findings: (Page 1 of 1)

Appellant challenges the August 14, 2018 determination of the administrative law judge (“ALJ”), revoking release and imposing a 15-month time assessment. Appellant is on parole for possession of a firearm, and possession of drugs. The current violative behavior included charges of kicking and choking a woman, threatening her father with a knife, curfew violation, and a positive drug test. Appellant pled guilty to a curfew violation. Appellant raises only one issue. Appellant claims he was erroneously classified as a category one case. As such, appellant seeks a reduction in the time assessment.

Appellant’s parole was revoked at the hearing upon his unconditional plea of guilty. Appellant was represented by counsel at the final hearing, and the Administrative Law Judge explained the substance of the plea agreement. The inmate confirmed he understood and there is nothing to indicate he was confused. The guilty plea was entered into knowingly, intelligently and voluntarily, and is therefore valid. Matter of Steele v. New York State Div. of Parole, 123 A.D.3d 1170, 998 N.Y.S.2d 244 (3d Dept. 2014); Matter of James v. Chairman of N.Y. State Bd. of Parole, 106 A.D.3d 1300, 965 N.Y.S.2d 235 (3d Dept. 2013); Matter of Ramos v. New York State Div. of Parole, 300 A.D.2d 852, 853, 752 N.Y.S.2d 159 (3d Dept. 2002). Consequently, his guilty plea forecloses this challenge. See Matter of Steele, 123 A.D.3d 1170, 998 N.Y.S.2d 244; Matter of Gonzalez v. Artus, 107 A.D.3d 1568, 1569, 966 N.Y.S.2d 710, 711 (4th Dept. 2013).

The ALJ did not place appellant into category one. Rather, she properly placed him into the outside the guidelines category, as he was originally a judicial sanction.

It is presumed the Administrative Law Judge considered all of the relevant factors. Ramirez v New York State Board of Parole, 214 A.D.2d 441, 625 N.Y.S.2d 505 (1st Dept 1995); Garner v Jones, 529 U.S. 244, 120 S.Ct. 1362, 1371, 146 L.Ed.2d 236 (2000). The time assessment imposed is clearly permissible. Otero v New York State Board of Parole, 266 A.D.2d 771, 698 N.Y.S.2d 781 (3d Dept 1999) leave to appeal denied 95 N.Y.2d 758, 713 N.Y.S.2d 2 (2000); Carney v New York State Board of Parole, 244 A.D.2d 746, 665 N.Y.S.2d 687 (3d Dept 1997); Issac v. New York State Division of Parole, 222 A.D.2d 913, 635 N.Y.S.2d 756 (3d Dept. 1995).

Recommendation: Affirm.