

Fordham Law School

## FLASH: The Fordham Law Archive of Scholarship and History

---

Parole Administrative Appeal Decisions

Parole Administrative Appeal Documents

---

December 2020

### Administrative Appeal Decision - Ortiz, Angelo (2019-01-31)

Follow this and additional works at: <https://ir.lawnet.fordham.edu/aad>

---

#### Recommended Citation

"Administrative Appeal Decision - Ortiz, Angelo (2019-01-31)" (2020). Parole Information Project  
<https://ir.lawnet.fordham.edu/aad/33>

This Parole Document is brought to you for free and open access by the Parole Administrative Appeal Documents at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Parole Administrative Appeal Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

Administrative Appeal Decision Notice

**Inmate Name:** Ortiz, Angelo

**Facility:** Fishkill Correctional Facility

**NYSID No.** [REDACTED]

**Appeal Control #:** 07-025-18-B

**Dept. DIN#:** 07A6984

Appearances:

For the Board, the Appeals Unit

For Appellant:

Glenn Bruno Esq.  
11 Market Street  
Suite 221  
Poughkeepsie, New York 12601


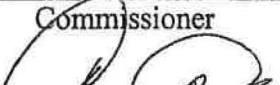
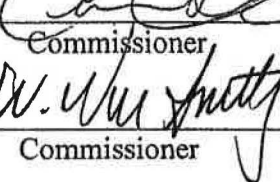
Board Member(s) who participated in appealed from decision: **Alexander, Agostini, Shapiro**

Decision appealed from: 6/2018-Denial of discretionary release, with imposition of 12 month hold.

Pleadings considered: Brief on behalf of the appellant received on October 31, 2018.  
Statement of the Appeals Unit's Findings and Recommendation

Documents relied upon: Presentence Investigation Report, Parole Board Report, Interview Transcript, Parole Board Release Decision (Form 9026), COMPAS, TAP/Case Plan.

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

	<input checked="" type="checkbox"/> <b>Affirmed</b>	<input type="checkbox"/> <b>Reversed for De Novo Interview</b>	<input type="checkbox"/> <b>Modified to</b> _____
Commissioner			
	<input checked="" type="checkbox"/> <b>Affirmed</b>	<input type="checkbox"/> <b>Reversed for De Novo Interview</b>	<input type="checkbox"/> <b>Modified to</b> _____
Commissioner			
	<input checked="" type="checkbox"/> <b>Affirmed</b>	<input type="checkbox"/> <b>Reversed for De Novo Interview</b>	<input type="checkbox"/> <b>Modified to</b> _____
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 1/31/19 GG.

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:** Ortiz, Angelo

**Facility:** Fishkill Correctional Facility

**Dept. DIN#:** 07A6984

**Appeal Control #:** 07-025-18-B

**Findings:**

Counsel for the appellant has submitted a brief to serve as the perfected appeal. The brief raises the following issues: 1) 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. 2) no aggravating factors exist. 3) the decision illegally resentenced him. 4) the decision failed to make required findings of fact, lacked details, and didn't offer any future guidance. 5) the decision was predetermined. 6) the interview was done in a defective manner, per comments from former Board Commissioner Manley. 7) not all documents in the possession of the Board were turned over, and the Parole Board Report is deficient when compared to the prior Inmate Status Report, in violation of the 6<sup>th</sup> amendment and right to counsel provisions of the constitution; 8) the Board failed to comply with the 2011 amendments to the Executive Law because the 2014 regulations don't have any written procedures, the TAP and COMPAS aren't just mere factors, the COMPAS was ignored, and the statutes are now present/future based. Letters from the Assembly, and statistics, prove this. 9) the decision was due to a political policy of the Governor to deny parole release to all violent felons. 10) the 12 month hold is excessive. 11) his rights under the due process clause were violated. 12) one tier ticket was later reversed on appeal and should not have been used.

In response, 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 (1<sup>st</sup> Dept. 1997); People ex rel. Herbert v. New York State Board of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881 (1<sup>st</sup> Dept. 1983). The Board is not required to give equal weight to each statutory factor. Arena v New York State Department of Corrections and Community Supervision, 156 A.D.3d 1101, 65 N.Y.S.3d 471 (3d Dept. 2017); Mays v Stanford, 150 A.D.3d 1521, 55 N.Y.S.3d 502 (3d Dept. 2017); Marszalek v Stanford, 152 A.D.3d 773, 59 N.Y.S.3d 432 (2d Dept. 2017); Paniagua v Stanford, 153 A.D.3d 1018, 56 N.Y.S.3d 894 (3d Dept. 2017); Esquilin v New York State Board of Parole, 144 A.D.3d 846, 40 N.Y.S.3d 279 (2<sup>nd</sup> Dept. 2016); Kenefick v Sticht, 139 A.D.3d 1380, 31 N.Y.S.3d 367 (4<sup>th</sup> Dept. 2016); LeGeros v New York State Board of Parole, 139 A.D.3d 1068, 30 N.Y.S.3d 834 (2d Dept. 2016); De la Cruz v Annucci, 122 A.D.3d 1413, 997 N.Y.S.2d 872 (4<sup>th</sup> Dept. 2014); Phillips v Dennison, 41 A.D.3d 17, 834 N.Y.S.2d 121 (1<sup>st</sup> Dept. 2007). 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).

STATE OF NEW YORK - BOARD OF PAROLE

**STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION**

**Inmate Name:** Ortiz, Angelo

**Facility:** Fishkill Correctional Facility

**Dept. DIN#:** 07A6984

**Appeal Control #:** 07-025-18-B

**Findings:** (continued from page 1)

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).

The Board may place particular emphasis upon the nature of the offense. Mullins v New York State Board of Parole, 136 A.D.3d 1141, 25 N.Y.S.3d 698 (3d Dept. 2016). The Board in its discretion properly placed greater emphasis on the present offenses, as it is not required to give equal weight to all requisite factors. Wiley v State of New York Department of Corrections and Community Supervision, 139 A.D.3d 1289, 32 N.Y.S.3d 370 (3d Dept. 2016); Peralta v New York State Board of Parole, 157 A.D.3d 1151, 69 N.Y.S.3d 885 (3d Dept. 2018).

The fact that the appellant committed the instant offense while on parole supervision is also a basis for denying parole release. Berry v New York State Division of Parole, 50 A.D.3d 1346, 855 N.Y.S.2d 310 (3d Dept. 2008); Davis v New York State Division of Parole, 114 A.D.2d 412, 494 N.Y.S.2d 136, 137 (2d Dept 1985); Delman v New York State Board of Parole, 93 A.D.2d 888, 461 N.Y.S.2d 406, 407 (2d Dept 1983); Wilson v Board of Parole, 284 A.D.2d 846, 726 N.Y.S.2d 599 (3d Dept 2001); Coombs v New York State Division of Parole, 25 A.D.3d 1051, 808 N.Y.S.2d 491 (3d Dept. 2006); Ward v New York State Division of Parole, 144 A.D.3d 1375, 40 N.Y.S.3d 803 (3d Dept. 2016).

The Board may consider the denial of an EEC. Frett v Coughlin, 156 A.D.2d 779, 550 N.Y.S.2d 61 (3d Dept. 1989); Porter v New York State Board of Parole, 282 A.D.2d 843, 722 N.Y.S.2d 922, 923 (3d Dept. 2001); Jarvis v Commissioner of the New York State Department of Correctional Services, 277 A.D.2d 556, 714 N.Y.S.2d 825, 826 (3d Dept. 2000).

Appellant's COMPAS has high scores in history of violence and need for re-entry substance abuse treatment, which is relevant to his risk of re-offense. Bush v Annucci, 148 A.D.3d 1392, 50 N.Y.S.3d 180 (3d Dept. 2017). The COMPAS can contain negative factors that support the Board's conclusion. Wade v Stanford, 148 A.D.3d 1487, 52 N.Y.S.3d 508 (3d Dept. 2017).

STATE OF NEW YORK - BOARD OF PAROLE

**STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION**

**Inmate Name:** Ortiz, Angelo

**Facility:** Fishkill Correctional Facility

**Dept. DIN#:** 07A6984

**Appeal Control #:** 07-025-18-B

**Findings:** (continued from page 2)

The Board is obligated to consider the inmate's prior criminal record. Matter of Partee v Evans, 117 A.D.3d 1258, 984 N.Y.S.2d 894 (3d Dept. 2014). The Board may put more weight on the inmate's criminal history. Bello v Board of Parole, 149 A.D.3d 1458, 53 N.Y.S.3d 715 (3d Dept. 2017); Hall v New York State Division of Parole, 66 A.D.3d 1322, 886 N.Y.S.2d 835 (3d Dept. 2009); Davis v Evans, 105 A.D.3d 1305, 963 N.Y.S.2d 485 (3d Dept. 2013); Jones v New York State Parole Board, 127 A.D.3d 1327, 6 N.Y.S.3d 774 (3d Dept. 2015); Wade v Stanford, 148 A.D.3d 1487, 52 N.Y.S.3d 508 (3d Dept. 2017). The fact that the Board afforded greater weight to the inmate's criminal history, and not to an alleged positive institutional adjustment, does not render the denial of parole for that reason irrational or improper. Matter of Ortiz v. Hammock, 96 A.D.2d 735, 465 N.Y.S.2d 341 (4<sup>th</sup> Dept 1983); Peo. ex rel. Yates v. Walters, 111 A.D.2d 839, 490 N.Y.S.2d 573 (2d Dept. 1985); Matter of Ristau v. Hammock, 103 A.D.2d 944, 479 N.Y.S.2d 760 (3d Dept. 1984) lv. to appeal den. 63 N.Y.2d 608, 483 N.Y.S.2d 1023 (1984); Torres v New York State Division of Parole, 300 A.D.2d 128, 750 N.Y.S.2d 759 (1<sup>st</sup> Dept 2002); Lashway v Evans, 110 A.D.3d 1420, 973 N.Y.S.2d 496 (3d Dept. 2013).

The denial of parole release based upon nature of conviction and criminal history is appropriate. In the Matter of Hawkins v. Travis, 259 A.D.2d 813, 686 N.Y.S.2d 198 (3d Dept. 1999); Farid v. Russi, 217 A.D.2d 832, 629 N.Y.S.2d 821 (3d Dept. 1995); Charlemagne v New York State Division of Parole, 281 A.D.2d 669, 722 N.Y.S.2d 74, 75 (3d Dept 2001); Burress v Evans, 107 A.D.3d 1216, 967 N.Y.S.2d 486 (3d Dept. 2013); Boccadisi v Stanford, 133 A.D.3d 1169, 20 N.Y.S.3d 477 (3d Dept. 2015); Bush v Annucci, 148 A.D.3d 1392, 50 N.Y.S.3d 180 (3d Dept. 2017); Holmes v Annucci, 151 A.D.3d 1954, 57 N.Y.S.3d 857 (4<sup>th</sup> Dept. 2017).

Per Executive Law 259-i(2)(c)(A), the Board is obligated to consider the inmate's prior criminal record and the nature of the instant offenses, and the fact that such consideration resulted in a parole denial does not reflect irrationality bordering on impropriety. Singh v Evans, 118 A.D.3d 1209, 987 N.Y.S.2d 271 (3d Dept. 2014).

Appellant lacks a documented relapse prevention plan. Executive Law 259-i(c)(1) clearly confers discretion upon the parole board as to whether and, if release is granted, when to release an inmate. Hodge v Griffin, 2014 WL 2453333(S.D.N.Y. 2014).

The Board may deny parole release without the existence of any aggravating factors, no matter how exemplary the institutional record is. Hamilton v New York State Division of Parole, 119 A.D.3d 1268, 1272, 990 N.Y.S.2d 714 (3d Dept. 2014).

STATE OF NEW YORK - BOARD OF PAROLE

**STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION**

**Inmate Name:** Ortiz, Angelo

**Facility:** Fishkill Correctional Facility

**Dept. DIN#:** 07A6984

**Appeal Control #:** 07-025-18-B

**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); Betancourt v Stanford, 148 A.D.3d 1497, 49 N.Y.S.3d 315 (3d Dept. 2017); Bush v Annucci, 148 A.D.3d 1392, 50 N.Y.S.3d 180 (3d Dept. 2017); Perea v Stanford, 149 A.D.3d 1392, 53 N.Y.S.3d 231 (3d Dept. 2017); Mays v Stanford, 150 A.D.3d 1521, 55 N.Y.S.3d 502 (3d Dept. 2017); Gonzalvo v Stanford, 153 A.D.3d 1021, 56 N.Y.S.3d 896 (3d Dept. 2017); Paniagua v Stanford, 153 A.D.3d 1018, 56 N.Y.S.3d 894 (3d Dept. 2017); Lewis v Stanford, 153 A.D.3d 1478, 59 N.Y.S.3d 726 (3d Dept. 2017); Cobb v Stanford, 153 A.D.3d 1500, 59 N.Y.S.3d 915 (3d Dept. 2017); Franza v Stanford, 155 A.D.3d 1291, 65 N.Y.S.3d 252 (3d Dept. 2017); Constant v Stanford, 157 A.D.3d 1175, 67 N.Y.S.3d 508 (3d Dept. 2018); Robinson v New York State Board of Parole, 162 A.D.3d 1450, 81 N.Y.S.3d 235 (3d Dept. 2018).

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); 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; 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); Borcsok 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. 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 a lack of future guidance, there is no due process right to an inmate obtaining a statement as to what he should do to improve his chances for parole in the future. Boothe v Hammock, 605 F.2d 661 (2d Cir. 1979); Watkins v Caldwell, 54 A.D.2d 42, 387 N.Y.S.2d 177 (4<sup>th</sup> Dept 1976); Freeman v New York State Division of Parole, 21 A.D.3d 1174, 800 N.Y.S.2d 797 (3d Dept 2005); Francis v New York State Division of Parole, 89 A.D.3d 1312, 934 N.Y.S.2d 514 (3d Dept. 2011). There is no legal requirement that a second Parole Board panel must follow the recommendation of a prior Parole Board panel, nor that the same members should constitute both panels. Flores v New York State Board of Parole, 210 A.D.2d 555, 620 N.Y.S.2d 141, 142 (3d Dept 1994).

STATE OF NEW YORK - BOARD OF PAROLE

**STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION**

**Inmate Name:** Ortiz, Angelo

**Facility:** Fishkill Correctional Facility

**Dept. DIN#:** 07A6984

**Appeal Control #:** 07-025-18-B

**Findings:** (continued from page 4)

As for due process/constitutional liberty interest in a legitimate expectation of early release, at the Federal level, there is no inherent constitutional right to parole. Greenholtz v Inmates of Nebraska Penal and Correctional Complex, 442 U.S. 1, 99 S.Ct. 2100, 2104, 60 L.Ed2d 668 (1979) or to be released before the expiration of a valid sentence. Swarthout v Cooke, 562 U.S. 216, 131 S.Ct. 859, 178 L.Ed2d 732 (2011). Nor, under the New York State Constitution, is there a due process right to parole. Russo v New York State Board of Parole, 50 N.Y.2d 69, 427 N.Y.S.2d 982, 984 (1980); Boothe v. Hammock, 605 F.2d 661 (2d Cir. 1979). The New York State parole scheme is not one that creates in any prisoner a legitimate expectancy of release. No entitlement to release is created by the parole provisions. Accordingly, appellant has no liberty interest in parole. Duettel v Fischer, 368 Fed.Appx. 180, 182 (2d Cir. 2010); Davis v Dennison, 219 Fed Appx 68 (2d Cir. 2007), cert. den. 552 U.S. 863, 128 S.Ct. 151, 169 Led2d 103 (2007); Rodriguez v Alexander, 71 A.D.3d 1354, 896 N.Y.S.2d 693 (3d Dept. 2010), lv. den. 15 N.Y.3d 703, 906 N.Y.S.2d 817. Thus, the protections of the due process clause are inapplicable. Barna v Travis, 239 F.3d 169, 171 (2d Cir. 2001); Freeman v New York State Division of Parole, 21 A.D.3d 1174, 800 N.Y.S.2d 797 (3d Dept 2005); Watson v New York State Board of Parole, 78 A.D.3d 1367, 910 N.Y.S.2d 311 (3d Dept. 2010).

Completion of the minimum term of the sentence still does not create any protected liberty interest. Motti v Alexander, 54 A.D.3d 1114, 1115 (3d Dept. 2008).

Nothing in the due process clause requires the Parole Board to specify the particular evidence on which rests the discretionary determination an inmate is not ready for conditional release. Duettel v Fischer, 368 Fed.Appx. 180, 182 (2d Cir. 2010). There is no due process requirement that the Parole Board disclose its release criteria. Haymes v Regan, 525 F.2d 540 (2d Cir. 1975).

The due process clause is not violated by the Board's balancing of the statutory criteria, and which is not to be second guessed by the courts. Mathie v Dennison, 2007 WL 2351072 (S.D.N.Y. 2007); MacKenzie v Cunningham, 2014 WL 5089395 (S.D.N.Y. 2014).

Parole is not constitutionally based, but is a creature of statute which may be imposed subject to conditions imposed by the state legislature. Banks v Stanford, 159 A.D.3d 134, 71 N.Y.S.3d 515 (2d Dept. 2018).

STATE OF NEW YORK - BOARD OF PAROLE

**STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION**

**Inmate Name:** Ortiz, Angelo

**Facility:** Fishkill Correctional Facility

**Dept. DIN#:** 07A6984

**Appeal Control #:** 07-025-18-B

**Findings:** (continued from page 5)

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 instant offenses, committed while on parole, criminal history, prison disciplinary record, EEC denial, mixed COMPAS scores, and deficient relapse prevention plan, 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). 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); Mullins v New York State Board of Parole, 136 A.D.3d 1141, 25 N.Y.S.3d 698 (3d Dept. 2016).

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); Withrow v Larkin, 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed2d 712 (1975). 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); Hakim-Zaki v New York State Division of Parole, 29 A.D.3d 1190, 814 N.Y.S.2d 414 (3d Dept. 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. Black v New York State Board of Parole, 54 A.D.3d 1076, 863 N.Y.S.2d 521 (3d Dept. 2008); Rivers v Evans, 119 A.D.3d 1188, 989 N.Y.S.2d 400 (3d Dept. 2014); Mays v Stanford, 150 A.D.3d 1521, 55 N.Y.S.3d 502 (3d Dept. 2017).



STATE OF NEW YORK - BOARD OF PAROLE

**STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION**

**Inmate Name:** Ortiz, Angelo

**Facility:** Fishkill Correctional Facility

**Dept. DIN#:** 07A6984

**Appeal Control #:** 07-025-18-B

**Findings:** (continued from page 6)

Claims revolving around a speech by former Commissioner Manley are without merit as his comments were not made under oath, and create no substantive rights. Matter of Alvarez v Evans, Index # 2804/2013, *Decision and Order* dated July 30, 2013 (Sup. Ct. Dutchess Co.)(Brands, J.S.C.). Furthermore, Manley was on the Board many years ago, and since then many of his concerns have been addressed by enacting 9 N.Y.C.R.R. 8002.2. And, the transcript reveals the Board did discuss all required issues, and the Board decision is adequately detailed.

It is not improper for the Board to consider a DOCS prison disciplinary finding against the appellant, even if the case is pending on appeal at the time of the Parole Board Release Interview. Matter of Arce v Travis, 273 A.D.2d 564, 710 N.Y.S.2d 554 (3d Dept 2000). Appellant is not automatically entitled to a new parole release interview due to the subsequent reversal of a DOCS disciplinary hearing. Matter of Collins v. Hammock, 52 N.Y.2d 798, 436 N.Y.S.2d 704 (1980). Although one disciplinary violation was reversed after his Parole Board interview, this does not annul the decision, especially if there are other numerous disciplinary violations. McCallister v New York State Division of Parole, 78 A.D.3d 1413, 910 N.Y.S.2d 600 (3d Dept. 2010) lv.app.den. 16 N.Y.3d 707, 920 N.Y.S.2d 781 (2011); McCaskell v Evans, 108 A.D.3d 926, 969 N.Y.S.2d 603 (3d Dept. 2013).

The Board stressing the nature of the underlying offense, troubling criminal history and prison disciplinary record, does not constitute irrationality bordering on impropriety. Perez v Evans, 76 A.D.3d 1130, 907 N.Y.S.2d 701 (3d Dept. 2010); Mentor v New York State Division of Parole, 87 A.D.3d 1245, 930 N.Y.S.2d 302 (3d Dept. 2011) lv.app.den. 18 N.Y.3d 803, 938 N.Y.S.2d 860 (2012); Stanley v New York State Division of Parole, 92 A.D.3d 948, 939 N.Y.S.2d 132 (2d Dept. 2012); Moore v New York State Board of Parole, 137 A.D.3d 1375, 26 N.Y.S.3d 412 (3d Dept. 2016).

Denial of parole is neither arbitrary nor capricious when the Parole Board relied on the factors defined by the New York statute. Hodge v Griffin, 2014 WL 2453333(S.D.N.Y. 2014) citing Romer v Travis, 2003 WL 21744079. An arbitrary action is one without sound basis in reason and without regard to the facts. Rationality is what is reviewed under an arbitrary and capricious standard. Hamilton v New York State Division of Parole, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014). An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts. Ward v City of Long Beach, 20 N.Y.3d 1042 (2013).

STATE OF NEW YORK - BOARD OF PAROLE

**STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION**

**Inmate Name:** Ortiz, Angelo

**Facility:** Fishkill Correctional Facility

**Dept. DIN#:** 07A6984

**Appeal Control #:** 07-025-18-B

**Findings:** (continued from page 7)

The Board set forth in adequate detail the reasons for its denial of the inmate's request for release. Burress v Evans, 107 A.D.3d 1216, 967 N.Y.S.2d 486 (3d Dept. 2013). The written Board decision in this case contains sufficient detail. McLain v New York State Division of Parole, 204 A.D.2d 456, 611 N.Y.S.2d 629 (2d Dept 1994); Walker v Russi, 176 A.D.2d 1185, 576 N.Y.S.2d 51 (3d Dept 1991), appeal dismissed 79 N.Y.2d 897, 581 N.Y.S.2d 660 (1992); Thomas v Superintendent of Arthur Kill Correctional Facility, 124 A.D.2d 848, 508 N.Y.S.2d 564 (2d Dept 1986), appeal dismissed 69 N.Y.2d 611, 517 N.Y.S.2d 1025 (1987); De la Cruz v Annucci, 122 A.D.3d 1413, 997 N.Y.S.2d 872 (4<sup>th</sup> Dept. 2014); Betancourt v Stanford, 148 A.D.3d 1497, 49 N.Y.S.3d 315 (3d Dept. 2017); Robinson v New York State Board of Parole, 162 A.D.3d 1450, 81 N.Y.S.3d 235 (3d Dept. 2018); Applegate v New York State Board of Parole, 164 A.D.3d 996, 82 N.Y.S.3d 240 (3d Dept. 2018).

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 (4<sup>th</sup> 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. disp. 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).

The Parole Board Report complies with the statutory requirements. An inmate has no constitutional right to the information in his parole file. Billiteri v U.S. Board of Parole, 541 F.2d 938, 944-945 (2d Cir. 1976). An inmate does not have automatic access to confidential material. Matter of Perez v New York State Division of Parole, 294 A.D.2d 726, 741 N.Y.S.2d 753 (3d Dept 2002); Macklin v Travis, 274 A.D.2d 821, 711 N.Y.S.2d 915, 916 (3d Dept. 2000). The Board may consider the confidential section to the Inmate Status Report is permissible. Molinar v New York State Division of Parole, 119 A.D.3d 1214, 991 N.Y.S.2d 487 (3d Dept. 2014).

STATE OF NEW YORK - BOARD OF PAROLE

**STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION**

**Inmate Name:** Ortiz, Angelo

**Facility:** Fishkill Correctional Facility

**Dept. DIN#:** 07A6984

**Appeal Control #:** 07-025-18-B

**Findings:** (continued from page 8)

Per Public Officers Law 87(2)(a) and (f) and Executive Law 259-k(2) and 9 N.Y.C.R.R. 8000.5(c)(2)(i)(a)(3), the Board of Parole is authorized to treat records as confidential. So access to confidential documents may be denied. Justice v Commissioner of the New York State Department of Corrections and Community Supervision, 130 A.D.3d 1342, 15 N.Y.S.3d 853 (3d Dept. 2015). Pursuant to Executive Law §259-k and 9 N.Y.C.R.R. §8000.5 et. seq., parole records are deemed to be confidential.

The 6<sup>th</sup> amendment applies to criminal trials. A parole release interview is not a full adversarial type proceeding. The nature and extent of the interview and attendant release considerations is solely within the discretion of the Parole Board. Matter of Briguglio v New York State Board of Parole, 24 N.Y.2d 21, 298 N.Y.S.2d 704, 710 (1969). The Parole Board is not the appellant's adversary. It is not an adversarial proceeding, and there are no charges or disputed issues of fact. Menechino v Oswald, 430 F.2d 403, 407 (2d Cir. 1970); cert. den. 400 U.S. 1023, 91 S.Ct. 588, 27 L.Ed2d 635 (1971). A proceeding to determine whether an inmate should be released on parole is not a quasi-judicial hearing. Banks v Stanford, 159 A.D.3d 134, 71 N.Y.S.3d 515 (2d Dept. 2018).

Nor is there is a constitutional right to have an attorney present on behalf of the inmate at the Board interview. Matter of Briguglio v. New York State Board of Parole, 24 N.Y.2d 21, 298 N.Y.S.2d 704 (1969); Menechino v. Oswald, 430 F.2d 403 (2d Cir. 1970); Russo v. New York State Board of Parole, 50 N.Y.2d 76, 427 N.Y.S.2d 982 (1980); McCall v Pataki, 232 F.3d 321, 323 (2d Cir. 2000); Billiteri v U.S. Board of Parole, 541 F.2d 938, 944-945 (2d Cir. 1976).

Allegations that the New York State Parole Board has systematically denied parole to prisoners convicted of violent crimes have been dismissed by the Courts. The Parole Board does not have a predetermination for an informal policy against violent felony offenders. Barna v Travis, 239 F.3d 169 (2d Cir. 2001); Graziano v Pataki, 689 F.3d 110 (2d Cir. 2012); McAllister v New York State Division of Parole, 432 F.App'x 32 (2d Cir. 2011); Mathie v Dennison, 381 F.App'x 26 (2d Cir. 2010); Jones v Travis, 293 A.D.2d 800, 739 N.Y.S.2d 656, 657 (3d Dept 2002); Connelly v New York State Division of Parole, 286 A.D.2d 792, 729 N.Y.S.2d 808, 809 (3d Dept 2001), appeal dismissed 97 N.Y.2d 677, 738 N.Y.S.2d 291 (2001); Lue-Shing v Pataki, 301 A.D.2d 827, 828, 754 N.Y.S.2d 96, 97 (3d Dept. 2003) leave denied 99 N.Y.2d 511, 760 N.Y.S.2d 102 (2003); Cardenas v Dennison, 37 A.D.3d 371, 830 N.Y.S.2d 152 (1<sup>st</sup> Dept. 2007); Bottom v Travis, 8 A.D.3d 1132, 773 N.Y.S.2d 717 (4<sup>th</sup> Dept. 2004).

STATE OF NEW YORK - BOARD OF PAROLE

**STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION**

**Inmate Name:** Ortiz, Angelo

**Facility:** Fishkill Correctional Facility

**Dept. DIN#:** 07A6984

**Appeal Control #:** 07-025-18-B

**Findings:** (continued from page 9)

The Courts will reject as pure speculation that a parole denial is due to political and media pressure. Huber v Travis, 264 A.D.2d 887, 695 N.Y.S.2d 622, 623 (3d Dept 1999); McGovern v Travis, 268 A.D.2d 924, 700 N.Y.S.2d 872, 873 (3d Dept 2000). Nor has the inmate proven any improper political interference directed at his individual parole application. Allegations that a parole denial were influenced by political policy is without merit. Gamez v Dennison, 18 A.D.3d 1099, 795 N.Y.S.2d 397 (3d Dept 2005). There is no merit to the inmate's contention that the decision was due to a political policy. Wellman v Dennison, 23 A.D.3d 974, 805 N.Y.S.2d 159 (3d Dept. 2005); Bonilla v New York State Board of Parole, 32 A.D.3d 1070, 820 N.Y.S.2d 661 (3d Dept. 2006); Murray v Evans, 83 A.D.3d 1320, 920 N.Y.S.2d 745 (3d Dept. 2011).

Appellant's claim that the Board failed to comply with the 2011 amendments to the Executive Law is rejected. Dolan v New York State Board of Parole, 122 A.D.3d 1058, 995 N.Y.S.2d 850 (3d Dept. 2014); Tran v Evans, 126 A.D.3d 1196, 3 N.Y.S.3d 633 (3d Dept. 2015); Boccadisi v Stanford, 133 A.D.3d 1169, 20 N.Y.S.3d 477 (3d Dept. 2015). Furthermore, the 2011 Executive Law amendments have been incorporated into the regulations adopted by the Board in 2017. The 2014 regulation cited by appellant was repealed in 2017.

The 2011 amendments to the Executive Law, as well as the state regulations governing parole, do not create a legitimate expectancy of release that would give rise to a due process interest in parole. Fuller v Evans, 586 Fed.Appx. 825 (2d Cir. 2014) cert.den. 135 S.Ct. 2807, 192 L.Ed2d 851. The 2017 amended regulations don't create any substantive right to release, but rather, merely increase transparency in the final decision. Courts must defer to the Parole Board's interpretation of its own regulations so long as it is rational and not arbitrary nor capricious. Brown v Stanford, 163 A.D.3d 1337, 82 N.Y.S.3d 622 (3d Dept. 2018).

The 2011 amendments still permit the Board to place greater emphasis on the gravity of the crime. Matter of Montane v Evans, 116 A.D.3d 197, 981 N.Y.S.2d 866 (3d Dept.) appeal dismissed 24 N.Y.3d 1052, 999 N.Y.S.2d 360 (2014); Hamilton v New York State Division of Parole, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014); Moore v New York State Board of Parole, 137 A.D.3d 1375, 26 N.Y.S.3d 412 (3d Dept. 2016). The Board can still consider the nature of the inmate's crimes, the criminal history, the prison disciplinary record, the program accomplishments and post release plans. Rivera v New York State Division of Parole, 119 A.D.3d 1107, 990 N.Y.S.2d 295 (3d Dept. 2014). The Board is obligated to consider the serious nature of the crime. Khatib v New York State Board of Parole, 118 A.D.3d 1207, 988 N.Y.S.2d 286 (3d Dept. 2014).

STATE OF NEW YORK - BOARD OF PAROLE

**STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION**

**Inmate Name:** Ortiz, Angelo

**Facility:** Fishkill Correctional Facility

**Dept. DIN#:** 07A6984

**Appeal Control #:** 07-025-18-B

**Findings:** (continued from page 10)

Statistical probabilities alone do not generate constitutional protections. Connecticut Board of Pardons v Dumschat, 452 U.S. 458, 101 S.Ct. 2460, 2465, 69 L.Ed.2d 158 (1981). Neither the mere possibility of release, nor a statistical probability of release, gives rise to a legitimate expectancy of release on parole. Graziano v Pataki, 689 F.3d 110 (2<sup>nd</sup> Cir. 2012).

Appellant failed to demonstrate that the hold of 12 months was excessive. Hill v New York State Board of Parole, 130 A.D.3d 1130, 14 N.Y.S.3d 515 (3d Dept. 2015); 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 (3d Dept. 2013).

**Recommendation:**

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