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Administrative Appeal Decision - Parker, Arabian (2019-10-11)

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ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Parker, Arabian

Facility: Oneida County Jail

NYSID [REDACTED]

Appeal Control No.: 05-113-19 R

DIN: 10-B-1972

Appearances: Arabian Parker
Oneida County Jail
6075 Judd Road
Oriskany, New York 13424

Decision appealed: April 29, 2019 revocation of release and imposition of a time assessment of 12 months/DOCCS 90 day alternate drug treatment program.

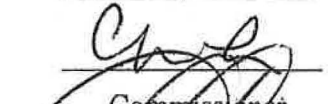

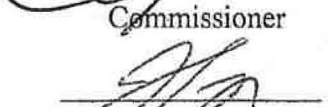
Final Revocation Hearing Date: April 29, 2019

Papers considered: Appellant's Letter-brief received June 7, 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 10/11/19 AL.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Parker, Arabian **DIN:** 10-B-1972
Facility: Oneida County Jail **AC No.:** 05-113-19 R

Findings: (Page 1 of 2)

Appellant challenges the April 29, 2019 determination of the administrative law judge (“ALJ”), revoking release and imposing a 12 month/DOCCS alternate 90 day drug treatment program time assessment. Appellant’s instant offense involved him breaking into the house of an elderly man, and into the business of an elderly man, displaying a weapon and forcibly stealing money and a car. The current parole revocation charges involved failure to make office reports, curfew violations, and failing drug tests. At the final parole revocation hearing, a plea bargain was entered into. Appellant pled guilty to use of cocaine, [REDACTED]

[REDACTED] Appellant raises the following issues: 1) he was denied his right to a Preliminary Violation Hearing. 2) the time assessment imposed was excessive. 3) the reason he violated parole was that his parole officer pushed him into the wrong programs.

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).

Petitioner signed the Notice of Violation in the box that he waived the Preliminary Violation Hearing.

Appellant has already served the time assessment, and been released. Claims that the time assessment hold imposed is excessive are rendered moot when the inmate is subsequently released onto parole during the course of the litigation. Adams v New York State Division of Parole, 89 A.D.3d 1267, 932 N.Y.S.2d 388 (3d Dept. 2011); Horton v Travis, 18 A.D.3d 922, 793 N.Y.S.2d 778 (3d Dept. 2005); Gray v Travis, 239 A.D.2d 631, 657 N.Y.S.2d 118, 119 (3d Dept 1997); Darnell v David, 300 A.D.2d 766, 750 N.Y.S.2d 802 (3d Dept 2002); Gainey v Stanford, 157 A.D.3d 1176, 70 N.Y.S.3d 589 (3d Dept. 2018). As such, this part of the appeal is dismissed as being moot.

The inmate’s assertion of an innocent excuse creates a credibility issue for the Administrative Law Judge to resolve, and does not negate the fact that the behavior violated the condition of parole. Bolton v Dennison, 38 A.D.3d 1077, 832 N.Y.S.2d 118 (3d Dept. 2007). The excuse is unavailing when the condition of parole prohibited the conduct. Carney v New York State Division of Parole, 244 A.D.2d 746, 665 N.Y.S.2d 687 (3d Dept. 1997).

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Parker, Arabian

DIN: 10-B-1972

Facility: Oneida County Jail

AC No.: 05-113-19 R

Findings: (Page 2 of 2)

Recommendation: Affirm.