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December 2020

### Administrative Appeal Decision - Coleman, Brandon (2019-06-06)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Coleman, Brandon

Facility: Greene CF

NYSID



Appeal Control No.: 03-171-19 R

DIN: 17-A-2789

Appearances: Brandon Coleman (17A2789)  
Greene Correctional Facility  
165 Plank Road, Box 975  
Coxsackie, New York 12051

Decision appealed: February 27, 2019 revocation of release and imposition of a time assessment of 14 months.

Final Revocation February 27, 2019

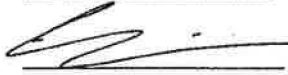
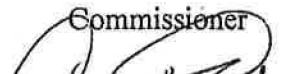
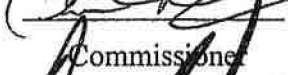
Hearing Date:

Papers considered: Appellant's Brief received March 25, 2019

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

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:

	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed, remanded for de novo hearing	<input type="checkbox"/> Reversed, violation vacated
Commissioner	<input type="checkbox"/> Vacated for de novo review of time assessment only	<input type="checkbox"/> Modified to _____	
	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed, remanded for de novo hearing	<input type="checkbox"/> Reversed, violation vacated
Commissioner	<input type="checkbox"/> Vacated for de novo review of time assessment only	<input type="checkbox"/> Modified to _____	
	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed, remanded for de novo hearing	<input type="checkbox"/> Reversed, violation vacated
Commissioner	<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 6/6/19 GG.

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Coleman, Brandon                                        **DIN:** 17-A-2789  
**Facility:** Greene CF     **AC No.:** 03-171-19 R

**Findings:** (Page 1 of 1)

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Appellant challenges the February 27, 2019 determination of the administrative law judge (“ALJ”), revoking release and imposing a 14-month time assessment.

Appellant is serving a determinate term of imprisonment of 2 years with 3 years post-release supervision after having been convicted of the crime of Rape 3<sup>rd</sup>. Appellant had unlawful sexual intercourse with a minor.

A number of parole violation charges were brought against Appellant involving violating an existing court order of protection, having contact with an individual in violation of a condition of parole, and failing to notify his parole officer of an arrest. At the final revocation hearing, Appellant entered a plea of guilty to the charge that he violating a court order of protection.

In his brief, Appellant raises the issue that the 14-month time assessment was excessive. Appellant raised no objection to the time assessment imposed by the ALJ at the final revocation hearing. Appellant did not preserve this issue at the final revocation hearing, and it has therefore been waived. See 9 N.Y.C.R.R. §8006.3(b); *Matter of Worrell v. Stanford*, 153 A.D.3d 1510, 59 N.Y.S.3d 922 (3d Dept. 2017); *Matter of Bowes v. Dennison*, 20 A.D.3d 845, 800 N.Y.S.2d 459 (3d Dept. 2005); *Matter of Currie v. New York State Board of Parole*, 298 A.D.2d 805, 748 N.Y.S.2d 712 (3d Dept. 2002).

In addition, Appellant is a Category 1 violator and, therefore, the ALJ must impose a minimum time assessment of 15 months, or a hold to the maximum expiration date of Appellant’s sentence, whichever is less. The ALJ may in certain cases reduce the minimum 15-month time assessment by up to three months. See 9 N.Y.C.R.R. §8005.20(c)(1). In this case, the ALJ reduced the 15-month minimum to 14 months. We note further that the Executive Law does not place an outer limit on the length of the time assessment that may be imposed. *Matter of Washington v. Annucci*, 144 A.D.3d 1541, 41 N.Y.S.3d 808 (4th Dept. 2016); *Matter of Wilson v. Evans*, 104 A.D.3d 1190, 1191, 960 N.Y.S.2d 807, 809 (4th Dept. 2013); *Murchison v. New York State Div. of Parole*, 91 A.D.3d 1005, 1005, 935 N.Y.S.2d 741, 742 (3d Dept. 2012). The time assessment of 14 months was proper.

**Recommendation:** Affirm.