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December 2020

### Administrative Appeal Decision - MacMillan, Bruce (2018-12-28)

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STATE OF NEW YORK- BOARD OF PAROLE

Administrative Appeal Decision Notice

**Inmate Name:** MacMillan, Bruce

**Facility:** Livingston Correctional Facility

**NYSID No.:** [REDACTED]

**Appeal Control #:** 07-114-18-B

**Dept. DIN#:** 14B0768

Appearances:

For the Board, the Appeals Unit

For Appellant:

Bruce MacMillan 14B0768  
Livingston Correctional Facility  
P.O. Box 49  
Route 36, Sonyea Road  
Sonyea, New York 14556


Board Member(s) who participated in appealed from decision: **Demosthenes, Drake**

Decision appealed from: 6/2018-Denial of discretionary release, with imposition of 24 month hold.

Pleadings considered: Handwritten letter on behalf of the pro se appellant received on October 16, 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

  
\_\_\_\_\_  
Commissioner      Affirmed      Reversed for De Novo Interview      Modified to \_\_\_\_\_

  
\_\_\_\_\_  
Commissioner      Affirmed      Reversed for De Novo Interview      Modified to \_\_\_\_\_

  
\_\_\_\_\_  
Commissioner      Affirmed      Reversed for De Novo Interview      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 12/28/18.  
LB

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:** MacMillan, Bruce

**Facility:** Livingston Correctional Facility

**Dept. DIN#:** 14B0768

**Appeal Control #:** 07-114-18-B

**Findings:**

The pro se appellant has submitted a handwritten letter to serve as the perfected appeal. The letter raises two issues: 1) over the past year his institutional record has greatly improved, and after the interview he did complete more key programs; and 2) he had been told he was going to be released without having to appear before the Board such that he was unprepared for the interview.

In response to the first issue, the Board is looking at many factors overall. The consideration by the Board of prison disciplinary violations is 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); 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).

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).

The fact that the appellant had a prior violation of parole is also a basis for denying parole release in the present. Walker v Russi, 176 A.D.2d 1185, 576 N.Y.S.2d 51, 52 (3d Dept 1991), leave to appeal dismissed 79 N.Y.2d 897, 581 N.Y.S.2d 660 (1992); Webb v Travis, 26 A.D.3d 614, 810 N.Y.S.2d 233 (2d Dept. 2006); Rodriguez v Evans, 10 A.D.3d 1049, 958 N.Y.S.2d 529 (3d Dept. 2013); Davis v Evans, 105 A.D.3d 1305, 963 N.Y.S.2d 485 (3d Dept. 2013); Lashway v Evans, 110 A.D.3d 1420, 973 N.Y.S.2d 496 (3d Dept. 2013); Holmes v Annucci, 151 A.D.3d 1954, 57 N.Y.S.3d 857 (4<sup>th</sup> Dept. 2017).

Appellant's COMPAS had several poor scores. 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**

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

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).

As for appellant's second claim, he never asked the Board to postpone the interview, thereby waiving the issue. Matter of Shaffer v. Leonardo, 179 A.D.2d 980, 579 N.Y.S.2d 910 (3d Dept. 1992); Boddie v New York State Division of Parole, 288 F.Supp.2d 431 (S.D.N.Y. 2003). If the inmate fails to raise an issue during the interview, the Board is not required to do so either. Molinar v New York State Division of Parole, 119 A.D.3d 1214, 991 N.Y.S.2d 487 (3d Dept. 2014).

**Recommendation:**

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