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Administrative Appeal Decision - Dean, Charles (2019-06-06)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Dean, Charles

Facility: Mid-State CF

NYSID [REDACTED]

Appeal Control No.: 12-009-18 R

DIN: 84-C-1118

Appearances: Charles Dean 84C1118
Mid-State Correctional Facility
P.O. Box 2500
Marcy, New York 13403

Decision appealed: November 16, 2018 revocation of release and imposition of a time assessment of 12 months.

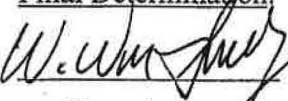
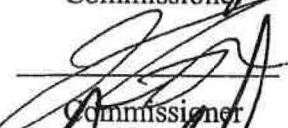
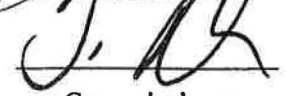
Final Revocation Hearing Date: November 6, 2018

Papers considered: Appellant's Letter-brief received April 8, 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:

	<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 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 6/10/19 66.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Dean, Charles **DIN:** 84-C-1118
Facility: Mid-State CF **AC No.:** 12-009-18 R

Findings: (Page 1 of 2)

Appellant challenges the November 16, 2018 determination of the administrative law judge (“ALJ”), revoking release and imposing a 12-month time assessment. Appellant’s instant offense involved breaking into a residence, kidnapping a 10 year old girl, and repeatedly sodomizing her. He was using drugs and alcohol at the time of the crime. Appellant also has a lengthy criminal history, including a prior sex offense conviction. The current parole revocation charges involve alcohol being found in his residence, which violates condition of parole, and lying to his parole officer about when questioned. Appellant raises the following issues on appeal: 1) none of the parole charges constitute a crime, and to thus send him back to prison violates the double jeopardy clause of the constitution. 2) the amount of alcohol contained in the drinks were minimal, especially when compared to some of his medications. 3) the PRS and ALJ can’t use prior criminal history or prior parole revocations against him. 4) parole conditions are akin to slavery.

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).

A parole revocation proceeding does not create a violation of the Double Jeopardy Clause. U.S. v DiFrancesco, 449 U.S. 117, 137, 101 S.Ct. 426, 437, 66 L.Ed2d 328 (1980); Priore v Nelson, 626 F.2d 211, 217 (2d Cir. 1980). A violation of parole conditions doesn’t constitute a new crime and revocation is not considered a new punishment. Robinson v New York State, 2010 WL 11507493 (N.D.N.Y. 2010); Jones v Fraser, 1998 WL 355341 (E.D.N.Y. 1998). Thus, this clause only protects against imposing multiple criminal punishments for the same crime in successive criminal proceedings. Its protections are not available at all in administrative parole proceedings. Matter of Dantzler v Travis, 249 A.D.2d 841, 673 N.Y.S.2d 221 (3d Dept 1998) lv.app.den. 92 N.Y.2d 810, 680 N.Y.S.2d 55.

A parole revocation hearing is an administrative proceeding at which it is determined whether a parolee violated the terms of his parole. It is different from a criminal trial, which is conducted to determine guilt or innocence. People ex rel. Maiello v New York State Board of Parole, 65 N.Y.2d 145, 490 N.Y.S.2d 742, 743 (1985); People ex rel. Piccarillo v New York State Board of Parole, 48 N.Y.2d 76, 421 N.Y.S.2d 842 (1979).

