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December 2020

### Administrative Appeal Decision - Butler, Clifford (2019-03-22)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Butler, Clifford

Facility: Riverview CF

NYSID: [REDACTED]

Appeal Control No.: 10-059-18 B

DIN: 16-R-1326

Appearances: Clifford Butler 16R1326  
Riverview Correctional Facility  
P.O. Box 27  
Ogdensburg, New York 13669

Decision appealed: October 2018 decision, denying discretionary release and imposing a hold of 12 months.


Board Member(s) who participated: Berliner, Davis

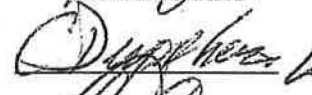
Papers considered: Appellant's Letter-brief received January 18, 2019


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

Records relied upon: Pre-Sentence Investigation Report, Parole Board Report, Interview Transcript, Parole Board Release Decision Notice (Form 9026), COMPAS instrument, Offender Case Plan.

Final Determination: The undersigned determine that the decision appealed is hereby:

 \_\_\_\_\_  Affirmed  Vacated, remanded for de novo interview  Modified to \_\_\_\_\_  
Commissioner

 \_\_\_\_\_  Affirmed  Vacated, remanded for de novo interview  Modified to \_\_\_\_\_  
Commissioner

 \_\_\_\_\_  Affirmed  Vacated, remanded for de novo interview  Modified to \_\_\_\_\_  
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 3/22/19 16.

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Butler, Clifford

**DIN:** 16-R-1326

**Facility:** Riverview CF

**AC No.:** 10-059-18 B

**Findings:** (Page 1 of 2)

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Appellant challenges the October 2018 determination of the Board, denying release and imposing a 12-month hold. Appellant raises the following issues: 1) the Board did not have his sentencing minutes, which would reveal the court did not want him to serve the maximum of this sentence (appellant is on lifetime parole from a prior bid). 2) any official opposition from the DA's office would violate the terms of the plea bargain. 3) the parole authorities were also a part of the plea bargain and are in violation of it by denying parole release.

With respect to the appellant's argument that the appealed from decision should be set aside because the Parole Board did not have the minutes from his sentencing proceeding at the time it interviewed the appellant to assess the appropriateness of his discretionary release, there is no dispute that the Board neither had nor considered the sentencing minutes. However, since the appellant's appearance before the Board, the Appeals Unit has been able to obtain and review the subject's sentencing minutes. A review of the sentencing minutes reveals that at no time during the proceeding did the court proffer any recommendation in favor of or in opposition to the appellant's possible release to parole supervision. That the Parole Board neither had nor considered the sentencing minutes when they fail to contain any recommendation in favor of or in opposition to an inmate's possible release to parole supervision constitutes harmless error and does not provide a basis for setting aside the appealed from decision. Schettino v New York State Division of Parole, 45 A.D.3d 1086, 845 N.Y.S.2d 569 (3d Dept. 2007); Motti v Alexander, 54 A.D.3d 1114 (3d Dept. 2007); Valerio v New York State Division of Parole, 59 A.D.3d 802, 872 N.Y.S.2d 606 (3d Dept. 2009); Abbas v New York State Division of Parole, 61 A.D.3d 1228, 877 N.Y.S.2d 512 (3d Dept. 2009); Cruz v Alexander, 67 A.D.3d 1240, 890 N.Y.S.2d 656 (3d Dept. 2009); Davis v Lemons, 73 A.D.3d 1354, 899 N.Y.S.2d 919 (3d Dept. 2010); Ruiz v New York State Division of Parole, 70 A.D.3d 1162, 894 N.Y.S.2d 582 (3d Dept. 2010).

It must also be noted that during the interview, the Board asked appellant about his sentencing proceedings, and what was said. The appellant did not provide any of the information being urged in this appeal. That would also constitute a waiver of 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).

As a part of this appeal, the appellant has submitted his plea bargain minutes. The Parole Board is not required by statute to consider the plea bargain minutes. Gomez v New York State Division of Parole, 87 A.D.3d 1197, 929 N.Y.S.2d 338 (3d Dept. 2011) lv.app.den. 18 N.Y.3d 802, 938 N.Y.S.2d 860 (2011). The plea bargain minutes do contain some statements in support of appellant's position. However, the statements are ambiguous, and were not given to the Parole Board during the interview.

STATE OF NEW YORK – BOARD OF PAROLE

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In any event, any suggestion that the Parole Board is bound by promises made during the criminal proceedings is void. Discretion vested in a governmental authority may not be abrogated by the District Attorney or the Court. A prosecutor's representations may not bind other State agencies. Public policy does not permit excesses by a prosecutor to divest an independent body of its lawful discretion. Chaipis v State Liquor Authority, 44 N.Y.2d 57, 404 N.Y.S.2d 76 (1978). As such, any alleged prosecutor's recommendation or parole recommendation is not enforceable. Property Clerk of New York City Police Department v Ferris, 77 N.Y.2d 428, 568 N.Y.S.2d 577, 580 (1991).

**Recommendation:** Affirm.