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December 2020

Administrative Appeal Decision - Stroud, Darshell (2019-02-06)

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Administrative Appeal Decision Notice

Inmate Name: Stroud, Darshell

Facility: Elmira Correctional Facility.

NYSID No.:



Appeal Control #: 10-023-18-R

Dept. DIN#: 04B1631

Appearances:

For the Board, the Appeals Unit

For Appellant: Darshell Stroud 04B1631
Elmira Correctional Facility
P.O. Box 500
1879 Davis Street
Elmira, New York 14901

Board Member(s) who participated in appealed from decision: NONE

Decision appealed from: 9/2018-Revocation of release, with imposition of 18 month time assessment.

Pleadings considered: Handwritten letter on behalf of the pro se appellant received on October 2, 2018.
Statement of the Appeals Unit's Findings and Recommendation

Documents relied upon: Notice of Violation, Violation of Release Report, Final Hearing Transcript, Parole Revocation Decision Notice.

Final Determination: The undersigned have determined that the decision from which this appeal was taken be and the same is hereby

Commissioner	<input type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed 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 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 type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed 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 2/6/19 GG.

Distribution: Appeals Unit - Inmate - Inmate's Counsel - Inst. Parole File - Central File
P-2002(R) (May 2011)

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Stroud, Darshell

Facility: Elmira Correctional Facility

Dept. DIN#: 04B1631

Appeal Control #: 10-023-18-R

Findings:

The now pro se appellant has submitted a handwritten letter to serve as the perfected appeal. The letter raises only one primary issue. Appellant claims the time assessment imposed is excessive, in violation of the due process and equal protection clauses of the constitution.

Per the hearing transcript, the appellant did not raise at the final revocation hearing any of the issues or objections presented on this appeal. Also, his parole was revoked at the hearing upon his unconditional plea of guilty, after having everything explained to him with his counsel present. Given his failure to object and his plea of guilty, all issues are now waived and/or moot and are not preserved for judicial review. Stanbridge v Hammock, 55 N.Y.2d 661, 663, 446 N.Y.S.2d 929 (1981); Herman v Blum, 54 N.Y.2d 677, 678, 442 N.Y.S.2d 510 (1981); Wescott v New York State Board of Parole, 256 A.D.2d 1179, 682 N.Y.S.2d 499 (4th Dept 1998); Kirk v Hammock, 119 A.D.2d 851, 500 N.Y.S.2d 424, 426 (3d Dept 1986); Chavis v Superintendent, 236 A.D.2d 892, 653 N.Y.S.2d 752 (4th Dept 1997). It should also be pointed out this the appellant's third parole revocation, and he was out on parole for only one month before the current violation conduct commenced. Appellant pled to consuming cocaine, and violating his curfew. Appellant incurred a misdemeanor theft arrests during this time period as well.

As for equal protection, the inmate does not specify exactly what group or classification he has been placed into, or that any law is discriminatory on its face. He has not alleged any facts that can give rise to an equal protection claim (e.g. showing he has been treated differently than others). As such, the petition fails to state a cause of action. Anderson v Coughlin, 700 F.2d 37, 44 (2d Cir. 1982). Even if this is deemed to be a classification, plaintiff has certainly not alleged anything to suggest he is in a suspect class or has been treated invidiously. Nicholas v Tucker, 114 F.3d 17, 20-21 (2d Cir. 1997); Allen v Cuomo, 100 F.3d 253, 260 (2d Cir. 1996); Carbonell v Acrish, 154 F.Supp.2d 552, 561 (S.D.N.Y. 2001), as prisoners either in the aggregate, or by type of offense, are not a suspect class.

As for due process, since appellant pled guilty, he waived all of these rights.

Recommendation:

Accordingly, it is recommended the decision of the Administrative Law Judge be affirmed.