

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

Parole Administrative Appeal Decisions

Parole Administrative Appeal Documents

December 2020

Administrative Appeal Decision - Babenzien, David (2019-11-05)

Follow this and additional works at: <https://ir.lawnet.fordham.edu/aad>

Recommended Citation

"Administrative Appeal Decision - Babenzien, David (2019-11-05)" (2020). Parole Information Project
<https://ir.lawnet.fordham.edu/aad/96>

This Parole Document is brought to you for free and open access by the Parole Administrative Appeal Documents at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Parole Administrative Appeal Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Babenzien, David

Facility: Cayuga CF

NYSID: [REDACTED]

Appeal Control No.: 03-045-19 B

DIN: 18-B-0293

Appearances: Lyle T. Hajdu, Esq.
414 East Fairmont Avenue
Post Office Box 414
Lakewood, NY 14750-0414

Decision appealed: February 2019 decision, denying discretionary release and imposing a hold to the original Parole Eligibility Date.

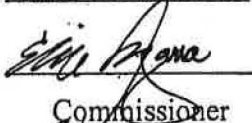
Board Member(s) who participated: **Smith, Coppola**


Papers considered: Appellant's Brief received June 20, 2019


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

Records relied upon: Pre-Sentence Investigation Report, Parole Board Report, 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 11/5/19.

LB

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Babenzien, David

DIN: 18-B-0293

Facility: Cayuga CF

AC No.: 03-045-19 B

Findings: (Page 1 of 1)

Appellant challenges the February 2019 determination of the Board, denying release and imposing a hold to the original Parole Eligibility Date. The instant offense involves possession of two large ziplock bags of crystal methamphetamine and a false bottom battery that contained suspected crystal methamphetamine. Among other things, Appellant argues the Board relied on erroneous information regarding his criminal record.

A review by the Appeals Unit reveals that Appellant's contention is correct. Specifically, the Board erroneously referred to Appellant as having two federal terms and convictions. It ultimately was discovered that Appellant has one federal drug conviction and a violation of federal probation supervision. As such, a *de novo* interview is appropriate.

Recommendation: Vacate and remand for de novo interview.