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Administrative Appeal Decision - Bonds, David (2018-12-28)

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Administrative Appeal Decision Notice

Inmate Name: Bonds, David

Facility: Clinton Correctional Facility

NYSID No. [REDACTED]

Appeal Control No.: 06-137-18B

DIN: 95-A-7814

Appearances:

For the Board: The Appeals Unit

For Appellant: Tina Soloski, Esq.
Anderson & Soloski, LLP
50 Clinton Street, Suite 1
P.O. Box 2723
Plattsburgh, New York 12901

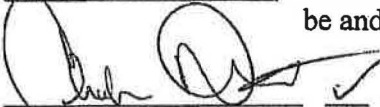
Board Member(s) who participated in appealed from decision: **Berliner, Coppola, Crangle**

Decision appealed from: 6/2018 Denial of Discretionary Release with a 24-Month Hold.

Pleadings considered: Brief on behalf of the appellant received on October 18, 2018
Statement of the Appeals Unit’s Findings and Recommendation

Documents relied upon: Presentence Investigation Report, Parole Board Report, Interview Transcript, Board Release Decision Notice (Form 9026), COMPAS instrument, Offender 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, the written reasons for such determination shall be annexed hereto.

This Final Determination, the related Statement of the Appeals Unit’s Findings and separate findings of the Board, if any, were mailed to the Inmate and the Inmate’s Counsel, if any, on 12/28/18 (A/H).

Distribution: Appeals Unit – Inmate - Inmate’s Counsel - Inst. Parole File - Central File

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Bonds, David

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Appellant was sentenced to 20 to 40 years upon his conviction of multiple offenses including Rape in the first degree, Sodomy in the first degree, Robbery in the first degree, and Burglary in the first degree. In the instant appeal, Appellant, through counsel, challenges the Board of Parole's June 2018 decision to deny discretionary release to parole with a 24-month hold as unlawful, arbitrary and capricious. Specifically, Appellant contends the Board placed improper emphasis on the instant offense without adequately considering other factors such as his institutional accomplishments, release plans and remorse. He argues the decision is unsupported.

As an initial matter, discretionary release to parole is not to be granted "merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law, **and** that his release is not incompatible with the welfare of society **and** will not so deprecate the seriousness of his crime as to undermine respect for the law." Executive Law § 259-i(2)(c)(A) (emphasis added); accord Matter of Hamilton v. New York State Div. of Parole, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014). Executive Law § 259-i(2)(c)(A) requires the Board to consider criteria which is relevant to the specific inmate, including, but not limited to, the inmate's institutional record and criminal behavior. People ex rel. Herbert v. New York State Bd. of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881 (1st Dept. 1983).

While consideration of these factors is mandatory, "the ultimate decision to parole a prisoner is discretionary." Matter of Silmon v. Travis, 95 N.Y.2d 470, 477, 718 N.Y.S.2d 704, 708 (2000). Thus, it is well settled that the weight to be accorded the requisite factors is solely within the Board's discretion. See, e.g., Matter of Delacruz v. Annucci, 122 A.D.3d 1413, 997 N.Y.S.2d 872 (4th Dept. 2014); Matter of Hamilton, 119 A.D.3d at 1271, 990 N.Y.S.2d at 717; Matter of Garcia v. New York State Div. of Parole, 239 A.D.2d 235, 239, 657 N.Y.S.2d 415, 418 (1st Dept. 1997). The Board need not explicitly refer to each factor in its decision, nor give them equal weight. Matter of Betancourt v. Stanford, 148 A.D.3d 1497, 49 N.Y.S.3d 315 (3d Dept. 2017). In the absence of a convincing demonstration that the Board did not consider the statutory factors, it must be presumed that the Board fulfilled its duty. Matter of Fuchino v. Herbert, 255 A.D.2d 914, 914, 680 N.Y.S.2d 389, 390 (4th Dept. 1998); Matter of McKee v. New York State Bd. of Parole, 157 A.D.2d 944, 945, 550 N.Y.S.2d 204, 205 (3d Dept. 1990).

The record as a whole, including the interview transcript, reflects that the Board considered the appropriate factors, including: the instant offenses stemming from a home-invasion of a family Appellant knew during which a daughter was repeatedly assaulted

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throughout the night by Appellant and his co-defendants while the rest of the family was tied up in a closet, the house was ransacked, and stolen property was taken in the family cars after which the family was threatened by phone if they did not deliver an additional \$10,000; Appellant's criminal history and that he was on parole for less than three months when he committed the instant offenses; institutional record including completion of programming in custodial maintenance, [REDACTED] ART and SOP, refusal of intensive SOP, and disciplinary record that, while improved, reflects a Tier III since Appellant's last Board appearance; release plans to work with Exodus and find a job; and statements of remorse. The Board also had before it and considered, among other things, the sentencing minutes, official statements by the District Attorney, Appellant's case plan, the COMPAS instrument, and letters of support/assurance. That the Board did not reference his release plans or every aspect of his institutional record in the decision does not constitute convincing evidence that the Board did not consider the factors. See Matter of Dolan v. New York State Bd. of Parole, 122 A.D.3d 1058, 995 N.Y.S.2d 850 (3d Dept. 2014), lv. denied, 24 N.Y.3d 915, 4 N.Y.S.3d 601 (2015); Matter of Morel v. Travis, 18 A.D.3d 930, 793 N.Y.S.2d 920 (3d Dept. 2005).

After considering all required factors, the Board acted within its discretion in determining release would not satisfy the standards provided for by Executive Law § 259-i(2)(c)(A). In reaching its conclusion, the Board permissibly relied on the instant offenses committed while on parole, the escalation in criminal history that includes prior felonies and failures on community supervision, Appellant's refusal to take the intensive sex offender program, his receipt of a Tier III since his last Board appearance, the COMPAS instrument's elevated scores for arrest risk and re-entry substance abuse, and official opposition to release. See Matter of Applegate v. New York State Bd. of Parole, 2164 A.D.3d 996, 997, 82 N.Y.S.3d 240 (3d Dept. 2018); Matter of Wiley v. State of New York Dept. of Corr. & Cmty. Supervision, 139 A.D.3d 1289, 32 N.Y.S.3d 370 (3 Dept. 2016); Matter of Partee v. Evans, 117 A.D.3d 1258, 1259, 984 N.Y.S.2d 894 (3d Dept.), lv. denied, 24 N.Y.3d 901, 995 N.Y.S.2d 710 (2014); Matter of Thompson v. New York State Bd. of Parole, 120 A.D.3d 1518, 1518-19, 992 N.Y.S.2d 464, 465 (3d Dept. 2014); Matter of Bockeno v. New York State Parole Bd., 227 A.D.2d 751, 642 N.Y.S.2d 97 (3d Dept. 1996). In addition, the Board expressed concern that, although Appellant expressed remorse, he denied responsibility for the sex crimes and claimed to not know they occurred until after the fact. See Matter of Silmon, 95 N.Y.2d 470, 718 N.Y.S.2d 704; Matter of Crawford v. New York State Bd. of Parole, 144 A.D.3d 1308, 46 N.Y.S.3d 228 (3d Dept. 2016), lv. denied, 29 N.Y.3d 901 (2017); Matter of Webb v. Travis, 26 A.D.3d 614, 810 N.Y.S.2d 233 (3d Dept. 2006).

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In conclusion, Appellant has failed to demonstrate the Board's decision was not made in accordance with the pertinent statutory requirements or was so irrational as to border on impropriety.

Recommendation:

It is the recommendation of the Appeals Unit that the Board's decision be affirmed.