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Administrative Appeal Decision - Lagas, David (2019-02-06)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Lagas, David

Facility: Released

NYSID

Appeal Control No.: 06-065-18 R

DIN: 06-A-4946

Appearances: David Lagas
142 Morton Avenue
Apartment #4
Albany, New York 12203

Decision appealed: May 24, 2018 revocation of release and imposition of a time assessment of 12-months/90 day alternative drug treatment program.



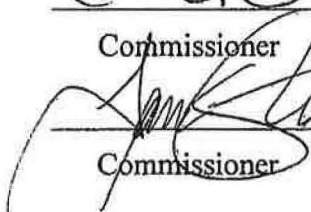
Final Revocation Hearing Date: May 22, 2018

Papers considered: Appellant's Brief received November 13, 2018

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 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 _____	

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 66.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Lagas, David

DIN: 06-A-4946

Facility: Released

AC No.: 06-065-18 R

Findings: (Page 1 of 1)

Appellant challenges the May 24, 2018 determination of the administrative law judge (“ALJ”), revoking release and imposing a 12-month/90 day drug treatment alternative time assessment. Appellant’s brief raises the following two issues. 1) he had a conflict with his assigned counsel, and received ineffective assistance of counsel. 2) the 90 day alternate drug treatment program has never been approved by the Secretary of State.

As a preliminary matter, 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).

The parolee has the obligation to raise his objection in a timely manner, but failed to do so, thus waiving the issue. See, e.g., Matter of Davis v. Laclair, 165 A.D.3d 1367, 1368, 85 N.Y.S.3d 623 (3d Dept. 2018) (issues unpreserved for judicial review as they were not raised at the hearing); Matter of Washington v. Annucci, 144 A.D.3d 1541, 41 N.Y.S.3d 808 (4th Dept. 2016) (waiver by failure to bring an alleged error to the attention of the Administrative Law Judge when he could have corrected); People ex rel. Murray v. New York State Div. of Parole, 95 A.D.3d 1527, 944 N.Y.S.2d 403 (3d Dept. 2012) (waiver by failure to make procedural objections); Matter of McCullough v. New York State Div. of Parole, 82 A.D.3d 1640, 919 N.Y.S.2d 424 (4th Dept.) (failure to object to untimely notice of hearing), leave. den. 17 N.Y.3d 704, 929 N.Y.S.2d 95 (2011).

The 90 day drug alternate drug treatment program is not required to be filed with the Sec. of State.

Recommendation: Affirm.