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

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Administrative Appeal Decision Notice

Inmate Name: Piepenburg, David

Facility: Collins Correctional Facility.

NYSID No.: [REDACTED]

Appeal Control #: 07-026-18-R

Dept. DIN#: 06B0072

Appearances:

For the Board, the Appeals Unit

For Appellant: David Piepenburg 06B0072
Collins Correctional Facility
Box 340
Collins, New York 14034

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

Decision appealed from: 6/2018-Revocation of release, with imposition of 15 month time assessment.

Pleadings considered: Letter on behalf of the pro se appellant received on September 11, 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.

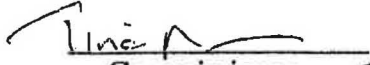
Final Determination: The undersigned have determined that the decision from which this appeal was taken be and the same is hereby



Commissioner

Affirmed Reversed for De Novo Hearing
 Vacated for De Novo Review of Time Assessment Only

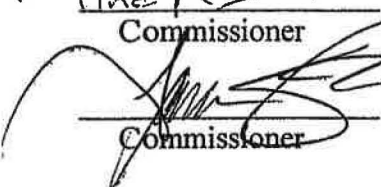
Reversed - Violation Vacated
 Modified to _____



Commissioner

Affirmed Reversed for De Novo Hearing
 Vacated for De Novo Review of Time Assessment Only

Reversed - Violation Vacated
 Modified to _____



Commissioner

Affirmed Reversed for De Novo Hearing
 Vacated for De Novo Review of Time Assessment Only

Reversed - Violation Vacated
 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 12/28/18.
LB

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: Piepenburg, David

Facility: Collins Correctional Facility

Dept. DIN#: 06B0072

Appeal Control #: 07-026-18-R

Findings:

The now pro se appellant has submitted a letter to serve as the perfected appeal. The letter raises two primary issues: 1) he did not receive the Notice of Violation within three days, in violation of the Executive Law and the due process clause of the constitution. 2) he was promised by his lawyer he would receive only a 12 month time assessment, which he needs for work purposes. He thus seeks reconsideration of the imposed 15 month time assessment for personal reasons. For the reason explained below, none of the issues raised will be addressed.

Per the hearing transcript, the appellant was represented by counsel at the final revocation hearing. Neither he nor his lawyer raised at the final revocation hearing any of the issues or objections presented on this appeal, as appellant's parole was revoked at the hearing upon his unconditional plea of guilty. Appellant gave his approval to the agreement and indicated he understood. Given appellant's 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).

Recommendation:

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