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Administrative Appeal Decision - Lynn, Derrick (2019-03-22)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Lynn, Derrick

Facility: Watertown CF

NYSID: [REDACTED]

Appeal Control No.: 09-132-18 B

DIN: 17-R-1546

Appearances: Derrick Lynn (17R1546)
Watertown Correctional Facility
23147 Swan Road
Watertown, New York 13601

Decision appealed: September 2018 decision, denying discretionary release and imposing a hold of 15 months.

Board Member(s) who participated: Smith, Crangle, Demosthenes

Papers considered: Appellant's Brief received January 11, 2019

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

Records relied upon: Pre-Sentence Investigation Report, Parole Board Report, Interview Transcript, Parole Board Release Decision Notice (Form 9026), COMPAS instrument, Offender Case Plan.

Final Determination: The undersigned determine that the decision appealed is hereby:

[Signature] Affirmed Vacated, remanded for de novo interview Modified to

Commissioner

[Signature] Affirmed Vacated, remanded for de novo interview Modified to

Commissioner

[Signature] 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 3/22/19 CS.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Lynn, Derrick
Facility: Watertown CF

DIN: 17-R-1546
AC No.: 09-132-18 B

Findings: (Page 1 of 1)

Appellant challenges the September 2018 determination of the Board, denying release and imposing a 15-month hold.

Appellant raises the following issues in his brief: (1) at the time of the interview, the Board did not have the parole packet prepared by Appellant; and (2) Appellant's remorse for having committed multiple violent felony offenses should have been provided greater weight by the Board.

As to the first issue, Appellant never mentioned a parole packet during the interview. Furthermore, he did not request an adjournment of the interview so that he could provide the Board with additional information. Appellant was provided the opportunity to discuss with the Board during the interview any issues of interest, and cannot now be heard to complain that certain issues were not discussed, or the extent to which certain issues were discussed. See Matter of Serna v. New York State Division of Parole, 279 A.D.2d 684, 719 N.Y.S. 2d 166 (3d Dept. 2001); Matter of Garcia v. New York State Div. of Parole, 239 A.D.2d 235, 657 N.Y.S.2d 415 (1st Dept. 1997).

As to the second issue, while Appellant disputes the Board's finding with respect to insight and remorse, it was well within the Board's authority to make an assessment of Appellant's credibility (Matter of Siao-Pao v. Dennison, 51 A.D.3d 105, 108, 854 N.Y.S.2d 348, 351 (1st Dept.), aff'd, 11 N.Y.3d 777, 866 N.Y.S.2d 602 (2008)). Also, the Board is permitted to conclude that the serious nature of the inmate's offense, as well as limited insight and/or remorse, outweigh other factors. See, e.g., Matter of Silmon v. Travis, 95 N.Y.2d 470, 478, 718 N.Y.S.2d 704 (2000), aff'g 266 A.D.2d 296, 297, 698 N.Y.S.2d 685, 686 (2d Dept. 1999); Matter of Beodeker v. Stanford, 164 A.D.3d 1555, 82 N.Y.S.3d 669 (3d Dept. 2018); 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, 57 N.Y.S.3d 704 (2017); Matter of Almeyda v. New York State Div. of Parole, 290 A.D.2d 505, 736 N.Y.S.2d 275 (2d Dept. 2002); Matter of Serrano v. N.Y. State Exec. Dep't-Div. of Parole, 261 A.D.2d 163, 164, 689 N.Y.S.2d 504, 505 (1st Dept. 1999).

Recommendation: Affirm.