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December 2020

### Administrative Appeal Decision - Johnson, Elton (2019-02-06)

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Administrative Appeal Decision Notice

Inmate Name: Johnson, Elton

Facility: Mid-State Correctional Facility

NYSID No.:

Appeal Control #: 07-022-18-B

Dept. DIN#: 99A4666

Appearances:

For the Board, the Appeals Unit

For Appellant:

Elton Johnson 99A4666  
Mid-State Correctional Facility  
P.O. Box 2500  
Marcy, New York 13403

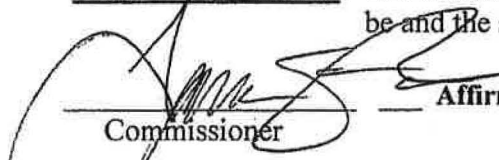
Board Member(s) who participated in appealed from decision: **Cruse, Drake**

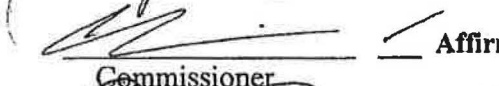
Decision appealed from: 6/2018-Denial of discretionary release, with imposition of 24 month hold.

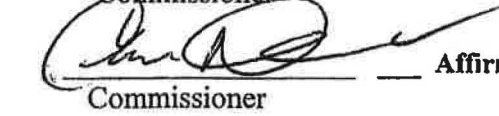
Pleadings considered: Handwritten letter-brief on behalf of the pro se appellant received on October 5, 2018.  
Statement of the Appeals Unit's Findings and Recommendation

Documents relied upon: Presentence Investigation Report, Parole Board Report, Interview Transcript,  
Parole Board Release Decision (Form 9026), COMPAS, TAP/Case Plan.

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

 \_\_\_\_\_  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 \_\_\_\_\_  
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 2/6/19 66.

Distribution: Appeals Unit - Inmate - Inmate's Counsel - Inst. Parole File - Central File  
P-2002(B) (5/2011)

STATE OF NEW YORK - BOARD OF PAROLE

**STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION**

**Inmate Name:** Johnson, Elton

**Facility:** Mid-State Correctional Facility

**Dept. DIN#:** 99A4666

**Appeal Control #:** 07-022-18-B

**Findings:**

The pro se appellant has submitted a handwritten letter-brief to serve as the perfected appeal. The letter-brief raises two primary issues. 1) the Board decision is based upon several pieces of erroneous information. Specifically, a) [REDACTED] b) [REDACTED] [REDACTED] c) the transcript decision describes a willingness to accept responsibility, whereas the form 9026 says appellant is still unwilling; d) the reason no proposed residence was mentioned was because the SORC stated to appellant it wasn't necessary. 2) the Board failed to comply with the 2011 amendments to the Executive Law in that the COMPAS was ignored, and the statutes are now future focused.

[REDACTED]

[REDACTED]

As for the willing vs unwilling language, this was clearly a typographical error in the transcript. If the transcribed decision contains an error which is corrected on the written disposition, then there no error requiring an annulment of the decision. Veras v New York State Division of Parole, 56 A.D.3d 878, 866 N.Y.S.2d 813 (3d Dept. 2008). The Parole Board has the power to correct an obvious clerical error. People ex rel. Dell v Walker, 186 A.D.2d 1043, 588 N.Y.S.2d 685, 686 (4<sup>th</sup> Dept 1992), leave to appeal denied 81 N.Y.2d 702, 594 N.Y.S.2d 716 (1992).

As for the lack of a residence, the SORC would not have given any such advice. It should be noted that in prior Parole Board Reports the appellant likewise did not have a proposed residence. This is reflected in the COMPAS report as well.

STATE OF NEW YORK - BOARD OF PAROLE

**STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION**

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**Appeal Control #:** 07-022-18-B

**Findings:** (continued from page 1)

As for the second issue, appellant's claim that the Board failed to comply with the 2011 amendments to the Executive Law is rejected. Dolan v New York State Board of Parole, 122 A.D.3d 1058, 995 N.Y.S.2d 850 (3d Dept. 2014); Tran v Evans, 126 A.D.3d 1196, 3 N.Y.S.3d 633 (3d Dept. 2015); Boccadisi v Stanford, 133 A.D.3d 1169, 20 N.Y.S.3d 477 (3d Dept. 2015).

The 2011 amendments still permit the Board to place greater emphasis on the gravity of the crime. Matter of Montane v Evans, 116 A.D.3d 197, 981 N.Y.S.2d 866 (3d Dept.) appeal dismissed 24 N.Y.3d 1052, 999 N.Y.S.2d 360 (2014); Hamilton v New York State Division of Parole, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014); Moore v New York State Board of Parole, 137 A.D.3d 1375, 26 N.Y.S.3d 412 (3d Dept. 2016). The Board can still consider the nature of the inmate's crimes, the criminal history, the prison disciplinary record, the program accomplishments and post release plans. Rivera v New York State Division of Parole, 119 A.D.3d 1107, 990 N.Y.S.2d 295 (3d Dept. 2014). The Board is obligated to consider the serious nature of the crime. Khatib v New York State Board of Parole, 118 A.D.3d 1207, 988 N.Y.S.2d 286 (3d Dept. 2014).

Notably, the 2011 amendments to the Executive Law did not change the three substantive standards that the Board is required to apply when deciding whether to grant parole, namely (1) whether "there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law"; (2) whether release "is not incompatible with the welfare of society"; and (3) whether release "will not so deprecate the seriousness of his crime as to undermine respect for law." See Executive Law § 259-i(2)(c)(A). Even uniformly low COMPAS scores and other evidence of rehabilitation would not resolve the broader questions of society's welfare, public perceptions of the seriousness of a crime, or whether release would undermine respect for the law. Thus the COMPAS cannot mandate a particular result, and declining to afford the COMPAS controlling weight does not violate the 2011 amendments. King v Stanford, 137 A.D.3d 1396, 26 N.Y.S.3d 815 (3d Dept 2016); Furman v Annucci, 138 A.D.3d 1269, 28 N.Y.S.3d 352 (3d Dept. 2016). The COMPAS is an additional consideration that the Board must weigh along with the statutory factors for purposes of deciding whether the three standards are satisfied. Rivera v New York State Division of Parole, 119 A.D.3d 1107, 1108, 990 N.Y.S.2d 295 (3d Dept. 2014); Dawes v Annucci, 122 A.D.3d 1059, 1061, 994 N.Y.S.2d 747 (3d Dept. 2014).

STATE OF NEW YORK - BOARD OF PAROLE

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**Findings:** (continued from page 2)

The Board did consider the COMPAS, which was mixed, in that he was a probable risk on re-entry substance abuse, and low family support, which is relevant to his risk of re-offense. Bush v Annucci, 148 A.D.3d 1392, 50 N.Y.S.3d 180 (3d Dept. 2017). The COMPAS can contain negative factors that support the Board's conclusion. Wade v Stanford, 148 A.D.3d 1487, 52 N.Y.S.3d 508 (3d Dept. 2017).

**Recommendation:**

Accordingly, it is recommended the decision of the Board be affirmed.