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Administrative Appeal Decision - Nilsen, Eric (2019-03-22)

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ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Nilsen, Eric

Facility: Wyoming CF

NYSID: [REDACTED]

Appeal Control No.: 10-033-18 R

DIN: 02-B-1869

Appearances: Eric Nilson 02B1869
Wyoming Correctional Facility
P.O. Box 501
Dunbar Road
Attica, New York 14011

Decision appealed: September 5, 2018 revocation of release and imposition of a time assessment of 36 months.

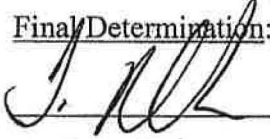

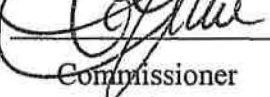
Final Revocation Hearing Date: August 30, 2018

Papers considered: Appellant's Letter-brief received January 8, 2019

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:

| | |
|--|---|
|  Commissioner | <input checked="" type="checkbox"/> Affirmed <input type="checkbox"/> Reversed, remanded for de novo hearing <input type="checkbox"/> Reversed, violation vacated <input type="checkbox"/> Vacated for de novo review of time assessment only <input type="checkbox"/> Modified to _____ |
|  Commissioner | <input checked="" type="checkbox"/> Affirmed <input type="checkbox"/> Reversed, remanded for de novo hearing <input type="checkbox"/> Reversed, violation vacated <input type="checkbox"/> Vacated for de novo review of time assessment only <input type="checkbox"/> Modified to _____ |
|  Commissioner | <input checked="" type="checkbox"/> Affirmed <input type="checkbox"/> Reversed, remanded for de novo hearing <input type="checkbox"/> Reversed, violation vacated <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 3/22/19 66.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Nilsen, Eric

DIN: 02-B-1869

Facility: Wyoming CF

AC No.: 10-033-18 R

Findings: (Page 1 of 1)

Appellant challenges the September 5, 2018 determination of the administrative law judge (“ALJ”), revoking release and imposing a 36-month time assessment. Appellant claims the Violation of Release Report was written in such a manner that it was deceptively negative, and as such his corresponding 36 time assessment is excessive. Appellant’s original crime involved him having sex with his 6 month old baby daughter. The parole revocation charges he pled guilty to involved his prohibited possession of a phone with internet capabilities, and having sexually explicit photos.

First of all, 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).

Appellant had an opportunity in the plea negotiations to discuss his concerns about the Violation of Release Report. It is presumed the Administrative Law Judge and the Board considered all of the relevant factors. Ramirez v New York State Board of Parole, 214 A.D.2d 441, 625 N.Y.S.2d 505 (1st Dept 1995); Garner v Jones, 529 U.S. 244, 120 S.Ct. 1362, 1371, 146 L.Ed.2d 236 (2000). The time assessment imposed is clearly permissible. Otero v New York State Board of Parole, 266 A.D.2d 771, 698 N.Y.S.2d 781 (3d Dept 1999) leave to appeal denied 95 N.Y.2d 758, 713 N.Y.S.2d 2 (2000); Carney v New York State Board of Parole, 244 A.D.2d 746, 665 N.Y.S.2d 687 (3d Dept 1997); Issac v. New York State Division of Parole, 222 A.D.2d 913, 635 N.Y.S.2d 756 (3d Dept. 1995). 3 years' incarceration is permissible. Bush v. New York State Board of Parole, 223 A.D.2d 806, 636 N.Y.S.2d 158 (3d Dept 1995); Riley v Alexander, 139 A.D.3d 1206, 31 N.Y.S.3d 318 (3d Dept. 2016); Washington v Annucci, 144 A.D.3d 1541, 41 N.Y.S.3d 808 (4th Dept. 2016).

Recommendation: Affirm.