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Administrative Appeal Decision - Partak, Eric (2019-06-06)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Partak, Eric

Facility: Bare Hill CF

NYSID [REDACTED]

Appeal Control No.: 12-040-18 R

DIN: 05-A-6124

Appearances: Amanda Figgsganter Esq.
90 State Street
Suite 700
Albany, New York 12207

Decision appealed: November 29, 2018 revocation of release and imposition of a time assessment of 14 months.



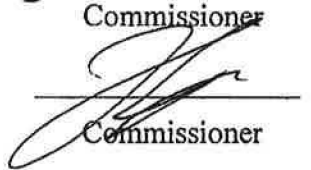
Final Revocation Hearing Date: October 31, 2018

Papers considered: Appellant's Brief received April 9, 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 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 6/6/19 66.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Partak, Eric **DIN:** 05-A-6124
Facility: Bare Hill CF **AC No.:** 12-040-18 R

Findings: (Page 1 of 2)

Appellant challenges the November 29, 2018 determination of the administrative law judge (“ALJ”), revoking release and imposing a 14-month time assessment. Appellant is on parole for four different crimes. In the first one, he possessed stolen jewelry valued at over \$1,000. In the second, he possessed over one half of an ounce of cocaine. In the third, he kidnapped two victims, forced one to have oral sex with him, and also forced her to have oral sex with a co-defendant. And in the fourth, while confined in a State prison, conspired with his girlfriend to have her bring four balloons filled with cocaine and marijuana smuggled into his prison. As for the current parole violation, appellant lied to his parole officer about using drugs, and then tested positive for use of cocaine. Per the terms of a plea bargain, appellant pled guilty to the use of cocaine. Appellant raises the following issues: 1) the plea was not knowing or voluntary in that there was no detailed allocution to the charge, nor that it was a violation in an important respect. 2) the revocation paperwork erroneously states appellant is a sex offender, but in fact appellant has no sex offender conviction. 3) the ALJ erroneously says in the transcript that this is the appellant’s second parole revocation, when in fact it is his first. 4) appellant received ineffective assistance of counsel. 5) the 14 month time assessment is excessive.

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 cites criminal cases concerning the details of an allocution in a plea. Parole revocation proceedings have no such requirement. Parole revocation hearings and criminal actions are separate proceedings having different procedures and, most importantly, different objectives. People v Fagan, 104 A.D.2d 252, 483 N.Y.S.2d 489, 492 (4th Dept 1984). A parole revocation proceeding does not have the full panoply of rights that a criminal proceeding has. U.S. v Carlton, 442 F.3d 802 (2d Cir. 2006).

Appellant is a discretionary sex offender for parole supervision purposes due to sex based facts in one of his crimes of conviction. So there was no error in that regard.

The ALJ did at one time make the mistake and say this was appellant’s second revocation. That error does not appear in the final decision, and the ALJ did get the facts straight other times in the

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Partak, Eric **DIN:** 05-A-6124
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Findings: (Page 2 of 2)

transcript. So, the decision is not based upon erroneous information. Even if an error is made by the Administrative Law Judge, if the principal objective of the questioner is somehow proven anyway, the error is irrelevant. Bowes v Dennison, 20 A.D.3d 845, 800 N.Y.S.2d 459 (3d Dept. 2005). In parole revocation proceedings, procedural irregularities/clerical errors will not require a reversal. Kirk v Hammock, 119 A.D.2d 851, 500 N.Y.S.2d 424, 426 (3d Dept 1986).

It will be noted that nothing can be gleaned from the record to indicate his counsel was ineffective. However, even if he was, by the appellant's plea of guilty, it would not warrant a different result. Hunter v New York State Board of Parole, 167 A.D.2d 611, 563 N.Y.S.2d 234(3d Dept 1990). Counsel "is presumed to have been competent and the burden is on the accused to demonstrate upon the record the absence of meaningful adversarial representation." Matter of Jeffrey V., 82 N.Y.2d 121, 126, 603 N.Y.S.2d 800, 803 (1993); see also People v. Hall, 224 A.D.2d 710, 638 N.Y.S.2d 732 (2d Dept. 1996). T]here is nothing to substantiate petitioner's contention that he was denied the effective assistance of counsel as the record discloses that he received meaningful representation". Matter of James v. Chairman of New York State Bd. of Parole, 106 A.D.3d 1300, 1300-1301, 965 N.Y.S.2d 235, 237 (3d Dept. 2013); accord Matter of Partee v. Stanford, 159 A.D.3d 1294, 74 N.Y.S.3d 114 (3d Dept. 2018); Matter of Rosa v. Fischer, 108 A.D.3d 1227, 969 N.Y.S.2d 706 (4th Dept.), lv. denied, 22 N.Y.3d 855, 979 N.Y.S.2d 561 (2013).

It is presumed the Administrative Law Judge 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). A short time on parole before the violation also may be used. See Matter of Wilson v. Evans, 104 A.D.3d 1190, 1191, 960 N.Y.S.2d 807, 809 (4th Dept. 2013) (finding no impropriety in 30 month time assessment where release violated by consuming alcohol two days after release); Matter of Davidson v. N.Y. State Div. of Parole, 34 A.D.3d 998, 999, 824 N.Y.S.2d 466, 467 (3d Dept. 2006) (hold to ME was not excessive given violent attack and that it occurred less than four months after release), lv. denied, 8 N.Y.3d 803, 830 N.Y.S.2d 699 (2007); Matter of Drayton v. Travis, 5 A.D.3d 891, 892, 772 N.Y.S.2d 886 (3d Dept. 2004) ("ALJ properly considered petitioner's short time on parole" in imposing 40 month time assessment for traveling outside city without permission and failing to report to parole officer following release for prior curfew violations).

Recommendation: Affirm.