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December 2020

### Administrative Appeal Decision - Munck, Erik (2019-03-22)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Munck, Erik

Facility: Groveland CF

NYSID [REDACTED]

Appeal Control No.: 11-147-18 R

DIN: 14-B-0929

Appearances: Erik Munck (14B0929)  
Groveland Correctional Facility  
7000 Sonyea Road, Box 50  
Sonyea, New York 14556

Decision appealed: November 14, 2018 revocation of release and imposition of a time assessment of 12 months.

Final Revocation . November 14, 2018

Hearing Date:

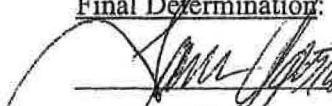


Papers considered: Appellant's Briefs received January 11 and 29, 2019

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

Review:

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:

	<input type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed, remanded for de novo hearing	<input type="checkbox"/> Reversed, violation vacated
Commissioner	<input type="checkbox"/> Vacated for de novo review of time assessment only	<input type="checkbox"/> Modified to _____	
	<input type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed, remanded for de novo hearing	<input type="checkbox"/> Reversed, violation vacated
Commissioner	<input type="checkbox"/> Vacated for de novo review of time assessment only	<input type="checkbox"/> Modified to _____	
	<input type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed, remanded for de novo hearing	<input type="checkbox"/> Reversed, violation vacated
Commissioner	<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:** Munck, Erik **DIN:** 14-B-0929  
**Facility:** Groveland CF **AC No.:** 11-147-18 R

**Findings:** (Page 1 of 2)

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Appellant challenges the November 14, 2018 determination of the administrative law judge (“ALJ”), revoking release and imposing a 12-month time assessment.

Appellant has a significant criminal history resulting in multiple prison sentences. His history also includes three separate sustained parole violations. His instant offense of Attempted Assault 2<sup>nd</sup> involves causing physical injury to another person with a dangerous instrument. His criminal history also includes felony assault against his former wife which resulted in her suffering a collapsed lung.

Appellant’s most recent parole violation charges include multiple alleged failures to make office reports, as well as assaultive behavior. In exchange for his plea of guilty to a charge that he consumed alcohol in violation of imposed conditions of release, all other charges were withdrawn.

Appellant raises the following issues in his briefs: (1) Appellant’s sentence has not been properly calculated; (2) Appellant has been subjected to invalid conditions of release; and (3) the ALJ’s decision violated Appellant’s due process rights.

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 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).

In addition, Appellant did not preserve any of the issues he now raises in his brief, and they have therefore been waived. See 9 N.Y.C.R.R. §8006.3(b); Matter of Worrell v. Stanford, 153 A.D.3d 1510, 59 N.Y.S.3d 922 (3d Dept. 2017); Matter of Bowes v. Dennison, 20 A.D.3d 845, 800 N.Y.S.2d 459 (3d Dept. 2005); Matter of Currie v. New York State Board of Parole, 298 A.D.2d 805, 748 N.Y.S.2d 712 (3d Dept. 2002).

Appellant is a Category 1 violator and, therefore, the ALJ must impose a minimum time assessment of 15 months, or a hold to the maximum expiration date of Appellant’s sentence, whichever is less. The ALJ may in certain cases reduce the minimum 15-month time assessment by up to three months, and this was part of the stipulated settlement made on the record at the final

STATE OF NEW YORK – BOARD OF PAROLE

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**Findings:** (Page 2 of 2)

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revocation hearing. See 9 N.Y.C.R.R. §8005.20(c)(1). The 12-month time assessment imposed by the ALJ at the final revocation hearing was agreed to on the record by both Appellant and his attorney without objection, and was not excessive as the Executive Law does not place an outer limit on the length of the time assessment that may be imposed. Matter of Washington v. Annucci, 144 A.D.3d 1541, 41 N.Y.S.3d 808 (4th Dept. 2016); Matter of Wilson v. Evans, 104 A.D.3d 1190, 1191, 960 N.Y.S.2d 807, 809 (4th Dept. 2013); Murchison v. New York State Div. of Parole, 91 A.D.3d 1005, 1005, 935 N.Y.S.2d 741, 742 (3d Dept. 2012).

**Recommendation:** Affirm.