December 2020

Administrative Appeal Decision - Mujib, Esa (2018-12-28)

STATE OF NEW YORK– BOARD OF PAROLE

Administrative Appeal Decision Notice

Inmate Name: Mujib, Esa
Facility: Otisville Correctional Facility
NYSID No.: [redacted]
Appeal Control #: 06-068-18-B
Dept. DIN#: 77D0092

Appearances:
For the Board, the Appeals Unit
For Appellant: James Pawliczek Esq.
62 North Main Street
Suite 303
Florida, New York 10921

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

Decision appealed from: 5/2018-Denial of discretionary release, with imposition of 24 month hold.

Pleadings considered: Brief on behalf of the appellant received on October 23, 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

Commissioner ✓ **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** _____

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 12/28/18 GG.

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: Mujib, Esa **Facility:** Otisville Correctional Facility

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Findings:

Counsel for the appellant has submitted a brief to serve as the perfected appeal. The brief raises the following issues: 1) the decision is arbitrary and capricious, and irrational bordering on impropriety. Appellant contends he has an excellent institutional record and release plan, but the Board ignored the regulation concerning reappearances and only looked at the instant offense/criminal history. Appellant alleges the Board failed to make required findings of fact or to provide detail or offer any future guidance. The Board also illegally resentenced him, and erroneously stated he lacked remorse-which is a prohibited factor anyway. This is all in violation of the due process clause. 2) only two Commissioners interviewed him, instead of the required three. 3) the decision lacks substantial evidence. 4) the COMPAS has errors in it. 5) the 24 month hold is excessive.

In response, pursuant to Executive Law §259-i(2)(c), the Parole Board must consider criteria which is relevant to the specific inmate, including, but not limited to, the inmate's institutional record or criminal behavior, giving whatever emphasis they so choose to each factor. In re Garcia v. New York State Division of Parole, 239 A.D.2d 235, 657 N.Y.S.2d 415 (1st Dept. 1997); People ex rel. Herbert v. New York State Board of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881 (1st Dept. 1983). The Board is not required to give equal weight to each statutory factor. Arena v New York State Department of Corrections and Community Supervision, 156 A.D.3d 1101, 65 N.Y.S.3d 471 (3d Dept. 2017); Mays v Stanford, 150 A.D.3d 1521, 55 N.Y.S.3d 502 (3d Dept. 2017); Marszalek v Stanford, 152 A.D.3d 773, 59 N.Y.S.3d 432 (2d Dept. 2017); Paniagua v Stanford, 153 A.D.3d 1018, 56 N.Y.S.3d 894 (3d Dept. 2017); Esquilin v New York State Board of Parole, 144 A.D.3d 846, 40 N.Y.S.3d 279 (2nd Dept. 2016); Kenefick v Sticht, 139 A.D.3d 1380, 31 N.Y.S.3d 367 (4th Dept. 2016); LeGeros v New York State Board of Parole, 139 A.D.3d 1068, 30 N.Y.S.3d 834 (2d Dept. 2016); De la Cruz v Annucci, 122 A.D.3d 1413, 997 N.Y.S.2d 872 (4th Dept. 2014); Phillips v Dennison, 41 A.D.3d 17, 834 N.Y.S.2d 121 (1st Dept. 2007); That an inmate has numerous achievements within a prison's institutional setting does not automatically entitle him to parole release. Matter of Faison v. Travis, 260 A.D.2d 866, 688 N.Y.S.2d 782 (3d Dept. 1999); Pulliam v Dennison, 38 A.D.3d 963, 832 N.Y.S.2d 304 (3d Dept. 2007). Moreover, per Executive Law §259-i(2)(c), an application for parole release shall not be granted merely as a reward for appellant's good conduct or achievements while incarcerated. Larrier v New York State Board of Parole Appeals Unit, 283 A.D.2d 700, 723 N.Y.S.2d 902, 903 (3d Dept 2001); Vasquez v State of New York Executive Department, Division of Parole, 20 A.D.3d 668, 797 N.Y.S.2d 655 (3d Dept. 2005); Wellman v Dennison, 23 A.D.3d 974, 805 N.Y.S.2d 159 (3d Dept. 2005).

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Mujib, Esa **Facility:** Otisville Correctional Facility

Dept. DIN#: 77D0092 **Appeal Control #:** 06-068-18-B

Findings: (continued from page 1)

The Board is obligated to consider the inmate's prior criminal record. Matter of Partee v Evans, 117 A.D.3d 1258, 984 N.Y.S.2d 894 (3d Dept. 2014). The Board may put more weight on the inmate's criminal history. Bello v Board of Parole, 149 A.D.3d 1458, 53 N.Y.S.3d 715 (3d Dept. 2017); Hall v New York State Division of Parole, 66 A.D.3d 1322, 886 N.Y.S.2d 835 (3d Dept. 2009); Davis v Evans, 105 A.D.3d 1305, 963 N.Y.S.2d 485 (3d Dept. 2013); Jones v New York State Parole Board, 127 A.D.3d 1327, 6 N.Y.S.3d 774 (3d Dept. 2015); Wade v Stanford, 148 A.D.3d 1487, 52 N.Y.S.3d 508 (3d Dept. 2017). The fact that the Board afforded greater weight to the inmate's criminal history, and not to an alleged positive institutional adjustment, does not render the denial of parole for that reason irrational or improper. Matter of Ortiz v. Hammock, 96 A.D.2d 735, 465 N.Y.S.2d 341 (4th Dept 1983); Peo. ex rel. Yates v. Walters, 111 A.D.2d 839, 490 N.Y.S.2d 573 (2d Dept. 1985); Matter of Ristau v. Hammock, 103 A.D.2d 944, 479 N.Y.S.2d 760 (3d Dept. 1984) lv. to appeal den. 63 N.Y.2d 608, 483 N.Y.S.2d 1023 (1984); Torres v New York State Division of Parole, 300 A.D.2d 128, 750 N.Y.S.2d 759 (1st Dept 2002); Lashway v Evans, 110 A.D.3d 1420, 973 N.Y.S.2d 496 (3d Dept. 2013).

The denial of parole release based upon nature of conviction and criminal history is appropriate. In the Matter of Hawkins v. Travis, 259 A.D.2d 813, 686 N.Y.S.2d 198 (3d Dept. 1999); Farid v. Russi, 217 A.D.2d 832, 629 N.Y.S.2d 821 (3d Dept. 1995); Charlemagne v New York State Division of Parole, 281 A.D.2d 669, 722 N.Y.S.2d 74, 75 (3d Dept 2001); Burress v Evans, 107 A.D.3d 1216, 967 N.Y.S.2d 486 (3d Dept. 2013); Boccadisi v Stanford, 133 A.D.3d 1169, 20 N.Y.S.3d 477 (3d Dept. 2015); Bush v Annucci, 148 A.D.3d 1392, 50 N.Y.S.3d 180 (3d Dept. 2017); Holmes v Annucci, 151 A.D.3d 1954, 57 N.Y.S.3d 857 (4th Dept. 2017).

Per Executive Law 259-i(2)(c)(A), the Board is obligated to consider the inmate's prior criminal record and the nature of the instant offenses, and the fact that such consideration resulted in a parole denial does not reflect irrationality bordering on impropriety. Singh v Evans, 118 A.D.3d 1209, 987 N.Y.S.2d 271 (3d Dept. 2014).

The Board may place particular emphasis upon the nature of the offense. Mullins v New York State Board of Parole, 136 A.D.3d 1141, 25 N.Y.S.3d 698 (3d Dept. 2016). The Board in its discretion properly placed greater emphasis on the present offenses, as it is not required to give equal weight to all requisite factors. Wiley v State of New York Department of Corrections and Community Supervision, 139 A.D.3d 1289, 32 N.Y.S.3d 370 (3d Dept. 2016); Peralta v New York State Board of Parole, 157 A.D.3d 1151, 69 N.Y.S.3d 885 (3d Dept. 2018).

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Mujib, Esa **Facility:** Otisville Correctional Facility

Dept. DIN#: 77D0092 **Appeal Control #:** 06-068-18-B

Findings: (continued from page 2)

The Board may consider the brutality of the offense. Dudley v Travis, 227 A.D.2d 863, 642 N.Y.S.2d 386, 387 (3d Dept 1996), leave to appeal denied 88 N.Y.2d 812, 649 N.Y.S.2d 379; Borcsok v New York State Division of Parole, 34 A.D.3d 961, 823 N.Y.S.2d 310 lv. den. 8 N.Y.3d 803, 830 N.Y.S.2d 699 (3d Dept. 2006); Matter of Partee v Evans, 117 A.D.3d 1258, 984 N.Y.S.2d 894 (3d Dept. 2014); Bush v Annucci, 148 A.D.3d 1392, 50 N.Y.S.3d 180 (3d Dept. 2017). Per Executive Law 259-i(2)(c)(A), the Board may place greater weight on the violence and level of brutality of the crime, as opposed to an excellent institutional record and achievement. Garofolo v Dennison, 53 A.D.3d 734, 860 N.Y.S.2d 336 (3d Dept. 2008); Applegate v New York State Board of Parole, 164 A.D.3d 996, 82 N.Y.S.3d 240 (3d Dept. 2018).

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).

The Board is empowered to deny parole where it concludes release is incompatible with the welfare of society. Thus, there is a strong rehabilitative component in the statute that may be given effect by considering lack of remorse. Silmon v Travis, 95 N.Y.2d 470, 718 N.Y.S.2d 704, 708 (2000). The appellant clearly lacked remorse. The Board is obligated to consider the inmate's lack of remorse. Khatib v New York State Board of Parole, 118 A.D.3d 1207, 988 N.Y.S.2d 286 (3d Dept. 2014).

Credibility of an inmates explanation is to be made by the Board. The Board may consider the inmate's capacity to tell the truth, and how this impacts on the statutory factors. Siao-Pao v Dennison, 51 A.D.3d 105, 854 N.Y.S.2d 348 (1st Dept. 2008).

[redacted]

Appellant's claim about appropriate topics on a reappearance is based upon a regulation that was repealed.

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Mujib, Esa **Facility:** Otisville Correctional Facility

Dept. DIN#: 77D0092 **Appeal Control #:** 06-068-18-B

Findings: (continued from page 3)

As for due process/constitutional liberty interest in a legitimate expectation of early release, at the Federal level, there is no inherent constitutional right to parole. Greenholtz v Inmates of Nebraska Penal and Correctional Complex, 442 U.S. 1, 99 S.Ct. 2100, 2104, 60 L.Ed2d 668 (1979) or to be released before the expiration of a valid sentence. Swarthout v Cooke,562 U.S. 216, 131 S.Ct. 859, 178 L.Ed2d 732 (2011). Nor, under the New York State Constitution, is there a due process right to parole. Russo v New York State Board of Parole, 50 N.Y.2d 69, 427 N.Y.S.2d 982, 984 (1980); Boothe v. Hammock, 605 F.2d 661 (2d Cir. 1979). The New York State parole scheme is not one that creates in any prisoner a legitimate expectancy of release. No entitlement to release is created by the parole provisions. Accordingly, appellant has no liberty interest in parole. Duemmel v Fischer, 368 Fed.Appx. 180, 182 (2d Cir. 2010); Davis v Dennison, 219 Fed Appx 68 (2d Cir. 2007), cert. den. 552 U.S. 863, 128 S.Ct. 151, 169 Led2d 103 (2007); Rodriguez v Alexander, 71 A.D.3d 1354, 896 N.Y.S.2d 693 (3d Dept. 2010), lv. den. 15 N.Y.3d 703, 906 N.Y.S.2d 817. Thus, the protections of the due process clause are inapplicable. Barna v Travis, 239 F.3d 169, 171 (2d Cir. 2001); Freeman v New York State Division of Parole, 21 A.D.3d 1174, 800 N.Y.S.2d 797 (3d Dept 2005); Watson v New York State Board of Parole, 78 A.D.3d 1367, 910 N.Y.S.2d 311 (3d Dept. 2010).

Completion of the minimum term of the sentence still does not create any protected liberty interest. Motti v Alexander, 54 A.D.3d 1114, 1115 (3d Dept. 2008).

Nothing in the due process clause requires the Parole Board to specify the particular evidence on which rests the discretionary determination an inmate is not ready for conditional release. Duemmel v Fischer, 368 Fed.Appx. 180, 182 (2d Cir. 2010). There is no due process requirement that the Parole Board disclose its release criteria. Haymes v Regan, 525 F.2d 540 (2d Cir. 1975).

The due process clause is not violated by the Board's balancing of the statutory criteria, and which is not to be second guessed by the courts. Mathie v Dennison, 2007 WL 2351072 (S.D.N.Y. 2007); MacKenzie v Cunningham, 2014 WL 5089395 (S.D.N.Y. 2014).

Parole is not constitutionally based, but is a creature of statute which may be imposed subject to conditions imposed by the state legislature. Banks v Stanford, 159 A.D.3d 134, 71 N.Y.S.3d 515 (2d Dept. 2018).

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Mujib, Esa **Facility:** Otisville Correctional Facility

Dept. DIN#: 77D0092 **Appeal Control #:** 06-068-18-B

Findings: (continued from page 4)

As for the required three part statutory standard, contrary to appellant's claim, the Board is not required to repeat the language of the statute verbatim. Rather, it need merely insure that sufficient facts are in the decision which comply with the standard-which it has clearly done in this case. The factors cited, which were appellant's brutal instant offense, criminal history, poor COMPAS scores, lack of remorse, failure to be truthful during the interview, and history of mental illness, show the required statutory findings were in fact made in this case. Language used in the decision which is only semantically different from the statutory language (e.g. continued incarceration serves the community standards) is permissible. James v Chairman of the New York State Division of Parole, 19 A.D.3d 857, 796 N.Y.S.2d 735 (3d Dept. 2005); Miller v New York State Division of Parole, 72 A.D.3d 690, 897 N.Y.S.2d 726 (2d Dept. 2010). Although the Board's determination could have been stated more artfully, this is insufficient to annul the decision. Ek v Travis, 20 A.D.3d 667, 798 N.Y.S.2d 199 (3d Dept 2005). The Board's failure to recite the precise statutory language of the first sentence in support of its conclusion to deny parole release does not undermine it's determination. Silvero v Dennison, 28 A.D.3d 859, 811 N.Y.S.2d 822 (3d Dept. 2006); Reed v Evans, 94 A.D.3d 1323, 942 N.Y.S.2d 387 (3d Dept. 2012); Mullins v New York State Board of Parole, 136 A.D.3d 1141, 25 N.Y.S.3d 698 (3d Dept. 2016).

A claim that the denial of parole release amounted to a resentencing is without merit. Kalwasinski v Patterson, 80 A.D.3d 1065, 915 N.Y.S.2d 715 (3d Dept. 2011) lv.app.den. 16 N.Y.3d 710, 922 N.Y.S.2d 273 (2011); Marnell v Dennison, 35 A.D.3d 995, 824 N.Y.S.2d 812 (3d Dept. 2006) lv.den. 8 N.Y.3d 807, 833 N.Y.S.2d 426; Murray v Evans, 83 A.D.3d 1320, 920 N.Y.S.2d 745 (3d Dept. 2011); Gonzalez v Chair, New York State Board of Parole, 72 A.D.3d 1368, 898 N.Y.S.2d 737 (3d Dept. 2010); Borcsok v New York State Division of Parole, 34 A.D.3d 961, 823 N.Y.S.2d 310 (3d Dept. 2006) lv.den. 8 N.Y.3d 803, 830 N.Y.S.2d 699. The Board was vested with discretion to determine whether release was appropriate, notwithstanding what the minimum period of incarceration which was set by the Court. Cody v Dennison, 33 A.D.3d 1141, 1142 (3d Dept. 2006), lv.den. 8 N.Y.3d 2007; Burress v Dennison, 37 A.D.3d 930, 829 N.Y.S.2d 283 (3d Dept. 2007).

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Mujib, Esa **Facility:** Otisville Correctional Facility

Dept. DIN#: 77D0092 **Appeal Control #:** 06-068-18-B

Findings: (continued from page 5)

The Board set forth in adequate detail the reasons for its denial of the inmate's request for release. Burress v Evans, 107 A.D.3d 1216, 967 N.Y.S.2d 486 (3d Dept. 2013). The written Board decision in this case contains sufficient detail. McLain v New York State Division of Parole, 204 A.D.2d 456, 611 N.Y.S.2d 629 (2d Dept 1994); Walker v Russi,176 A.D.2d 1185, 576 N.Y.S.2d 51 (3d Dept 1991), appeal dismissed 79 N.Y.2d 897, 581 N.Y.S.2d 660 (1992); Thomas v Superintendent of Arthur Kill Correctional Facility, 124 A.D.2d 848, 508 N.Y.S.2d 564 (2d Dept 1986), appeal dismissed 69 N.Y.2d 611, 517 N.Y.S.2d 1025 (1987); De la Cruz v Annucci, 122 A.D.3d 1413, 997 N.Y.S.2d 872 (4th Dept. 2014); Betancourt v Stanford, 148 A.D.3d 1497, 49 N.Y.S.3d 315 (3d Dept. 2017); Robinson v New York State Board of Parole, 162 A.D.3d 1450, 81 N.Y.S.3d 235 (3d Dept. 2018); Applegate v New York State Board of Parole, 164 A.D.3d 996, 82 N.Y.S.3d 240 (3d Dept. 2018).

As for a lack of future guidance, there is no due process right to an inmate obtaining a statement as to what he should do to improve his chances for parole in the future. Boothe v Hammock, 605 F.2d 661 (2d Cir. 1979); Watkins v Caldwell, 54 A.D.2d 42, 387 N.Y.S.2d 177 (4th Dept 1976); Freeman v New York State Division of Parole, 21 A.D.3d 1174, 800 N.Y.S.2d 797 (3d Dept 2005); Francis v New York State Division of Parole, 89 A.D.3d 1312, 934 N.Y.S.2d 514 (3d Dept. 2011). There is no legal requirement that a second Parole Board panel must follow the recommendation of a prior Parole Board panel, nor that the same members should constitute both panels. Flores v New York State Board of Parole, 210 A.D.2d 555, 620 N.Y.S.2d 141, 142 (3d Dept 1994).

Denial of parole is neither arbitrary nor capricious when the Parole Board relied on the factors defined by the New York statute. Hodge v Griffin, 2014 WL 2453333(S.D.N.Y. 2014) citing Romer v Travis, 2003 WL 21744079. An arbitrary action is one without sound basis in reason and without regard to the facts. Rationality is what is reviewed under an arbitrary and capricious standard. Hamilton v New York State Division of Parole, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014). An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts. Ward v City of Long Beach, 20 N.Y.3d 1042 (2013).

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Mujib, Esa **Facility:** Otisville Correctional Facility

Dept. DIN#: 77D0092 **Appeal Control #:** 06-068-18-B

Findings: (continued from page 6)

Since the Board's decision was sufficiently detailed to inform the inmate of the reasons for the denial of parole, it satisfied the criteria set out in section 259-i of the Executive Law. Siao-Pao v Dennison, 11 N.Y.3d 777, 866 N.Y.S.2d 602 (Ct. App. 2008); Matter of Whitehead v. Russi, 201 A.D.2d 825, 607 N.Y.S.2d 751 (3d Dept. 1993); Matter of Green v. New York State Division of Parole, 199 A.D.2d 677, 605 N.Y.S.2d 148 (3d Dept. 1993). Moreover, the reasons stated by the Parole Board members for holding appellant are sufficient grounds to support their decision. People ex rel. Yates v. Walters, 111 A.D.2d 839, 490 N.Y.S.2d 573 (2d Dept. 1985); Matter of Ganci v Hammock, 99 A.D.2d 546, 471 N.Y.S.2d 630 (2d Dept. 1984); Matter of Vuksanaj v. Hammock, 93 A.D.2d 958, 463 N.Y.S.2d 61 (3d Dept. 1983); Matter of Pina v. Hammock, 89 A.D.2d 799, 453 N.Y.S.2d 479 (4th Dept. 1982). Since the Board's challenged decision was made in accordance with the pertinent statutory requirements, it exercised proper discretion in denying appellant early release on parole. In the Matter of Hawkins v. Travis, 259 A.D.2d 813, 686 N.Y.S.2d 198 (3d Dept. 1999), app. dism. 93 N.Y.2d 1033, 697 N.Y.S.2d 556 (1999); Matter of Barrett v. New York State Division of Parole, 242 A.D.2d 763, 661 N.Y.S.2d 857 (3d Dept. 1997).

Appellant's second claim is three Commissioners are required to conduct the interview.

In response, per 9 N.Y.C.R.R. 8002.1(b), only two Commissioners are required.

Appellant's third claim is the decision lacks substantial evidence.

In response, there are no substantial evidence issues in a Parole Board Release Interview. Valderrama v Travis, 19 A.D.3d 904, 905, 796 N.Y.S.2d 758 (3d Dept. 2005); Tatta v Dennison, 26 A.D.3d 663, 809 N.Y.S.2d 296 (3d Dept. 2006) lv.den. 6 N.Y.3d 714, 816 N.Y.S.2d 750; Harris v New York State Division of Parole, 211 A.D.2d 205, 628 N.Y.S.2d 416 (3d Dept. 1995). A substantial evidence issue arises only where a quasi-judicial hearing has been held and evidence has been taken pursuant to law. If no hearing was held, the issue does not arise. Horace v Annucci, 133 A.D.3d 1263, 20 N.Y.S.3d 492 (4th Dept. 2015). A proceeding to determine whether an inmate should be released on parole is not a quasi-judicial hearing. Banks v Stanford, 159 A.D.3d 134, 71 N.Y.S.3d 515 (2d Dept. 2018).

Appellant's fourth claim is the COMPAS has errors on it.

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Mujib, Esa **Facility:** Otisville Correctional Facility

Dept. DIN#: 77D0092 **Appeal Control #:** 06-068-18-B

Findings: (continued from page 7)

In response, appellant failed to raise this issue during the interview, thereby waiving it. Matter of Shaffer v. Leonardo, 179 A.D.2d 980, 579 N.Y.S.2d 910 (3d Dept. 1992); Boddie v New York State Division of Parole, 288 F.Supp.2d 431 (S.D.N.Y. 2003). If the inmate was given a chance to discuss the matter at the interview and didn't mention it, the issue is without merit. Matter of Mercer v New York State Department of Corrections and Community Supervision, Index # 5872-13, *Decision/Order/Judgment* dated April 7, 2014 (Sup. Ct. Albany Co.)(Ceresia J.S.C.); Matter of Cox v Stanford, Index # 228-14, *Decision and Order* dated June 17, 2014 (Sup. Ct. Albany Co.)(McGrath J.S.C.). If the inmate fails to raise the issue of alleged COMPAS error at the interview, and the matter could have been corrected then, the issue is waived. Matter of Cox v Stanford, Index # 228-14, *Decision and Order* dated April 18, 2014 (Sup. Ct. Albany Co.)(McGrath J.S.C.).

Appellant's final claim is that the 24 month hold is excessive.

In response, the Board's decision to hold the inmate for the maximum period of 24 months is within the Board's discretion and within its authority pursuant to Executive Law § 259-i(2)(a) and 9 NYCRR § 8002.3 (d). Abascal v New York State Board of Parole, 23 A.D.3d 740, 802 N.Y.S. 2d 803 (3d Dept. 2005); Matter of Sinopoli v. New York State Board of Parole, 189 A.D.2d 960, 592 N.Y.S.2d 831 (3d Dept. 1993); Matter of Ganci v. Hammock, 99 A.D.2d 546, 471 N.Y.S.2d 630 (2d Dept. 1984). As such, appellant failed to demonstrate that the hold of 24 months was excessive. Hill v New York State Board of Parole, 130 A.D.3d 1130, 14 N.Y.S.3d 515 (3d Dept. 2015); Kalwasinski v Patterson, 80 A.D.3d 1065, 915 N.Y.S.2d 715 (3d Dept. 2011) lv.app.den. 16 N.Y.3d 710, 922 N.Y.S.2d 273 (2011); Matter of Madlock v. Russi, 195 A.D.2d 646, 600 N.Y.S.2d 283 (3d Dept. 1993); Confoy v New York State Division of Parole, 173 A.D.2d 1014, 569 N.Y.S.2d 846,848 (3d Dept 1991); Smith v New York State Division of Parole, 64 A.D.3d 1030, 882 N.Y.S.2d 759 (3d Dept. 2009); Smith v New York State Division of Parole, 81 A.D.3d 1026, 916 N.Y.S.2d 285 (3d Dept. 2011); Shark v New York State Division of Parole Chair, 110 A.D.3d 1134, 972 N.Y.S.2d 741 (3d Dept. 2013).

Recommendation:

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