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Administrative Appeal Decision - Chery, Franto (2019-05-10)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Chery, Franto

Facility: Attica CF

NYSID: [REDACTED]

Appeal Control No.: 12-006-18 R

DIN: 14-A-2275

Appearances: Franto Chery (14A2275)
Attica Correctional Facility
639 Exchange Street
Attica, New York 14011

Decision appealed: October 16, 2018 revocation of release and imposition of a time assessment of 12 months.

Final Revocation Hearing Date: October 12, 2018

Papers considered: Appellant's Brief received February 8, 2019

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

Records relied upon: Violation of Release Report, Final Hearing Transcript, Parole Revocation Decision Notice

Final Determination: The undersigned determine that the decision appealed is hereby:

[Signature] Affirmed Reversed, remanded for de novo hearing Reversed, violation vacated

Commissioner Vacated for de novo review of time assessment only Modified to _____

[Signature] Affirmed Reversed, remanded for de novo hearing Reversed, violation vacated

Commissioner Vacated for de novo review of time assessment only Modified to _____

[Signature] Affirmed Reversed, remanded for de novo hearing Reversed, violation vacated

Commissioner Vacated for de novo review of time assessment only 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 5/10/19 b6.

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Chery, Franto

DIN: 14-A-2275

Facility: Attica CF

AC No.: 12-006-18 R

Findings: (Page 1 of 2)

Appellant challenges the October 16, 2018 determination of the administrative law judge (“ALJ”), revoking release and imposing a 12-month time assessment.

Appellant raises the following issues in his brief: (1) ineffective assistance of counsel; and (2) the 12-month hold was excessive.

Appellant is serving a determinate term of imprisonment of 5 years with 5 years of post-release supervision after having been convicted by verdict of Attempted Robbery 2nd. Six separate parole violation charges were brought against Appellant involving threats of violence against an Institutional Safety Officer (ISO) and refusing to obey the ISO’s direct orders. Appellant pled guilty to refusing to obey a direct order given by the ISO.

As to the first issue, Appellant’s attorney successfully negotiated a plea agreement that resulted in the dismissal of 5 of the 6 parole violation charges. 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) (“When, as in this case, a defendant receives an advantageous plea agreement and the record does not cast doubt on the apparent effectiveness of counsel, the defendant is deemed to have been furnished with meaningful representation”). “[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).

As to the second issue, 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, which in Appellant’s case was part of the stipulated settlement made on the record at the final 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);

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APPEALS UNIT FINDINGS & RECOMMENDATION

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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.