

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

Parole Administrative Appeal Decisions

Parole Administrative Appeal Documents

December 2020

Administrative Appeal Decision - Ayrhart, Harry (2019-02-14)

Follow this and additional works at: <https://ir.lawnet.fordham.edu/aad>

Recommended Citation

"Administrative Appeal Decision - Ayrhart, Harry (2019-02-14)" (2020). Parole Information Project
<https://ir.lawnet.fordham.edu/aad/171>

This Parole Document is brought to you for free and open access by the Parole Administrative Appeal Documents at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Parole Administrative Appeal Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Ayrhart, Harry

Facility: Livingston CF

NYSID: [REDACTED]

Appeal Control No.: 10-190-18 R .

DIN: 87-C-0559

Appearances: Harry Ayrhart 87C0559
Livingston Correctional Facility
P.O. Box 91
Sonyea, New York 14556

Decision appealed: October 23, 2018 revocation of release and imposition of a time assessment of 20-months.



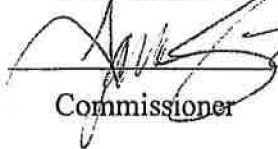
Final Revocation Hearing Date: October 22, 2018

Papers considered: Appellant's Brief received December 11, 2018

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:

	<input checked="" 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 2/14/19/15.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Ayrhart, Harry
Facility: Livingston CF

DIN: 87-C-0559
AC No.: 10-190-18 R

Findings: (Page 1 of 2)

Appellant challenges the October 23, 2018 determination of the administrative law judge (“ALJ”), revoking release and imposing a 20-month time assessment. Appellant raises the following issues: 1) he received ineffective assistance of counsel. 2) [REDACTED]. 3) the Violation of Release Report has errors. 4) the time assessment imposed is excessive. He should be sent for rehabilitation treatment.

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).

[REDACTED]

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). 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).

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Ayrhart, Harry

DIN: 87-C-0559

Facility: Livingston CF

AC No.: 10-190-18 R

Findings: (Page 2 of 2)

The Board may impose a time assessment [REDACTED] For a category 1 violator such as Appellant, the time assessment generally must be a *minimum* of 15 months or a hold to the maximum expiration of the sentence, whichever is less. 9 N.Y.C.R.R. § 8005.20(c)(1). The Executive Law does not place an outer limit on the length of time 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.