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December 2020

### Administrative Appeal Decision - Beaver, Horace (2019-03-22)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Beaver, Horace

Facility: Franklin CF

NYSID: [REDACTED]

Appeal Control No.: 11-042-18 R

DIN: 14-B-2131

Appearances: Horace Beaver 14B2131  
Franklin Correctional Facility  
62 Bare Hill Road  
P.O. Box 10  
Malone, New York 12953

Decision appealed: October 26, 2018 revocation of release and imposition of a time assessment of 16 months.



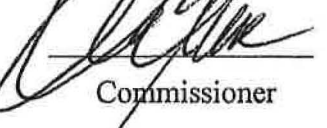
Final Revocation Hearing Date: October 25, 2018

Papers considered: Appellant's Letter-brief received January 4, 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:

	<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 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 _____

**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 *CO.*

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Beaver, Horace **DIN:** 14-B-2131  
**Facility:** Franklin CF **AC No.:** 11-042-18 R

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

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Appellant challenges the October 26, 2018 determination of the administrative law judge (“ALJ”), revoking release and imposing a 16-month time assessment. Appellant raises only one issue. Appellant claims that given all of the equities in his case, the 16 month time assessment is excessive, and should be reduced to 12 months. The appellant is currently on parole for sexually abusing his then 11 year old step-daughter, and for illegally possessing a gun. In the parole revocation matter, appellant pled guilty to possessing a phone that had photos of underage children in it.

As an initial matter, 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).

While the conduct giving rise to the violation did not constitute a new crime, the ALJ acted within her discretion to impose 16 month time assessment pursuant to 9 N.Y.C.R.R. § 8005.20(c) and the assessment was not excessive under the circumstances. See Matter of Bolden v. Dennison, 28 A.D.3d 1234, 814 N.Y.S.2d 477 (4th Dept.) (36-month assessment for curfew violation), lv. den. 7 N.Y.3d 705, 819 N.Y.S.2d 872 (2006); Matter of Smith v. Travis, 253 A.D.2d 955, 955, 678 N.Y.S.2d 917, (Mem)-918 (3d Dept. 1998) (36 month assessment was not excessive, notwithstanding that this was first parole violation 41 months after release, where releasee failed to report to parole officer); Matter of Folks v. Alexander, 58 A.D.3d 1038, 1039, 871 N.Y.S.2d 779, 780 (3d Dept. 2009) (24 month assessment by Board for failure to report 5 months after release); Matter of Ramirez v. New York State Board of Parole, 625 N.Y.S.2d 505 (1st Dept. 1995) (18 month assessment for moving to another state and not reporting to parole officer for three months).

**Recommendation:** Affirm.