

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 - Welch, Howard (2019-06-28)

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

Recommended Citation

"Administrative Appeal Decision - Welch, Howard (2019-06-28)" (2020). Parole Information Project
<https://ir.lawnet.fordham.edu/aad/179>

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.

STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Welch, Howard

Facility: Riverview CF

NYSID

Appeal Control No.: 01-091-19 R

DIN: 10-B-2986

Appearances: Howard Welch 10B2986
Riverview Correctional Facility
P.O. Box 247
Ogdensburg, New York 13669

Decision appealed: December 20, 2018 revocation of release and imposition of a time assessment of hold to ME date.

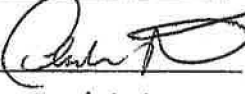

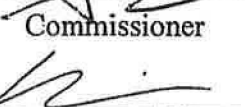
Final Revocation Hearing Date: December 20, 2018

Papers considered: Appellant's Letter-brief received April 16, 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 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 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 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 _____ | |

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 6/25/19 66.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Welch, Howard

DIN: 10-B-2986

Facility: Riverview CF

AC No.: 01-091-19 R

Findings: (Page 1 of 1)

Appellant challenges the December 20, 2018 determination of the administrative law judge (“ALJ”), revoking release and imposing a hold to ME date time assessment. Appellant’s instant offense involved him shooting the victim. The current parole revocation charges involved absconding for over two years, and multiple VTL violations, and fleeing from the police. Appellant pled guilty at his final parole revocation hearing to failure to report. Appellant raises the following issues: 1) appellant received ineffective assistance of counsel. 2) the ALJ threatened a harsher time assessment. 3) the time assessment is excessive.

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”). 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).

A Judge explaining the consequences could be more severe if you don’t take this plea offer doesn’t make the plea involuntary. People v Harrison, 70 A.D.3d 1257, 896 N.Y.S.2d 224 (3d Dept. 2010) lv.den. 15 N.Y.3d 774, 907 N.Y.S.2d 463.

A hold to the maximum expiration date is permissible. See Matter of Abreu v. Stanford, 153 A.D.3d 1455, 61 N.Y.S.3d 706 (3d Dept. 2017); Matter of Rodriguez v. New York State Dep’t of Corr. & Cmty. Supervision, 141 A.D.3d 903, 904, 35 N.Y.S.3d 569, 570–71 (3d Dept. 2016); Matter Davis v. N.Y. State Bd. of Parole, 81 A.D.3d 1020, 1021, 915 N.Y.S.2d 771 (3d Dept. 2011); Matter of Swinson v. Warden, 75 A.D.3d 433, 434, 903 N.Y.S.2d 235 (1st Dept. 2010).

Recommendation: Affirm.