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Administrative Appeal Decision - Smalls, Jamel (2019-05-10)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Smalls, Jamel

Facility: Franklin CF

NYSID



Appeal Control No.: 11-169-18 R

DIN: 98-A-6091

Appearances: Jamel Smalls, 98-A-6091
Franklin C.F.
62 Bare Hill Road
P.O. Box 10
Malone, New York 12953-0010

Decision appealed: November 16, 2018 revocation of release and imposition of a time assessment of 18 months.

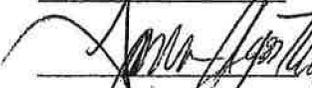
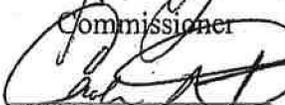
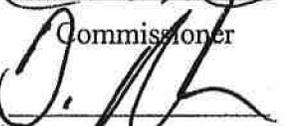
Final Revocation Hearing Date: September 25, 2018 and October 23, 2018

Papers considered: Appellant's Brief received March 1, 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 5/10/19 66.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Smalls, Jamel **DIN:** 98-A-6091
Facility: Franklin CF **AC No.:** 11-169-18 R

Findings: (Page 2 of 3)

Appellant's challenges concerning the charges that were not sustained are moot and provide no basis for appeal. The other claims are without merit.

The record reflects that the parole officer testified as to the no-contact condition and why it was imposed, that she occasionally authorized contact due to claimed medical and mental health issues, and that Appellant did not contact her and request permission to have contact with [REDACTED] on the date in question. (Sept. Tr. at 12-14.) The police officer who initiated the traffic stop and took Appellant into custody further testified that the vehicle's occupants included Appellant and [REDACTED] (Sept. Tr. at 19-20.) Indeed, Appellant admits on appeal that he had contact with [REDACTED] stating that he went to her house and was stopped while returning from a picnic he attended with her in Lake George. The evidence presented at the hearing was sufficient to support the ALJ's determination that Appellant violated a condition of his release in an important respect.

Appellant's objection concerning the unavailability of GPS data was waived by his failure to raise the issue at the final hearing. See, e.g., Matter of Davis v. Laclair, 165 A.D.3d 1367, 1368, 85 N.Y.S.3d 623 (3d Dept. 2018); Matter of Bowes v. Dennison, 20 A.D.3d 845, 800 N.Y.S.2d 459 (3d Dept. 2005). Even assuming the data would demonstrate other violations, it is irrelevant to the date in question and the sustained charge where there was a live witness. Appellant also waived his claim concerning documentation from the case management system by failing to raise the issue at the final hearing. See, e.g., Matter of Davis, 165 A.D.3d 1367, 1368, 85 N.Y.S.3d 623; Matter of Bowes, 20 A.D.3d 845, 800 N.Y.S.2d 459. However, the parole officer's testimony was sufficient in and of itself and supporting documentation was not required. As for Appellant's claim concerning an alleged text message, he makes no offer of proof to support his claim and his attorney's alleged decision to not introduce available evidence does not provide a basis to disturb the determination.

In response to Appellant's assertion that the ALJ was prejudiced by exposure to charges concerning the alleged domestic incident, there is a presumption of honesty and integrity that attaches to Judges and administrative fact-finders. See People ex rel. Carlo v. Bednosky, 294 A.D.2d 382, 383, 741 N.Y.S.2d 703 (2d Dept. 2002); People ex rel. Johnson v. New York State Bd. of Parole, 180 A.D.2d 914, 916, 580 N.Y.S.2d 957, 959 (3d Dept. 1992). There is no support for Appellant's claim that the ALJ – who did not sustain the more serious charges – was prejudiced against him. Matter of Hampton v. Kirkpatrick, 82 A.D.3d 1639, 919 N.Y.S.2d 422 (4th Dept. 2011); Matter of Ciccarelli v. New York State Div. of Parole, 11 A.D.3d 843, 844, 784 N.Y.S.2d 173, 175 (3d Dept. 2004); People ex rel. Brazeau v. McLaughlin, 233 A.D.2d 724, 725, 650 N.Y.S.2d 361 (3d Dept. 1996), lv. denied, 89 N.Y.2d 810, 656 N.Y.S.2d 738 (1997).

