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Administrative Appeal Decision - Nicholson, James (2019-11-12)

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ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Nicholson, James

Facility: Groveland CF

NYSID [REDACTED]

Appeal Control No.: 04-017-19 R

DIN: 10-A-2994

Appearances: Ann Connor Esq.
Livingston County Public Defender
6 Court Street
Room 109
Geneseo, New York 14454

Decision appealed: February 28, 2019 revocation of release and imposition of a time assessment of 13 months.

Final Revocation February 6, 2019

Hearing Date:

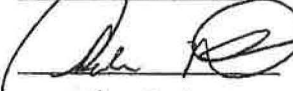
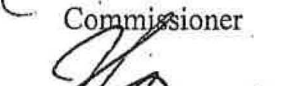

Papers considered: Appellant's Brief received June 27, 2019

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

Review:

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 11/12/19.
TH

Distribution: Appeals Unit – Appellant - Appellant's Counsel - Inst. Parole File - Central File
P-2002(B) (11/2018)

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name:	Nicholson, James	DIN:	10-A-2994
Facility:	Groveland CF	AC No.:	04-017-19 R

Findings: (Page 1 of 2)

Appellant challenges the February 28, 2019 determination of the administrative law judge (“ALJ”), revoking release and imposing a 13-month time assessment. Appellant’s underlying instant offense involved him beating up the victim such that the victim had a broken nose, damaged eye socket and cheekbone, and a broken jaw. The current parole revocation charges included curfew violations, changing his residence without permission of his parole officer, and driving a car without permission of his parole officer. At the final parole revocation hearing, a plea bargain agreement was entered into. Appellant pled guilty to the driving without permission charge, and a 13 month time assessment was imposed. Appellant raises the following issues: 1) the decision is based upon erroneous information as this is only his first sustained revocation, and not his third one. 2) the decision of the ALJ was predetermined. 3) the decision lacked a preponderance of the evidence. 4) the 13 month hold is excessive. 5) the decision is arbitrary and capricious.

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).

A review by the Appeals Unit reveals appellant’s parole was previously revoked in November 2014 and December 2016. So this is appellant’s third sustained revocation. As such, the decision is not based upon erroneous information.

There is a presumption of honesty and integrity that attaches to Judges and administrative factfinders. People ex. rel. Johnson v New York State Board of Parole, 180 A.D.2d 914, 580 N.Y.S.2d 957, 959 (3d Dept 1992); Withrow v Larkin, 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed2d 712 (1975). The inmate has failed to show that the findings in the case by the ALJ flowed from any alleged bias. Cicarelli v New York State Division of Parole, 11A.D32d 843, 784 N.Y.S.2d 173, 175 (3d Dept. 2004); Donahue v Fischer, 98 A.D.3d 784, 948 N.Y.S.2d 778 (3d Dept. 2012); Lafferty v Annucci, 148 A.D.3d 1628, 50 N.Y.S.3d 221 (4th Dept. 2017); Leno v Stanford, 165 A.D.3d 1334, 84 N.Y.S.3d 603 (3d Dept. 2018).

By the parolee’s plea of guilty (even if its with an explanation), the Division of Parole has sustained its burden of proof. People ex rel. Smith v Mantello, 167 A.D.2d 912, 561 N.Y.S.2d 866 (4th Dept 1990); Montanez v New York State Division of Parole, 227 A.D.2d 753, 642 N.Y.S.2d

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

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Findings: (Page 2 of 2)

355,356 (3d Dept 1996) leave to appeal denied 88 N.Y.2d 814, 651 N.Y.S.2d 15 (1996); Carney v New York State Division of Parole, 244 A.D.2d 746, 665 N.Y.S.2d 687 (3d Dept 1997); McCloud v New York State Division of Parole, 277 A.D.2d 627, 715 N.Y.S.2d 118, 119 (3d Dept 2000) leave to appeal denied 96 N.Y.2d 702, 722 N.Y.S.2d 794 (2001); Ramos v New York State Division of Parole, 300 A.D.2d 852, 752 N.Y.S.2d 159 (3d Dept 2002). A plea of guilty constitutes substantial evidence of guilt. Gonzalez v Artus, 107 A.D.3d 1568, 966 N.Y.S.2d 710 (4th Dept. 2013).

It is presumed the Administrative Law Judge considered all of the relevant factors. Ramirez v New York State Board of Parole, 214 A.D.2d 441, 625 N.Y.S.2d 505 (1st Dept 1995); Garner v Jones, 529 U.S. 244, 120 S.Ct. 1362, 1371, 146 L.Ed.2d 236 (2000). The time assessment imposed is clearly permissible. Otero v New York State Board of Parole, 266 A.D.2d 771, 698 N.Y.S.2d 781 (3d Dept 1999) leave to appeal denied 95 N.Y.2d 758, 713 N.Y.S.2d 2 (2000); Carney v New York State Board of Parole, 244 A.D.2d 746, 665 N.Y.S.2d 687 (3d Dept 1997); Issac v. New York State Division of Parole, 222 A.D.2d 913, 635 N.Y.S.2d 756 (3d Dept. 1995).

An arbitrary action is one without sound basis in reason and without regard to the facts. Rationality is what is reviewed under an arbitrary and capricious standard. Hamilton v New York State Division of Parole, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014). An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts. Ward v City of Long Beach, 20 N.Y.3d 1042 (2013). Revocation of parole is neither arbitrary nor capricious when the Parole Board relied on the factors defined by the New York statute. Hodge v Griffin, 2014 WL 2453333(S.D.N.Y. 2014) citing Romer v Travis, 2003 WL 21744079; Siao-Paul v. Connolly, 564 F. Supp. 2d 232, 242 (S.D.N.Y. 2008); Hanna v New York State Board of Parole, 169 A.D.3d 503, 92 N.Y.S.3d 621 (1st Dept. 2019).

Recommendation: Affirm.