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December 2020

### Administrative Appeal Decision - Shelton, Jermaine (2019-03-22)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Shelton, Jermaine

Facility: Collins CF

NYSID [REDACTED]

Appeal Control No.: 09-170-18 R

DIN: 17-B-1465

Appearances: Jermaine Shelton 17B1465  
Collins Correctional Facility  
P.O. Box 340  
Collins, New York 14034

Decision appealed: September 24, 2018 revocation of release and imposition of a time assessment of 15 months.

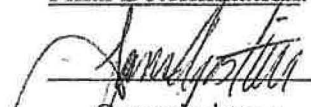
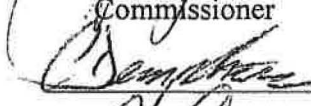
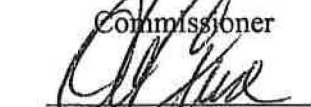
Final Revocation Hearing Date: August 22, 2018

Papers considered: Appellant's Letter-brief received January 25, 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 3/22/19 66.



STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Shelton, Jermaine

**DIN:** 17-B-1465

**Facility:** Collins CF

**AC No.:** 09-170-18 R

**Findings:** (Page 2 of 4)

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Dept. 1982). Nor does any statute or regulation require the ALJ to render his decision on the day of the decision. 9 N.Y.C.R.R. §8005.20(f) only requires the decision be made available “as soon as practicable after a violation hearing.” Per the limited caselaw in this area, the Courts have upheld delays as long as **41 days** (Knowles v Smith, 54 N.Y.2d 259, 445 N.Y.S.2d 103, 1981), **44 days** (People ex rel. White v Dillon and New York State Board of Parole, 81 A.D.2d 1037, 440 N.Y.S.2d 120, 4<sup>th</sup> Dept, 1981) **affirmed** 55 N.Y.2d 672 (1981), **47 days** (People ex rel. Froats v Hammock, 83 A.D.2d 745, 443 N.Y.S.2d 500, 4<sup>th</sup> Dept 1981), **49 days** (Davidson v Warden Rikers Island Correctional Facility, 22 A.D.3d 344, 801 N.Y.S.2d 896 (1<sup>st</sup> Dept. 2005) **lv. disp.** 5 N.Y.3d 872 **lv.den.** 6 N.Y.3d 703, 811 N.Y.S.2d 335 (2006) and **50 days** (People ex rel. Walker v Hammock, 78 A.D.2d 369, 435 N.Y.S.2d 410, 4<sup>th</sup> Dept 1981).

Penal Law §70.45(1) holds a determinate sentence is both a period of imprisonment and a period of PRS. Johnson v New York State Division of Parole, 83 A.D.3d 1168, 920 N.Y.S.2d 481 (3d Dept. 2011). There is no contractual or UCC relationship between DOCCS and the appellant. Germanis v Cunningham, 73 A.D.3<sup>rd</sup> 1297, 899 N.Y.S.2d 907 (3d Dept. 2010); St. Pierre v Cunningham, 73 A.D.3d 1310, 899 N.Y.S.2d 913 (3d Dept. 2010); MacKenzie v Cunningham, 78 A.D.3d 1434, 910 N.Y.S.2d 706 (3d Dept. 2010); Grate v Artus, 160 A.D.3d 1433, 72 N.Y.S.3d 900 (4<sup>th</sup> Dept. 2018). Nor does being assigned a new parole officer void the imposed parole conditions. Hayes v New York State Department of Correctional Services, 78 A.D.3d 1591, 910 N.Y.S.2d 728 (4<sup>th</sup> Dept. 2010) **lv. app. den.** 16 N.Y.3d 705, 919 N.Y.S.2d 120 (2011).

The basic decision as to whether or not to grant an adjournment remains a matter for the ALJ’s discretion. People ex rel. Matthews v. New York State Div. of Parole, 58 N.Y.2d 196, 460 N.Y.S.2d 746, 750 (1983). Any allegation of prejudice is void as appellant does not deny he was out past his curfew, which is in violation of his conditions of parole.

There is no merit to Appellant’s additional suggestion that the transcript was altered. Matter of Graham, 269 A.D.2d at 702 N.Y.S.2d at 710, or that it was insufficient to permit meaningful review. Davis v Laclair, 165 A.D.3d 1367, 85 N.Y.S.3d 623 (3d Dept. 2018).

Credibility issues as to which set of witnesses to believe are left to the discretion of the hearing officer. Matter of Gainey v. Stanford, 157 A.D.3d 1176, 70 N.Y.S.3d 589 (3d Dept. 2018); Osman v. Stanford, 137 A.D.3d 628, 26 N.Y.S.3d 852 (1st Dept. 2016); Matter of Wilson v Evans, 104 A.D.3d 1190, 960 N.Y.S.2d 807 (4th Dept. 2013). Matter of Partee v. Stanford, 159 A.D.3d 1294, 74 N.Y.S.3d 114 (3d Dept. 2018); Matter of Brunson v. New York State Dep’t of Corr. & Cmty. Supervision, 153 A.D.3d 1077, 60 N.Y.S.3d 577 (3d Dept. 2017); People ex rel. Wright v. Demars, 153 A.D.3d 1466, 62 N.Y.S.3d 549 (3d Dept. 2017); Matter of Rodriguez v. New York State Dep’t of Corr. & Cmty. Supervision, 141 A.D.3d 903, 35 N.Y.S.3d 569 (3d Dept. 2016); Matter of Heier v. Dep’t of Corr. & Cmty. Supervision, 113 A.D.3d 1018, 978 N.Y.S.2d 925 (3d Dept. 2014);

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Shelton, Jermaine **DIN:** 17-B-1465  
**Facility:** Collins CF **AC No.:** 09-170-18 R

**Findings:** (Page 3 of 4)

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Matter of Davis v. New York State Bd. of Parole, 81 A.D.3d 1020, 1021, 915 N.Y.S.2d 771, 772 (3d Dept. 2011). To the extent that petitioner disagrees with the witnesses' versions of events upon which the charges were based, it is within the province of the Board to resolve issues of credibility, and to determine the relative weight to be assigned to the evidence." Matter of Davis v. Laclair, 165 A.D.3d 1367, 1368, 85 N.Y.S.3d 623 (3d Dept. 2018). Any inconsistencies in the testimonies of the arresting officers presented a credibility issue for the Administrative Law Judge to resolve. Giles v Alexander, 76 A.D.3d 1158, 907 N.Y.S.2d 723 (3d Dept. 2010).

The fact that the criminal charge, which was the basis for the revocation, was dismissed does not preclude a revocation for the same conduct. People ex rel. Beale v. LaClair, 122 A.D.3d 961, 962, 995 N.Y.S.2d 817 (3d Dept. 2014); Matter of McCowan v. Evans, 81 A.D.3d 1028, 1029, 916 N.Y.S.2d 290, 291 (3d Dept. 2011); Matter of Mummiami v. N.Y. State Bd. of Parole, 5 A.D.2d 923, 171 N.Y.S.2d 1018 (3d Dept. 1958), appeal den. 5 N.Y.2d 709, 182 N.Y.S.2d 1025 (1959).

As for due process, at the Federal level the only rights under due process held by a petitioner in a parole revocation proceeding include written notice of the claimed violations of parole, disclosure to the parolee of evidence against him, an opportunity to be heard in person and to present evidence, the right to confront and cross-examine witnesses, unless a hearing officer finds good cause for not allowing confrontation, a neutral and detached hearing body, and a written factfinding decision. Morrissey v Brewer, 408 U.S. 471, 92 S.Ct. 2593, 2604, 33 L.Ed.2d 484 (1972); People ex rel. Walker v New York State Division of Parole, 98 A.D.2d 33, 469 N.Y.S.2d 780 (2d Dept 1983). This is partially because the parole revocation hearings are not designed to be adversarial, but rather to be predictive and discretionary, in addition to any factfinding function. Gagnon v Scarpelli, 411 U.S. 778, 93 S.Ct. 1756, 1762, 36 L.Ed.2d 656 (1973). States have wide latitude under the Constitution to structure parole revocation proceedings, and may make it an informal, non-adversarial, administrative process. Pennsylvania Board of Probation v Scott, 524 U.S. 357, 118 S.Ct. 2014, 2021, 141 L.Ed.2d 344 (1998). A parole revocation proceeding is not to be equated to a criminal prosecution, and should be flexible enough to consider letters, affidavits, and other material that normally would not be admissible at a criminal trial. Morrissey v Brewer, supra. The appellant received all of these due process benefits.

As for the New York State Due Process Clause, the statutory scheme enacted under section 259-i of the Executive Law assures that a parolee's due process rights are protected. People ex rel. Matthews v New York State Division of Parole, 58 N.Y.2d 196, 460 N.Y.S.2d 746, 750 (1983). There is no allegation that Executive Law §259-i was not complied with.

As appellant is on parole for a violent felony offense, and one of the sustained parole revocation charges involves violence, he clearly falls within category one. A prior assault second degree

STATE OF NEW YORK – BOARD OF PAROLE

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**DIN:** 17-B-1465

**Facility:** Collins CF

**AC No.:** 09-170-18 R

**Findings:** (Page 4 of 4)

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conviction means he is properly classified as a category one violator. Brunson v New York State Department of Corrections and Community Supervision, 153 A.D.3d 1077, 60 N.Y.S.3d 577 (3d Dept. 2017). If the Board rationally determines the inmate to be a category one violator, the courts will uphold the decision. Holloway v Travis, 289 A.D.2d 821, 735 N.Y.S.2d 628 (3d Dept. 2001). The expert appraisal of the Parole Board in this area can be regarded as almost unreviewable. Fryar v Travis, 11 A.D.3<sup>rd</sup> 761, 782 N.Y.S.2d 876 (3d Dept. 2004).

**Recommendation:** Affirm.