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December 2020

### Administrative Appeal Decision - Williams, Jerome (2019-11-26)

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STATE OF NEW YORK – BOARD OF PAROLE

**ADMINISTRATIVE APPEAL DECISION NOTICE**

**Name:** Williams, Jerome

**Facility:** Clinton CF

**NYSID:** [REDACTED]

**Appeal Control No.:** 02-044-19 B

**DIN:** 91-B-0175

Appearances: James P. Godemann, Esq.  
Oneida County Public Defender  
250 Boehlert Center  
321 Main Street  
Utica, NY 13501

Decision appealed: January 2019 decision, denying discretionary release and imposing a hold of 12 months.

Board Member(s) who participated: **Alexander, Berliner**

Papers considered: Appellant's Brief received July 9, 2019

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

Records relied upon: Pre-Sentence Investigation Report, Parole Violator Re-Release Worksheet, Interview Transcript, Parole Board Release Decision Notice (Form 9026), COMPAS instrument, Offender Case Plan.

Final Determination: The undersigned determine that the decision appealed is hereby:

Affirmed  Vacated, remanded for de novo interview  Modified to \_\_\_\_\_

Commissioner

Affirmed  Vacated, remanded for de novo interview  Modified to \_\_\_\_\_

Commissioner

Affirmed  Vacated, remanded for de novo interview  Modified to \_\_\_\_\_

Commissioner

**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 11/26/19.

LB

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

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Appellant is incarcerated for three separate instant offenses. In the first, Appellant sold a ziploc bag of cocaine to an undercover police officer, then fled the scene and dropped nineteen bags of cocaine on the ground when the officer attempted to place him under arrest. In the second, while incarcerated, Appellant threw urine and feces on three separate correction officers. In the third, also while incarcerated, Appellant threw a cupful of urine at an employee of the correctional facility. He was released to parole supervision in June 2017 but violated the conditions of his release by failing to charge his GPS ankle bracelet. Thereafter, his parole was revoked with a 5-month time assessment. Due to his disciplinary record including Tier III tickets for flooding his cell and creating a disturbance, Appellant was referred to the Board as a parole violator in January 2019 and denied release with a 12-month hold. Executive Law § 259-i(3)(f)(x); 9 N.Y.C.R.R. § 8002.6. Appellant now challenges the January 2019 decision and raises the following issues: 1) the Board’s decision was arbitrary and capricious because it improperly emphasized the present offense and prior criminal history; 2) the Board did not adequately explain how it approached the statutory guidelines, how it reached its decision, or how the various factors were considered and weighted; and 3) parole was denied despite Appellant having a release plan. These arguments are without merit.

As an initial matter, discretionary release to parole is not to be granted “merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law, **and** that his release is not incompatible with the welfare of society **and** will not so deprecate the seriousness of his crime as to undermine respect for the law.” Executive Law § 259-i(2)(c)(A) (emphasis added); accord Matter of Hamilton v. New York State Div. of Parole, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014). Executive Law § 259-i(2)(c)(A) requires the Board to consider criteria which is relevant to the specific inmate, including, but not limited to, the inmate’s institutional record and criminal behavior. People ex rel. Herbert v. New York State Bd. of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881 (1st Dept. 1983).

While consideration of these factors is mandatory, “the ultimate decision to parole a prisoner is discretionary.” Matter of Silmon v. Travis, 95 N.Y.2d 470, 477, 718 N.Y.S.2d 704, 708 (2000). Thus, it is well settled that the weight to be accorded the requisite factors is solely within the Board’s discretion. See, e.g., Matter of Delacruz v. Annucci, 122 A.D.3d 1413, 997 N.Y.S.2d 872 (4<sup>th</sup> Dept. 2014); Matter of Hamilton, 119 A.D.3d at 1271, 990 N.Y.S.2d at 717; Matter of Garcia v. New York State Div. of Parole, 239 A.D.2d 235, 239, 657 N.Y.S.2d 415, 418 (1<sup>st</sup> Dept. 1997). The Board need not explicitly refer to each factor in its decision, nor give them equal weight. Matter of Betancourt v. Stanford, 148 A.D.3d 1497, 49 N.Y.S.3d 315 (3d Dept. 2017); Matter of LeGeros v. New York State Bd. Of Parole, 139 A.D.3d 1068, 30 N.Y.S.3d 834 (2d Dept. 2016); Matter of Phillips v. Dennison, 41 A.D.3d 17, 21, 834 N.Y.S.2d 121, 124 (1<sup>st</sup> Dept. 2007). In the absence

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of a convincing demonstration that the Board did not consider the statutory factors, it must be presumed that the Board fulfilled its duty. Matter of Fuchino v. Herbert, 255 A.D.2d 914, 914, 680 N.Y.S.2d 389, 390 (4<sup>th</sup> Dept. 1998); Matter of McLain v. New York State Div. of Parole, 204 A.D.2d 456, 611 N.Y.S.2d 629 (2d Dept. 1994); Matter of McKee v. New York State Bd. Of Parole, 157 A.D.2d 944, 945, 550 N.Y.S.2d 204, 205 (3d Dept. 1990); People ex rel. Herbert, 97 A.D.2d 128, 468 N.Y.S.2d 881.

The record as a whole, including the interview transcript, reflects that the Board considered the appropriate factors, including: Appellant's institutional record including denial of an EEC and Tier III tickets for flooding his cell and creating a disturbance; Appellant's criminal history; his prior failures while under community supervision; and release plans to seek assistance from ██████████. The Board also had before it and considered, among other things, the case plan and the COMPAS instrument.

After considering all required factors, the Board acted within its discretion in determining release would not satisfy the standards provided for by Executive Law § 259-i(2)(c)(A). In reaching its conclusion, the Board permissibly relied on Appellant's disciplinary record including denial of an EEC and failure to follow rules in prison, Appellant's criminal history, and his prior failures while under community supervision. See Matter of Almonte v. New York State Bd. of Parole, 145 A.D.3d 1307, 42 N.Y.S.3d 691 (3d Dept. 2016), lv. denied, 29 N.Y.3d 905 (2017); Matter of Karlin v. Cully, 104 A.D.3d 1285, 1286, 960 N.Y.S.2d 827, 828 (4th Dept. 2013); Matter of Grigger v. Goord, 41 A.D.3d 1128, 840 N.Y.S.2d 174 (3d Dept. 2007); Matter of Davis v. Evans, 105 A.D.3d 1305, 963 N.Y.S.2d 485 (3d Dept. 2013); Matter of Lashway v. Evans, 110 A.D.3d 1417, 1418, 974 N.Y.S.2d 164, 165 (3d Dept. 2013); Matter of Bello v. Bd. of Parole, 149 A.D.3d 1458, 53 N.Y.S.3d 715 (3d Dept. 2017); People ex rel. Yates v. Walters, 111 A.D.2d 839, 839, 490 N.Y.S.2d 573, 575 (2d Dept. 1985).

The Board's decision also satisfied the criteria set out in Executive Law § 259-i(2)(a) and 9 N.Y.C.R.R. § 8002.3(d), as it was sufficiently detailed to inform the inmate of the reasons for the denial of parole. Matter of Applegate v. New York State Bd. of Parole, 164 A.D.3d 996, 997, 82 N.Y.S.3d 240 (3d Dept. 2018); Matter of Kozlowski v. New York State Bd. of Parole, 108 A.D.3d 435, 968 N.Y.S.2d 87 (1st Dept. 2013); Matter of Little v. Travis, 15 A.D.3d 698, 788 N.Y.S.2d 628 (3d Dept. 2005); Matter of Davis v. Travis, 292 A.D.2d 742, 739 N.Y.S.2d 300 (3d Dept. 2002); People ex rel. Herbert v. New York State Bd. of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881 (1st Dept. 1983). The Board addressed the factors and principles considered in individualized terms and explained those that ultimately weighed most heavily in its deliberations. However, the Board was not required to address, or articulate the weight accorded to, each factor considered in its decision. See Matter of Mullins v. New York State Bd. of Parole, 136 A.D.3d 1141, 1142, 25 N.Y.S.3d 698

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(3d Dept. 2016); Matter of Allis v. New York State Div. of Parole, 68 A.D.3d 1309, 1309, 890 N.Y.S.2d 200, 201 (3d Dept. 2009).

In conclusion, Appellant has failed to demonstrate the Board’s decision was not made in accordance with the pertinent statutory requirements or was irrational “bordering on impropriety.” Matter of Silmon v. Travis, 95 N.Y.2d 470, 476, 718 N.Y.S.2d 704 (2000) (quoting Matter of Russo v. New York State Bd. of Parole, 50 N.Y.2d 69, 427 N.Y.S.2d 982 (1980)).

**Recommendation:** Affirm.