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Administrative Appeal Decision - Weldon, Jessee (2019-02-06)

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Administrative Appeal Decision Notice

Inmate Name: Weldon, Jesse

Facility: Southport Correctional Facility

NYSID No. [REDACTED]

Appeal Control #: 07-146-18R

Dept. DIN#: 14-A-4487

Appearances:

For the Board: The Appeals Unit

For Appellant: Jesse Weldon, 14-A-4487
Southport Correctional Facility
236 Bob Masia Drive
P.O. Box 2000
Pine City, NY 14871-2000

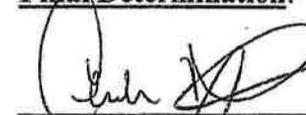
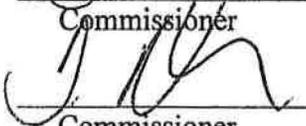
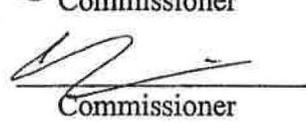
Board Member(s) who participated in appealed from decision: None.

Decision appealed from: 6/2018 Revocation of Parole with a 15-month time assessment.

Pleadings considered: Brief on behalf of the appellant received on October 16, 2018
Statement of the Appeals Unit's Findings and Recommendation

Documents relied upon: Notice of Violation, Violation of Release Report, Final Hearing Transcript, Parole Revocation Decision Notice.

Final Determination: The undersigned have determined that the decision from which this appeal was taken be and the same is hereby

 _____ Commissioner	<input checked="" type="checkbox"/> Affirmed <input type="checkbox"/> Reversed for De Novo Hearing	<input type="checkbox"/> Reversed - Violation Vacated
	<input type="checkbox"/> Vacated for De Novo Review of Time Assessment Only	<input type="checkbox"/> Modified to _____
 _____ Commissioner	<input checked="" type="checkbox"/> Affirmed <input type="checkbox"/> Reversed for De Novo Hearing	<input type="checkbox"/> Reversed - Violation Vacated
	<input type="checkbox"/> Vacated for De Novo Review of Time Assessment Only	<input type="checkbox"/> Modified to _____
 _____ Commissioner	<input checked="" type="checkbox"/> Affirmed <input type="checkbox"/> Reversed for De Novo Hearing	<input type="checkbox"/> Reversed - Violation Vacated
	<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, the written reasons for such determination shall be annexed hereto.

This Final Determination, the related Statement of the Appeals Unit's Findings and separate findings of the Board, if any, were mailed to the Inmate and the Inmate's Counsel, if any, on 2/6/19 66.

Distribution; Appeals Unit - Inmate - Inmate's Counsel - Inst. Parole File - Central File

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Weldon, Jesse

Facility: Southport Correctional Facility

Dept. DIN#: 14-A-4487

Appeal Control #: 07-146-18R

Findings: (Page 1 of 2)

Appellant is serving two to four years for his convictions of Attempted Promoting Prison Contraband in the first degree. He was released on parole in March 2018. Less than a month later, he was charged with violating conditions of his release including, in relevant part, for marijuana use, failure to reply truthfully to his parole officer concerning recent drug use, and not abiding by his established curfew. Following a final revocation hearing in June 2018, the Administrative Law Judge (hereinafter "ALJ") issued a decision dismissing four charges, sustaining the other five and revoking Appellant's parole with a 15-month time assessment imposed. This appeal ensued.

Appellant challenges the ALJ's decision to revoke his parole on the following grounds: (1) Appellant's parole officer was biased due to Appellant's admission that he used marijuana while incarcerated and the officer's decision to bring charges for violating parole was arbitrary and capricious; (2) the determination sustaining charges 3 and 8 stemming from marijuana use was not supported by substantial credible evidence; and (3) the determination sustaining charges 5, 6 and 7 for curfew violations was an abuse of discretion.

Contrary to Appellant's claim, there is no improper bias demonstrated in the record. As for the filing of charges, the relevant inquiry on appeal is whether the sustained charges were supported by sufficient evidence. Preliminarily, we note Appellant does not clearly dispute the determination with respect to charge 4 concerning his failure to reply truthfully to his parole officer's inquiry in violation of Rule 5. In any event, the undisputed testimony by another parole officer also established that Appellant tested positively for THC on April 18, 2018, admitted to having used marijuana on April 12, 2018, and signed a form admitting guilt. (Tr. at 44-46, 51-54.) That a warrant was issued later that day did not preclude consideration of the form. Furthermore, any credibility issues 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); Matter of Wilson v Evans, 104 A.D.3d 1190, 960 N.Y.S.2d 807 (4th Dept. 2013). The evidence was sufficient evidence to establish that Appellant violated the conditions of his release in an important respect. As charge 8 was properly sustained, alleged defects as to the remaining charges are irrelevant. People ex rel. Manton v. Von Holden, 86 A.D.2d 967, 448 N.Y.S.2d 294 (4th Dept.), app. den. 56 N.Y.2d 505, 451 N.Y.S.2d 1027 (1982); Braffman v. New York State Bd. of Parole, 66 A.D.2d 799, 411 N.Y.S.2d 38 (2d Dept. 1978).

We nonetheless note the evidence was sufficient to support the other sustained drug and curfew charges. (Tr. at 14-16, 19-22.) Although Appellant admitted to marijuana use while incarcerated at his initial report in March, charge 3 is supported by evidence that Appellant both

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Findings: (Page 2 of 2)

tested positive for marijuana on April 11, 2018, and signed a form admitting guilt. In addition, the undisputed testimony by Appellant's parole officer established that Appellant left his approved residence during curfew hours without the officer's permission on April 13, 17 and 18. While there was evidence indicating Appellant violated curfew on April 18 to be on time for an appointment that resulted in the ALJ dismissing charge 7, there was no similar evidence concerning the dates that were sustained under charges 5 and 6. (Tr. at 36-39.) Appellant's additional contention that he received permission from the caretaker of his residence is unsupported and irrelevant. Finally, inasmuch as charge 7 was dismissed, there is no basis for Appellant's challenge to a violation for that charge.

Recommendation:

It is the recommendation of the Appeals Unit that the ALJ's decision be affirmed.