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Administrative Appeal Decision - Hetherington, John (2018-12-28)

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Administrative Appeal Decision Notice

Inmate Name: Hetherington, John

Facility: Wyoming Correctional Facility

NYSID No. [REDACTED]

Appeal Control #: 07-017-18-B

Dept. DIN#: 94B1849

Appearances:

For the Board, the Appeals Unit

For Appellant: Norman Effman Esq.
Wyoming County Legal Aid
18 Linwood Avenue
Warsaw, New York 14569


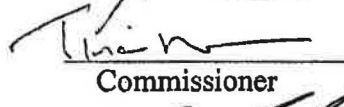

Board Member(s) who participated in appealed from decision: Davis, Demosthenes, Smith

Decision appealed from: 6/2018-Denial of discretionary release, with imposition of 24 month hold.

Pleadings considered: Brief on behalf of the appellant received on October 12, 2018.
Statement of the Appeals Unit's Findings and Recommendation

Documents relied upon: Presentence Investigation Report, Parole Board Report, Interview Transcript,
Parole Board Release Decision (Form 9026), COMPAS, TAP/Case Plan.

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

 Commissioner	<input type="checkbox"/> Affirmed	<input checked="" type="checkbox"/> Reversed for De Novo Interview	<input type="checkbox"/> Modified to _____
 Commissioner	<input type="checkbox"/> Affirmed	<input checked="" type="checkbox"/> Reversed for De Novo Interview	<input type="checkbox"/> Modified to _____
 Commissioner	<input type="checkbox"/> Affirmed	<input checked="" type="checkbox"/> Reversed for De Novo Interview	<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 12/28/18.
LB

Distribution: Appeals Unit - Inmate - Inmate's Counsel - Inst. Parole File - Central File
P-2002(B) (5/2011)

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Hetherington, John

Facility: Wyoming Correctional Facility

Dept. DIN#: 94B1849

Appeal Control #: 07-017-18-B

Findings:

Counsel for the appellant has submitted a brief to serve as the perfected appeal. Appellant contends the decision is arbitrary and capricious, and irrational bordering on impropriety, for the following reasons: 1) the Board failed to consider and/or properly weigh the required statutory factors, and failed to make required findings of fact or to provide detail; 2) illegally resentenced him to life without parole; 3) the decision was predetermined, as it was the same as prior decisions; 4) failed to find any aggravating factors, and ignored all deportation matters; 5) was based upon erroneous information concerning the sentencing minutes; 6) the 2011 amendments to the Executive Law were ignored; and 7) the hold was excessive.

For the reason explained below, only one issue raised will be addressed.

One of appellant's claims is the decision is based upon erroneous information. Specifically, the Board decision says the Board reviewed the sentencing minutes, but the Parole Board Report says the Board doesn't have the sentencing minutes.

In response, a review by the Appeals Unit indicates the Board of Parole has made several requests for the sentencing minutes, but never received any type of response. For the Board decision to state they reviewed the sentencing minutes brings confusion as to exactly what they were reviewing. In order to resolve any doubt, since the Board decision clearly contains erroneous information, a de novo interview is warranted.

Recommendation:

Accordingly, it is recommended the decision of the Board be vacated, and that a de novo interview in front of a different panel of Commissioners be held.