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Administrative Appeal Decision - Murray, John (2019-02-27)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Murray, John

Facility: Collins CF

NYSID: [REDACTED]

Appeal Control No.: 07-116-18-R

DIN: 15-B-2172

Appearances: Stephen Underwood Esq.
1395 Union Road
West Seneca, New York 14224

Decision appealed: June 29, 2018 revocation of release and imposition of a time assessment of 15-months.

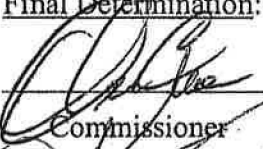


Final Revocation Hearing Date: June 19, 2018

Papers considered: Appellant's Brief received December 11, 2018

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:

 Commissioner	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed, remanded 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 type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed, remanded 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, remanded 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, 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 2/27/19 CC.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Murray, John

DIN: 15-B-2172

Facility: Collins CF

AC No.: 07-116-18-R

Findings: (Page 1 of 1)

Appellant challenges the June 29, 2018 determination of the administrative law judge (“ALJ”), revoking release and imposing a 15-month time assessment. Appellant raises only one issue. Appellant claims the time assessment imposed is arbitrary and capricious because it is harsh and excessive.

For a category 1 violator such as Appellant, the time assessment generally must be a *minimum* of 15 months or a hold to the maximum expiration of the sentence, whichever is less. 9 N.Y.C.R.R. § 8005.20(c)(1). The Executive Law does not place an outer limit on the length of time that may be imposed. Matter of Washington v. Annucci, 144 A.D.3d 1541, 41 N.Y.S.3d 808 (4th Dept. 2016); Matter of Wilson v. Evans, 104 A.D.3d 1190, 1191, 960 N.Y.S.2d 807, 809 (4th Dept. 2013); Murchison v. New York State Div. of Parole, 91 A.D.3d 1005, 1005, 935 N.Y.S.2d 741, 742 (3d Dept. 2012).

The on-going nature of Appellant’s drug use was properly considered. See Matter of Washington v. Annucci, 144 A.D.3d 1541, 41 N.Y.S.3d 808 (4th Dept. 2016).

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). The ALJ decision is not arbitrary.

Recommendation: Affirm.