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December 2020

### Administrative Appeal Decision - Smith, John (2019-06-06)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Smith, John

Facility: Mid-State CF

NYSID: [REDACTED]

Appeal Control No.: 10-218-18 R

DIN: 14-B-3416

Appearances: Charles J. Greenberg, Esq.  
3840 East Robinson Road-#318  
Amherst, New York 14228-2001

Decision appealed: September 14, 2018 revocation of release and imposition of a time assessment of revoke and restore to the Willard Drug Treatment Campus Program.

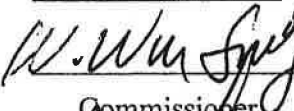
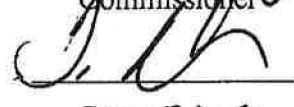

Final Revocation Hearing Date: September 12, 2018

Papers considered: Appellant's Brief received March 29, 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 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 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 6/16/19 CC.

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Smith, John

**DIN:** 14-B-3416

**Facility:** Mid-State CF

**AC No.:** 10-218-18 R

**Findings:** (Page 1 of 1)

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Appellant challenges the September 14, 2018 determination of the administrative law judge (“ALJ”), revoking release and imposing a revoke and restore to the [REDACTED]

Appellant raises the issue that his time assessment was excessive. It should be noted, however, that a time assessment was not imposed.

Pursuant to the provisions of 9 N.Y.C.R.R. §8005.20(d), when a parole violator who was restored to the [REDACTED] is found guilty of failing to complete that Program, his parole is revoked and the ALJ either imposes a time assessment or orders the violator to be restored to supervision. The [REDACTED] is not a correctional facility, and placement there does not constitute incarceration. People ex rel. Morejon v. New York State Bd. of Parole, 183 Misc.2d 435, 706 N.Y.S.2d 566 (Sup. Ct. Bronx Co. Sept. 7, 1999), citing, Correction Law §70(1)(c). When a parolee is sent to [REDACTED] it is as a condition of his parole supervision. 9 N.Y.C.R.R. §8005.20(c)(1),(2),(3)(ii),(6) and (d). The ALJ’s decision to revoke and restore Appellant to the [REDACTED] Campus Program in lieu of imposing a time assessment was proper.

**Recommendation:** Affirm.