

Fordham Law School

## FLASH: The Fordham Law Archive of Scholarship and History

---

Parole Administrative Appeal Decisions

Parole Administrative Appeal Documents

---

December 2020

### Administrative Appeal Decision - Howard, Joseph (2019-06-06)

Follow this and additional works at: <https://ir.lawnet.fordham.edu/aad>

---

#### Recommended Citation

"Administrative Appeal Decision - Howard, Joseph (2019-06-06)" (2020). Parole Information Project  
<https://ir.lawnet.fordham.edu/aad/243>

This Parole Document is brought to you for free and open access by the Parole Administrative Appeal Documents at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Parole Administrative Appeal Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

STATE OF NEW YORK – BOARD OF PAROLE

**ADMINISTRATIVE APPEAL DECISION NOTICE**

Name: Howard, Joseph

Facility: Upstate CF

NYSID [REDACTED]

Appeal Control No.: 12-082-18R

DIN: 14-B-1194

Appearances: Joseph Howard 14B1194  
Upstate Correctional Facility  
P.O. Box 2001  
Malone, New York 12953

Decision appealed: November 23, 2018 revocation of release and imposition of a time assessment of 30 months.


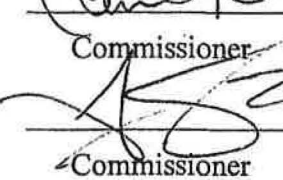
Final Revocation Hearing Date: November 5, 2018

Papers considered: Appellant's Letter-brief received March 12, 2019  
Appellant's Supplemental Letter-brief received May 3, 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:

 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 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 _____	

**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 6/6/19 06.



STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Howard, Joseph

**DIN:** 14-B-1194

**Facility:** Upstate CF

**AC No.:** 12-082-18R

**Findings:** (Page 2 of 2)

---

N.Y.S.2d 771 (3d Dept. 2011); McQueen v New York State Board of Parole, 118 A.D.3d 1238, 989 N.Y.S.2d 150 (3d Dept. 2014).

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 assessment was not excessive under the circumstances. See Matter of Bolden v. Dennison, 28 A.D.3d 1234, 814 N.Y.S.2d 477 (4th Dept.) (36-month assessment for curfew violation), lv. den. 7 N.Y.3d 705, 819 N.Y.S.2d 872 (2006); Matter of Smith v. Travis, 253 A.D.2d 955, 955, 678 N.Y.S.2d 917, (Mem)-918 (3d Dept. 1998) (36 month assessment was not excessive, notwithstanding that this was first parole violation 41 months after release, where releasee failed to report to parole officer); Matter of Folks v. Alexander, 58 A.D.3d 1038, 1039, 871 N.Y.S.2d 779, 780 (3d Dept. 2009) (24 month assessment by Board for failure to report 5 months after release); Matter of Ramirez v. New York State Board of Parole, 625 N.Y.S.2d 505 (1st Dept. 1995) (18 month assessment for moving to another state and not reporting to parole officer for three months). It is presumed the Administrative Law Judge considered all of the relevant factors. Ramirez v New York State Board of Parole, 214 A.D.2d 441, 625 N.Y.S.2d 505 (1<sup>st</sup> Dept 1995); Garner v Jones, 529 U.S. 244, 120 S.Ct. 1362, 1371, 146 L.Ed.2d 236 (2000). The time assessment imposed is clearly permissible. Otero v New York State Board of Parole, 266 A.D.2d 771, 698 N.Y.S.2d 781 (3d Dept 1999) leave to appeal denied 95 N.Y.2d 758, 713 N.Y.S.2d 2 (2000); Carney v New York State Board of Parole, 244 A.D.2d 746, 665 N.Y.S.2d 687 (3d Dept 1997); Issac v. New York State Division of Parole, 222 A.D.2d 913, 635 N.Y.S.2d 756 (3d Dept. 1995).

**Recommendation:** Affirm.