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December 2020

### Administrative Appeal Decision - Mullen, Joseph (2018-12-28)

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**Administrative Appeal Decision Notice**

**Inmate Name:** MULLEN, JOSEPH

**Facility:** Mohawk Correctional Facility

**NYSID No.** [REDACTED]

**Appeal Control #:** 08-160-18 R

**Dept. DIN#:** 04B3536

Appearances:

For the Board, the Appeals Unit

For Appellant:

Joseph Mullen (04B3536)  
Mohawk Correctional Facility  
6514 Rt. 26, P.O. Box 8450  
Rome, New York 13440

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

Decision appealed from: 7/2018 Revocation of Parole; 15-month hold.

Pleadings considered:

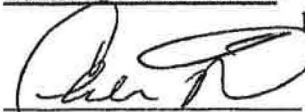
Brief on behalf of the Appellant submitted on: October 23, 2018.

Statement of the Appeals Unit's Findings and Recommendation.

Documents relied upon:

Notice of Violation, Violation of Release Report, Final Revocation 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  Affirmed  Reversed for De Novo Hearing  Reversed - Violation Vacated  
 Vacated for De Novo Review of Time Assessment Only  Modified to \_\_\_\_\_

  
Commissioner  Affirmed  Reversed for De Novo Hearing  Reversed - Violation Vacated  
 Vacated for De Novo Review of Time Assessment Only  Modified to \_\_\_\_\_

  
Commissioner  Affirmed  Reversed for De Novo Hearing  Reversed - Violation Vacated  
 Vacated for De Novo Review of Time Assessment Only  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(R) (May 2011)

STATE OF NEW YORK - BOARD OF PAROLE

**STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION**

**Inmate Name:** MULLEN, JOSEPH  
**Dept. DIN#:** 04B3536  
**Page: 1**

**Facility:** Mohawk Correctional Facility  
**Appeal Control #:** 08-160-18 R

**Findings:**

Appellant has filed a brief in support of his administrative appeal which challenges a decision made by the Administrative Law Judge (hereinafter "ALJ") following the final revocation hearing. The ALJ's decision revoked Appellant's parole and imposed a 15-month time assessment. Appellant was represented by counsel at the final revocation hearing. The Appeals Unit has reviewed each of the issues raised by Appellant in his brief, and finds that the issues have no merit.

Appellant raises the following issues in his brief: (1) his plea of guilty at the final revocation hearing was not made "knowingly, voluntarily and intelligently"; (2) the charge sustained by the ALJ at the final revocation hearing was not supported by a preponderance of the evidence; and (3) the 15-month time assessment imposed by the ALJ was not agreed to by Appellant at the final revocation hearing.

9 N.Y.C.R.R. §8006.3(b) specifies which questions may be raised on appeal from a parole rescission or a final revocation determination, subject to the limitation that evidentiary or procedural challenges will only be considered if a timely objection was made at the final revocation hearing. Appellant and his attorney failed to make a timely objection at the final revocation hearing with respect to any issues of the issues Appellant now raises in his brief. Therefore, all issues now raised by Appellant have been waived as there were no objections raised by Appellant or his attorney at the final revocation hearing. See 9 N.Y.C.R.R. §8006.3(b); Matter of Bowes v. Dennison, 20 A.D.3d 845 (3d Dept. 2005); People ex rel. Williams v. Allard, 19 A.D.3d 890 (3d Dept. 2005); Matter of Currie v. New York State Board of Parole, 298 A.D.2d 805 (3d Dept. 2002).

Additionally, as to the first issue, we find no evidence in the record to support Appellant's claim that his guilty plea was not made knowingly, intelligently and voluntarily. Inasmuch as there is nothing in the record to indicate that such waiver was not made knowingly, intelligently and voluntarily, the waiver was effective. White v. New York State Division of Parole, 60 N.Y.2d 920 (1983).

As to the second issue, Appellant entered a plea of guilty at the final revocation hearing. A guilty plea at the final parole revocation hearing operates as a waiver of any antecedent claims, and acts in the same way as a criminal defendant's waiver of various rights after pleading guilty to a crime. See Tollett v. Henderson, 411 U.S. 258 1602 (1973); People v. Suarez, 55 N.Y.2d 940 (1982); People v. Di Raffaele, 55 N.Y.2d 234 (1982).

STATE OF NEW YORK - BOARD OF PAROLE

**STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION**

**Inmate Name:** MULLEN, JOSEPH  
**Dept. DIN#:** 04B3536  
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**Facility:** Mohawk Correctional Facility  
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As to the third issue, Appellant is a Category 1 violator and, therefore, the ALJ must impose a minimum time assessment of 15 months, or a hold to the maximum expiration date of Appellant's sentence, whichever is less. The ALJ may have reduced the 15 month time assessment by up to three months if the violator accepted responsibility for his conduct, or if there were exceptional mitigating circumstances. See 9 N.Y.C.R.R. §8005.20(c)(1); People ex rel. Newland v. Travis, 185 Misc.2d 881 (Sup. Ct., Bronx Co., 2000). The 15-month time assessment imposed by the ALJ at the final revocation hearing was agreed to on the record by both Appellant and his attorney without objection, and was not excessive. See, e.g., Matter of Wilson v. Evans, 104 A.D.3d 1190 (4th Dept. 2013); Matter of Rosario v. New York State Division of Parole, 80 A.D.3d 1030 (3d Dept. 2011); Matter of Bell v. Lemons, 78 A.D.3d 1393 (3d Dept. 2010); Matter of Torres v. New York State Division of Parole, 58 A.D.3d 1039 (3d Dept. 2009).

**Recommendation:**

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