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December 2020

### Administrative Appeal Decision - Matias, Juan (2018-12-28)

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Administrative Appeal Decision Notice

**Inmate Name:** MATIAS, JUAN

**Facility:** Bare Hill Correctional Facility

**NYSID No** [REDACTED]

**Appeal Control #:** 08-158-18 B

**Dept. DIN#:** 83B2228

Appearances:

For the Board, the Appeals Unit

For Appellant:

Juan Matias (83B2228)  
Bare Hill Correctional Facility  
Caller Box #20, 181 Brand Road  
Malone, New York 12953

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

Decision appealed from: 8/2018 Denial of Discretionary Release; 24-month hold.

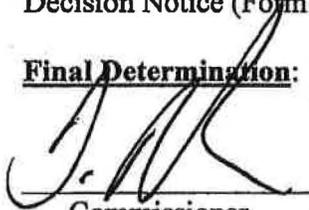
Pleadings considered:

Brief on behalf of the Appellant submitted on: October 2, 2018.  
Statement of the Appeals Unit's Findings and Recommendation.

Documents relied upon:

Pre-Sentence Investigation Report, Parole Board Report, Interview Transcript, Parole Board Release Decision Notice (Form 9026), COMPAS instrument, Offender Case Plan.

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

  Affirmed  Reversed for De Novo Interview  Modified to \_\_\_\_\_  
Commissioner

  Affirmed  Reversed for De Novo Interview  Modified to \_\_\_\_\_  
Commissioner

  Affirmed  Reversed for De Novo Interview  Modified to \_\_\_\_\_  
Commissioner

***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**

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Appellant raises various issues in the brief he submitted in support of the administrative appeal he initiated following the Board of Parole's decision to deny his immediate release to community supervision following an interview held on or about August 7, 2018. The Appeals Unit has reviewed each of the issues raised by Appellant and finds that the issues have no merit.

Initially, we note that Appellant in his 24-page brief submits many issues that can properly be divided into two categories: (1) those issues which could have been brought up during the interview, which were not brought up during the interview, and which have therefore been waived and accordingly are not before the Appeals Unit for purposes of this administrative appeal; and (2) those issues which are properly before the Appeals Unit for discussion herein.

Appellant was provided the opportunity to discuss with the Board during the interview any issues of interest, and cannot now be heard to complain that certain issues were not discussed, or the extent to which certain issues were discussed. See Matter of Serna v. New York State Division of Parole, 279 A.D.2d 684 (3d Dept. 2001); Matter of Garcia v. New York State Div. of Parole, 239 A.D.2d 235 (1<sup>st</sup> Dept. 1997). Certainly this would include any issues relating to any alleged errors in any records before the Board for consideration. See Matter of Shaffer v. Leonardo, 179 A.D.2d 980 (3d Dept. 1992); Matter of Morrison v. Evans, 81 A.D.3d 1073 (3d Dept. 2011); Matter of Jones v. New York State Div. of Parole, 24 A.D.3d 827 (3d Dept. 2005). Appellant could also have requested an adjournment of the interview to address not only any alleged errors in records, but any other matters of concern.

The issues raised by Appellant in his brief that have been waived because they were not brought up during the Board interview are as follows<sup>1</sup>: (1) issues relating to any alleged errors in his COMPAS instrument or Case Plan, or relating to any other records not discussed during the interview; (2) his request for an attorney to be present during the Board interview; (3) his request for copies of various records which could have been made to staff at his facility, or by means of a Freedom of Information law (FOIL) request, prior to the time of the Board interview, and any issues relating to any alleged errors in any such records which were not brought up during the interview; (5) guidance from the Board Commissioners as to how to improve his chances for parole release; and (6) historical discussion of "personality traits" and "psychoanalysis" of juvenile offenders.

Those issues raised by Appellant in his brief which are properly before the Appeals Unit for consideration are as follows: (1) the Board's decision was procedurally defective, "influenced

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<sup>1</sup> Please note that Appellant may not have had any legal or factual foundation relative to certain of these issues even if they had been raised during the interview, and some of these issues may have otherwise been beyond the scope of this administrative appeal.

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by an error of law”, and was arbitrary and capricious and unlawful; (2) the Board’s decision contained “mistaken or irrelevant information”; (3) the Board’s decision was “legally incorrect, improper, and not supported by the evidence”; (4) the 24-month hold imposed by the Board following the interview was excessive and constituted cruel and unusual punishment; (5) the Board’s decision was made in violation of Appellant’s due process rights under the U.S. Constitution; (6) the Board did not provide sufficient weight to certain scores contained in his COMPAS instrument; (7) Appellant’s age at the time of commission of the Murder in the second degree conviction (carrying a Life sentence) and its attendant circumstances were not adequately addressed during the interview; (8) the Board was not authorized to review Appellant’s juvenile record or prison disciplinary record; and (9) the Board was not authorized to consider Appellant’s sentencing minutes.

As to the first issue raised by Appellant in his brief, the legal standard governing the decision-making process of the Board when assessing the suitability of an inmate’s possible release to community supervision is: (1) whether or not there is a reasonable probability that the inmate, if released, will live and remain at liberty without violating the law; (2) whether or not the inmate’s release is incompatible with the welfare of society; and (3) whether or not the inmate’s release will so deprecate the seriousness of the crime as to undermine respect for law. See Executive Law §§259-c(4), 259-i(2)(c)(A); Robles v. Dennison, 745 F. Supp. 2d 244 (W.D.N.Y. 2010); Matter of Hamilton v. New York State Div. of Parole, 119 A.D.3d 1268 (3d Dept. 2014). In the instant case, the Board considered each of these three factors and specifically relied upon factors (2) and (3) in making its determination to deny Appellant’s release to community supervision and further found that it was not convinced that Appellant would live and remain at liberty without violating the law.

“Clearly, the Board of Parole has been vested with an extraordinary degree of responsibility in determining who will go free and who will remain in prison, and a [inmate] who seeks to obtain judicial review on the grounds that the Board did not properly consider all of the relevant factors, or that an improper factor was considered, **bears a heavy burden**.” Garcia v. New York State Div. of Parole, 239 A.D.2d 235, 239 (1st Dep’t 1997) (emphasis added). See also Matter of Phillips v. Dennison, 41 A.D.3d 17 (1<sup>st</sup> Dept. 2007).

Unless Appellant is able to demonstrate convincing evidence to the contrary, the Board is presumed to have acted properly in accordance with statutory requirements, and judicial intervention is warranted only when there is a showing of irrationality to the extent that it borders on impropriety. Matter of Jackson v. Evans, 118 A.D.3d 701 (2d Dept. 2014); Matter of Williams v. New York State Div. of Parole, 114 A.D.3d 992 (3rd Dept. 2014); Matter of Thomches v. Evans, 108 A.D.3d 724 (2d Dept. 2013).

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In determining whether to grant parole to an inmate, the Board is required to consider a number of statutory factors (see Executive Law §§259-c(4); 259-i(2)(c)(A); 9 NYCRR §8002.2). In addition, the Board's decision must detail the reasons for a denial of discretionary release (see Executive Law §259-i(2)(a)(i)). However, the Board is not required to give each factor it considered equal weight (Matter of Arena v. New York State Dept. of Corr. & Community Supervision, 156 A.D.3d 1101 (3d Dept. 2017); Matter of Hill v. New York State Bd. of Parole, 130 A.D.3d 1130 (3d Dept. 2015); Matter of Hamilton v. New York State Div. of Parole, 119 A.D.3d 1268 (3d Dept. 2014); Matter of Vigliotti v. State of N.Y. Exec. Div. of Parole, 98 A.D.3d 789 (3d Dept. 2012); Matter of Stanley v. New York State Div. of Parole, 92 A.D.3d 948 (2d Dept. 2012); Matter of Miller v. New York State Div. of Parole, 72 A.D.3d 690 (2d Dept. 2010)), and its actual or perceived emphasis on a specific factor is not improper as long as the Board complied with statutory requirements. Romer v. Dennison, 24 A.D.3d 866 (3d Dept. 2005); Matter of Collado v. New York State Division of Parole, 287 A.D.2d 921 (3d Dept. 2001); Matter of Rivera v. Executive Department, Board of Parole, 268 A.D.2d 928 (3d Dept. 2000).

The Board is entitled to afford more weight to the nature and seriousness of the underlying crime(s) and the inmate's criminal history than other factors. See Matter of Perez v. Evans, 76 A.D.3d 1130 (3d Dept. 2010). In this regard, the denial of release to community supervision primarily because of the gravity of the inmate's crime is appropriate. Karlin v. Alexander, 57 A.D.3d 1156 (3d Dept. 2008); Matter of Alamo v. New York State Div. of Parole, 52 A.D.3d 1163 (3d Dept. 2008); Matter of Flood v. Travis, 17 A.D.3d 757 (3d Dept. 2005).

The Court of Appeals unanimously affirmed the First Department decision in Matter of Siao-Pao v. Dennison, 51 A.D.3d 105 (1<sup>st</sup> Dept. 2008), aff'd, 11 N.Y.3d 777 (2008), in which the Appellate Court held: (1) it is not improper for the Board to primarily base its decision to deny parole release on the seriousness of the offense(s); (2) the weight to be assigned to each factor considered by the Board in making its determination is to be made solely by the Board; (3) parole release should not be granted merely as a reward for good conduct or efficient performance of duties while confined; and (4) the Board can consider the credibility of statements made by the inmate in regard to whether full responsibility was taken for the criminal behavior.

So long as the decision denying release to community supervision is made in accordance with statutory requirements, it is not to be set aside when subject to administrative or judicial review, particularly given the narrow scope of judicial review of discretionary parole denial determinations. Matter of Hamilton v. New York State Division of Parole, 119 A.D.3d 1268 (3d Dept. 2014); Matter of Williams v. New York State Division of Parole, 114 A.D.3d 992 (3d Dept. 2014); Matter of Martinez v. Evans, 108 A.D.3d 815 (3d Dept. 2013); Matter of Burress v. Evans, 107 A.D.3d 1216 (3d Dept. 2013).

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An inmate is not automatically entitled to release to community supervision merely because of achievements within a prison's institutional setting, no matter how numerous. Pearl v. New York State Div. of Parole, 25 A.D.3d 1058 (3d Dept. 2006); Corley v. New York State Div. of Parole, 33 A.D.3d 1142 (3d Dept. 2006); Rivera v. Travis, 289 A.D.2d 829 (3d Dept. 2001). In addition, per Executive Law §259-i(2)(c)(A), an application for release to community supervision shall not be granted merely as a reward for Appellant's good conduct or achievements while incarcerated. Matter of Larrier v. New York State Board of Parole Appeals Unit, 283 A.D.2d 700 (3d Dept. 2001). Therefore, a determination that the inmate's exemplary achievements are outweighed by the severity of the crimes is within the Board's discretion. Matter of Anthony v. New York State Division of Parole, 17 A.D.3d 301 (1<sup>st</sup> Dept. 2005); Matter of Kirkpatrick v. Travis, 5 A.D.3d 385 (2d Dept. 2004).

Appellant has the burden of showing that the Board's determination was irrational, bordering on impropriety, and therefore arbitrary and capricious, before administrative or judicial intervention is warranted. Matter of Silmon v. Travis, 95 N.Y.2d 470 (2000); Singh v. Dennison, 107 A.D. 3d 1274 (3d Dept. 2013). It is not the function of the Appeals Unit to assess whether the Board gave proper weight to the relevant factors, but only whether the Board followed applicable legal authority when rendering its decision, and that is supported, and not contradicted, by the facts in the record. Matter of Comfort v. New York State Division of Parole, 68 A.D.3d 1295 (3d Dept. 2009); see Matter of Hamilton v. New York State Division of Parole, 119 A.D.3d 1268. The weight to be accorded each of the requisite factors remains solely a matter of the Parole Board's discretion. See Matter of Dolan v. New York State Board of Parole, 122 A.D.3d 1058 (3d Dept. 2014); Matter of Singh v. Evans, 118 A.D.3d 1209 (3d Dept. 2014); Matter of Khatib v. New York State Board of Parole, 118 A.D.3d 1207 (3d Dept. 2014); Matter of Montane v. Evans, 116 A.D.3d 197 (3d Dept.), leave to appeal granted, 23 N.Y.3d 903, appeal dismissed, 24 N.Y.3d 1052 (2014). Appellant has not demonstrated any abuse on the part of the Board in its decision-making process that would warrant a *de novo* release interview.

As to the second issue raised by Appellant, While Appellant fails to specifically identify "mistaken or irrelevant information" in the Board's decision, the Appeals Unit has reviewed the entire transcript of the Board interview and the Board's decision following the interview and finds no information to support this unsubstantiated claim.

As to the third issue, the Board conducted an interview with Appellant, not an evidentiary hearing. The Board had Appellant's case record before it at the time of the interview, and its decision was made in accordance with applicable legal authority as set forth herein.

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As to the fourth issue, when denying parole release, the Board shall establish a date for reconsideration which shall not exceed 24 months from the date of the interview. See Executive Law §259-i(2)(a); 9 NYCRR §8002.3(b); Matter of Abascal v. New York State Board of Parole, 23 A.D.3d 740 (3d Dept. 2005); Matter of Tatta v. State, 290 A.D.2d 907 (3d Dept. 2002). Therefore, the 24-month hold was proper. As to cruel and unusual punishment claims, Appellant's argument concerning the Eighth Amendment falls flat as the denial of parole under a statute invoking discretion in parole determinations does not violate the Eighth Amendment's prohibition against cruel and unusual punishment. Lustgarden v Gunter, 966 F.2d 552, 555, (10<sup>th</sup> Cir. 1992), cert den, 506 U.S. 1008, 113 S.Ct. 624, rehearing denied 507 U.S. 955, 113 S.Ct. 1374; Bressette v New York State Division of Parole, 2 F.Supp.2d 383, 387 (W.D.N.Y. 1998).

As to the fifth issue, the Supreme Court has held that because a person's liberty interest is extinguished upon conviction, there is no inherent right, or right under the U.S. Constitution, to parole. Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex, 442 U.S. 1 (1979); Hewitt v. Helms, 459 U.S. 460 (1983). Likewise, there is no due process right to parole under the New York State Constitution. Boothe v. Hammock, 605 F.2d 661 (2d Cir. 1979); Matter of Russo, 50 N.Y.2d 69; Matter of Freeman v. New York State Division of Parole, 21 A.D.3d 1174 (3d Dept. 2005). Thus, the protections of the due process clause do not apply to the Parole Board's determinations as to whether an inmate should be released to parole supervision. Maldonado v. Evans, 2014 U.S. Dist. LEXIS 183163 (W.D.N.Y. 2014); Barrow v. Vanburen, 2014 U.S. Dist. LEXIS 181466 (N.D.N.Y. 2014); Barna v. Travis, 239 F.3d 169 (2d Cir. 2001). We recognize, however, that while an inmate has no vested right to parole release under the due process clause, there is a liberty interest which requires, as a matter of *procedural* due process, an opportunity to be heard, and a statement of the reasons for the denial of release. Therefore, in deciding whether to grant or deny parole, all the Board must do is: (1) afford the inmate an opportunity to be heard, and (2) if parole is denied, provide the reasons for the denial. Thurman v. Allard, 2004 U.S. Dist. LEXIS 18904 (S.D.N.Y. 2004); Blackett v. Thomas, 293 F.Supp.2d 317 (S.D.N.Y. 2003); Gittens v. Thomas, 2003 U.S. Dist. LEXIS 9087 (S.D.N.Y. 2003). Appellant received both of these constitutional protections and, therefore, any arguments alleging that the Board's decision was made in violation of the due process clause, and in contravention of a liberty interest arising from the due process clause, are without merit.

As to the sixth issue, in determining an inmate's suitability for possible release to community supervision, the Board must consider the institutional record of the inmate. See §259-i(2)(c)(A)(i); 9 N.Y.C.R.R. §8002.2(d)(1). One of the institutional records the Board must consider in making its determination as to the suitability of an inmate's possible release to community supervision is a risk and needs assessment designed to measure the inmate's rehabilitation. See Executive Law §259-c(4). In strict compliance with statutory and regulatory

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requirements, the Department of Corrections and Community Supervision promulgated Directive 8500 which provides comprehensive operating procedures governing the Correctional Offender Management Profiling for Alternative Sanctions instrument, commonly referred to as the COMPAS instrument, a research based clinical assessment instrument used to assist staff in assessing an inmate's risks and needs by gathering quality and consistent information to support decisions about supervision, treatment and other interventions. "By adopting the COMPAS risk assessment and utilizing it in considering an inmate's release, the Board has effectively complied with the minimal requirements of the amendments to the Executive Law." Matter of Steven Diaz v. New York State Bd. of Parole, 42 Misc. 3d 532 (Sup. Ct.; Cayuga Co. 2013).

The information contained in the COMPAS instrument is used to assist the Board of Parole in making its decision, but the quantified results contained in the COMPAS instrument are not alone determinative factors in the decision-making process. See Executive Law §§259-c(4), 259-i(2)(c)(A); Matter of Leung v. Evans, 120 A.D.3d (3d Dept. 2014), lv. denied 24 N.Y.3d 914 (2015); Matter of Rivera v. N.Y. State Div. of Parole, 119 A.D.3d 1107 (3d Dept. 2014); accord, Matter of Dawes v. Annucci, 122 A.D.3d 1059 (3d Dept. 2014). Moreover, uniformly low COMPAS scores and other evidence of an inmate's rehabilitation do not undermine the broader questions of public safety, public perceptions of the seriousness of a crime, and whether an inmate's release to parole would undermine respect for the law. Thus, the COMPAS instrument cannot mandate a particular result, and the Board determines the weight to be ascribed to the information contained therein. Matter of King v. Stanford, 137 A.D.3d 1396 (3d Dept. 2016).

The COMPAS instrument is used to develop the inmate's Offender Case Plan (formerly called the "Transitional Accountability Plan" or "TAP"), which is created for, and in cooperation with, an inmate by an Offender Rehabilitation Coordinator (ORC). The Case Plan serves to prioritize the inmate's needs and establish goals to address these needs, and further provides tasks designed to achieve these goals. Case Plans are reviewed with the inmate quarterly unless the inmate is more than four years from the earliest release date in which instance it is reviewed less frequently. A Case Plan was prepared for Appellant and made available to the Board at the time of the interview.

Appellant limits his remarks with respect to the COMPAS instrument to certain "Low" scores contained therein. However, he did score "High" for Prison Misconduct. He also scored "Probable" for Re-Entry Substance Abuse. Also, there are several more pages of narrative and scales contained in the COMPAS instrument that the Board also reviewed and considered in making its decision to deny parole release. The Board in deviating from the low COMPAS scores looked at all of these factors as well as all of the other records before it at the time of the interview, and of course considered what was discussed during the interview.

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As to Appellant’s disciplinary record, he has been issued over eighty (80) disciplinary tickets while incarcerated! Prison activities for which he received both Tier 2 and Tier 3 tickets include: creating disturbance (multiple); violating direct order (multiple); drug use (multiple); unhygienic act (multiple); alcohol/intoxication; harassment; violent conduct (multiple); tamper with electrical; assault on inmate; assault on staff; weapon (multiple); contraband; untidy.

As to issue seven, pursuant to the court’s holding in the Hawkins case, for those inmates who are serving a maximum sentence of life imprisonment for a crime committed prior to attaining the age of 18, “the Board must consider youth and its attendant circumstances in relationship to the commission of the crime at issue.” See, Hawkins v. New York State Dep’t of Corr. & Cmty. Supervision, 140 A.D.3d 34 (3d Dept. 2016), affirming in relevant part, 51 Misc. 3d 1218(A) (Sup. Ct., Sullivan Co., 2015). Specifically, in those instances, the Board shall consider: (i) the diminished culpability of youth; and (ii) the growth and maturity of the inmate since the time of commission of the offense. In the instant matter, the Board had before it at the time of the interview all information compiled by the Department of Corrections and Community Supervision, Appellant’s criminal record, and any family court record of Appellant. The transcript of the interview reveals that the Board discussed and considered Appellant’s age (17) at the time of commission of the Murder 2 offense which carried the Life sentence, his criminal history, his sentencing minutes, his pre-sentence investigation report, his living arrangement at the time of commission of the instant offense, his family life, his mother and that she was home on welfare, his siblings, his schooling, the neighborhood he lived in, that he made the choice to “hang out in the street” and be “with bad influence.”, his institutional programming, his disciplinary issues, his drug use in prison, [REDACTED] his current age, current family support, his GED, his release plans, and his assault on prison staff.

[REDACTED]

As to issue 8, the Board is required to consider an inmate’s prior criminal record, even if such includes youthful offender adjudications. See, e.g., Matter of Amen v. New York State Division of Parole, 100 A.D.3d 1230 (3d Dept. 2012); Matter of Murray v. Evans, 83 A.D.3d 1320 (3d Dept. 2011). The Board is also permitted to consider an inmate’s juvenile record and delinquency adjudications. Matter of Simmons v. Travis, 15 A.D.3d 896 (4<sup>th</sup> Dept. 2005); Matter of Waters v. New York State Division of Parole, 271 A.D.2d 779 (3d Dept. 2000); In re Carlton B., 268 A.D.2d 368 (1<sup>st</sup> Dept. 2000).

As to issue 9, Pursuant to both statutory and regulatory requirements, the Board must consider Appellant’s sentencing minutes when assessing an inmate’s suitability for possible

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release back into the community. See Executive Law §259-i(2)(c)(A); 9 N.Y.C.R.R. §8002.2(d)(7).

Finally, se note that there is a presumption of honesty and integrity that attaches to judges and administrative fact-finders. See People ex. rel. Johnson v. New York State Bd. of Parole, 180 A.D.2d 914 (3d Dept. 1992). The Board is presumed to have followed applicable statutory requirements and internal policies when making decisions regarding the suitability of an inmate's possible release to parole supervision. See Garner v. Jones, 529 U.S. 244 (2000). There is no evidence that the Board's decision was predetermined. See Matter of Hakim-Zaki v. New York State Div. of Parole, 29 A.D.3d 1190 (3d Dept. 2006); Matter of Guerin v. New York State Div. of Parole, 276 A.D.2d 899 (3d Dept. 2000).

**Recommendation:**

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