December 2020

# Administrative Appeal Decision - Morales, Julio (2019-02-27)

STATE OF NEW YORK – BOARD OF PAROLE

# *ADMINISTRATIVE APPEAL DECISION NOTICE*

**Name:** Morales, Julio **Facility:** Otisville CF

**NYSID:** [redacted] **Appeal Control No.:** 09-163-18 B

**DIN:** 93-A-2487

Appearances: Mary Zugibe Raleigh, Esq.
27 Crystal Farm Road
Warwick, New York 10990

Decision appealed: August 2018 decision denying discretionary release and imposing a hold of 18 months.

Board Member(s) who participated: **Crangle, Berliner**

Papers considered: Appellant's Brief received December 27, 2018

Appeals Unit Review: Statement of the Appeals Unit's Findings and Recommendation

Records 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 determine that the decision appealed is hereby:

_____ Commissioner — ✓ **Affirmed** ___ **Vacated, remanded for de novo interview** ___ **Modified to** _____

_____ Commissioner — ___ **Affirmed** ___ **Vacated, remanded for de novo interview** ___ **Modified to** _____

_____ Commissioner — ✓ **Affirmed** ___ **Vacated, remanded for de novo interview** ___ **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 GG.

Distribution: Appeals Unit – Appellant - Appellant's Counsel - Inst. Parole File - Central File
P-2002(B) (11/2018)

STATE OF NEW YORK – BOARD OF PAROLE

# ***APPEALS UNIT FINDINGS & RECOMMENDATION***

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Appellant was sentenced to 25 years to life upon his conviction of Murder in the second degree. In the instant appeal, Appellant challenges the August 2018 determination of the Board denying release and imposing a 18-month hold on the following grounds: (1) the decision is arbitrary and capricious because the Board relied on the instant offense and Appellant's criminal behavior (with brief mention of a past substance abuse problem) without properly reviewing all other factors such as his institutional record; (2) the Board failed to assess whether there was a reasonable probability that Appellant's release presented a danger to the community, or that he could live at liberty without violating the law; (3) the Board failed to consider the risk and needs assessment demonstrating Appellant should be paroled; and (4) the decision is conclusory and fails to adequately explain the reasons for denial. These arguments are without merit.

As an initial matter, discretionary release to parole is not to be granted "merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law, **and** that his release is not incompatible with the welfare of society **and** will not so deprecate the seriousness of his crime as to undermine respect for the law." Executive Law § 259-i(2)(c)(A) (emphasis added); accord Matter of Hamilton v. New York State Div. of Parole, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014). Executive Law § 259-i(2)(c)(A) requires the Board to consider criteria which is relevant to the specific inmate, including, but not limited to, the inmate's institutional record and criminal behavior. People ex rel. Herbert v. New York State Bd. of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881 (1st Dept. 1983).

While consideration of these factors is mandatory, "the ultimate decision to parole a prisoner is discretionary." Matter of Silmon v. Travis, 95 N.Y.2d 470, 477, 718 N.Y.S.2d 704, 708 (2000). Thus, it is well settled that the weight to be accorded the requisite factors is solely within the Board's discretion. See, e.g., Matter of Delacruz v. Annucci, 122 A.D.3d 1413, 997 N.Y.S.2d 872 (4th Dept. 2014); Matter of Hamilton, 119 A.D.3d at 1271, 990 N.Y.S.2d at 717; Matter of Garcia v. New York State Div. of Parole, 239 A.D.2d 235, 239, 657 N.Y.S.2d 415, 418 (1st Dept. 1997). The Board need not explicitly refer to each factor in its decision, nor give them equal weight. Matter of Betancourt v. Stanford, 148 A.D.3d 1497, 49 N.Y.S.3d 315 (3d Dept. 2017); Matter of LeGeros v. New York State Bd. of Parole, 139 A.D.3d 1068, 30 N.Y.S.3d 834 (2d Dept. 2016). In the absence of a convincing demonstration that the Board did not consider the statutory factors, it must be presumed that the Board fulfilled its duty. Matter of McLain v. New York State Div. of Parole, 204 A.D.2d 456, 611 N.Y.S.2d 629 (2d Dept. 1994); Matter of McKee v. New York State Bd. of Parole, 157 A.D.2d 944, 945, 550 N.Y.S.2d 204, 205 (3d Dept. 1990).

The record as a whole, including the interview transcript, reflects that the Board considered the appropriate factors, including: the instant offense – which occurred while Appellant was out to

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commit a robbery – involving the shooting death of the victim of another crime Appellant had been accused of committing; Appellant's expression of remorse; Appellant's criminal history; his history of alcohol/drug abuse; his institutional record including participation in [redacted] and AVP, church involvement and improved discipline; and [redacted] and work as a groundskeeper. The Board also had before it and considered, among other things, the sentencing minutes, an official D.A. statement, Appellant's case plan, the COMPAS instrument, and Appellant's personal statement, letters of support/assurance and apology letter.

After considering all required factors and principles, the Board acted within its discretion in determining release would not satisfy the standards provided for by Executive Law § 259-i(2)(c)(A). Specifically, the Board concluded release at this time would be incompatible with the welfare and safety of the community and so deprecate the serious nature of the crime as to undermine respect for the law. In reaching its conclusion, the Board permissibly relied on Appellant's prior unlawful behavior and the instant offense wherein he shot the victim – who was not verbally or physically threatening him – multiple times demonstrating no regard for human life. See, e.g., Matter of Partee v. Evans, 117 A.D.3d 1258, 1259, 984 N.Y.S.2d 894 (3d Dept.), lv. denied, 24 N.Y.3d 901, 995 N.Y.S.2d 710 (2014); Matter of Singh v. Evans, 118 A.D.3d 1209, 987 N.Y.S.2d 271 (3d Dept.), lv. denied, 24 N.Y.3d 906, 995 N.Y.S.2d 715 (2014); Matter of Scott v. Russi, 208 A.D.2d 931, 618 N.Y.S.2d 87 (2d. Dept. 1994). In its decision, the Board noted the elevated COMPAS score for reentry substance abuse and Appellant's admission to having a [redacted] when he was younger. See, e.g., Matter of Bush v. Annucci, 148 A.D.3d 1392, 50 N.Y.S.3d 180 (3d Dept. 2017); Matter of McLain v. New York State Div. of Parole, 204 A.D.2d 456, 611 N.Y.S.2d 629. The Board encouraged him to continue volunteer programs and outreach for reentry services to prepare himself in society.

Appellant objects to the Board's consideration of his substance abuse prior to incarceration. However, a history of substance abuse is a permissible consideration. See Matter of Gonzalvo v. Stanford, 153 A.D.3d 1021, 56 N.Y.S.3d 896 (3d Dept. 2017); Matter of Sanchez v. Dennison, 21 A.D.3d 1249, 801 N.Y.S.2d 423 (3d Dept. 2005); Matter of Brant v. New York State Bd. of Parole, 236 A.D.2d 760, 761, 654 N.Y.S.2d 207, 208 (3d Dept. 1997); Matter of McLain v. New York State Div. of Parole, 204 A.D.2d 456, 611 N.Y.S.2d 629. During the interview, the Board raised the elevated COMPAS score for reentry substance abuse and Appellant acknowledged using "a lot of drugs" in his youth and "almost his whole life", drinking for many years starting at age 9 with blackouts in his later years, and to being a recovering alcoholic. (Tr. at 9, 11-12.) That Appellant did not incur drug infractions, completed [redacted] and participates in [redacted] – which the Board considered – does not render the Board's consideration of his [redacted] and elevated COMPAS score irrational "bordering on impropriety." Matter of Silmon v. Travis, 95 N.Y.2d 470, 476, 718

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N.Y.S.2d 704 (quoting Matter of Russo v. New York State Bd. of Parole, 50 N.Y.2d 69, 427 N.Y.S.2d 982 (1980)).

And contrary to Appellant's claim, the Board's denial of parole release based on the second and third statutory standards complied with the Executive Law. A conclusion that an inmate fails to satisfy **any one** of the considerations set forth in Executive Law § 259-i(2)(c)(A) is an independent basis to deny parole. See, e.g., Matter of Silmon v. Travis, 95 N.Y.2d at 477, 718 N.Y.S.2d at 708; Matter of Robles v. Fischer, 117 A.D.3d 1558, 1559, 985 N.Y.S.2d 386 (4th Dept. 2014); Matter of Hamilton v. New York State Div. of Parole, 119 A.D.3d at 1273-74, 990 N.Y.S.2d at 719; Matter of Phillips v. Dennison, 41 A.D.3d 17, 21, 834 N.Y.S.2d 121, 124 (1st Dept. 2007).

Appellant's additional contention that the Board failed to consider the risk and needs assessment is belied by the record. The COMPAS instrument cannot mandate a particular result, and declining to afford COMPAS risk scores controlling weight does not constitute convincing evidence that the Board did not consider the COMPAS or render the decision irrational. See, e.g., Matter of Gonzalvo v. Stanford, 153 A.D.3d 1021, 56 N.Y.S.3d 896 (3d Dept. 2017); Matter of Lewis v. Stanford, 153 A.D.3d 1478, 59 N.Y.S.3d 726 (3d Dept. 2017); Matter of King v. Stanford, 137 A.D.3d 1396, 26 N.Y.S.3d 815 (3d Dept. 2016).

Finally, the Board's decision satisfied the criteria set out in Executive Law § 259-i(2)(a) and 9 N.Y.C.R.R. § 8002.3(d), as it was sufficiently detailed to inform the inmate of the reasons for the denial of parole. Matter of Applegate v. New York State Bd. of Parole, 164 A.D.3d 996, 997, 82 N.Y.S.3d 240 (3d Dept. 2018); Matter of Kozlowski v. New York State Bd. of Parole, 108 A.D.3d 435, 968 N.Y.S.2d 87 (1st Dept. 2013); Matter of Little v. Travis, 15 A.D.3d 698, 788 N.Y.S.2d 628 (3d Dept. 2005); Matter of Davis v. Travis, 292 A.D.2d 742, 739 N.Y.S.2d 300 (3d Dept. 2002). The Board addressed many of the factors and principles considered in individualized terms and explained those that ultimately weighed most heavily in its deliberations: namely, Appellant's criminal history and the instant offense, with consideration of his history of [redacted] and related elevated COMPAS score.

In conclusion, Appellant has failed to demonstrate the Board's decision was not made in accordance with the pertinent statutory requirements or was irrational "bordering on impropriety." Matter of Silmon v. Travis, 95 N.Y.2d at 476, 718 N.Y.S.2d 704 (quotation omitted).

**Recommendation:** Affirm.