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December 2020

### Administrative Appeal Decision - Bennett, Kenneth (2019-05-10)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Bennett, Kenneth Facility: Groveland CF  
NYSID: [REDACTED] Appeal Control No.: 11-082-18 B  
DIN: 93-B-0404

Appearances: Kenneth Bennett 93B0404  
Groveland Correctional Facility  
P.O. Box 50  
Sonyea, New York 14556

Decision appealed: October 2018 decision, denying discretionary release and imposing a hold of 24 months.

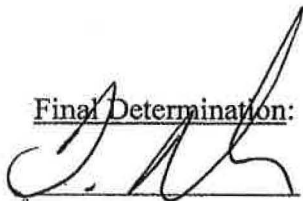
Board Member(s) who participated: Cruse, Alexander

Papers considered: Appellant’s Brief received March 11, 2019

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:

  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 \_\_\_\_\_

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 5/10/19 CC.

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Bennett, Kenneth

**DIN:** 93-B-0404

**Facility:** Groveland CF

**AC No.:** 11-082-18 B

**Findings:** (Page 1 of 2)

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Appellant challenges the October 2018 determination of the Board, denying release and imposing a 24-month hold. Appellant's instant offense involves him breaking into the home of an elderly couple, and killing them while burglarizing their residence. Appellant raises the following issues: 1) the decision is based upon erroneous information as he did great in both prior periods of prior parole supervision. 2) it isn't fair to penalize him in the Board decision for events he is unable to remember due to alcohol blackouts. 3) he didn't know he had to mention every illegal drug he ever used. 4) he doesn't have an anger issue as he has had no disciplinary infractions in prison.

Appellant committed the instant offense while on parole. [REDACTED], but rather had a friend forge his name on self report forms. So he never went to the therapy appointments. So, appellant's record while on parole was poor.

As for the alcohol blackouts, in the Pre-sentence Investigation Report the appellant does remember the details of the crimes that he claims he cannot now remember. Pursuant to Executive Law sections 259-i(2)(c)(A) and 259-k(1), the Board is required to obtain official reports and may rely on the information contained therein. See, e.g., Matter of Silmon v. Travis, 95 N.Y.2d 470, 474, 477, 718 N.Y.S.2d 704, 706, 708 (2000) (discussing former status report); Matter of Carter v. Evans, 81 A.D.3d 1031, 916 N.Y.S.2d 291 (3d Dept.) (presentence investigation report), lv. denied, 16 N.Y.3d 712, 923 N.Y.S.2d 416 (2011); see also Billiteri v. United States Bd. of Parole, 541 F.2d 938, 944-945 (2d Cir. 1976). To the extent appellant contends the Board relied on erroneous information in the pre-sentence report, this is not the proper forum to raise the issue. Any challenge to the pre-sentence report must be made to the original sentencing court. Matter of Delrosario v. Stanford, 140 A.D.3d 1515, 34 N.Y.S.3d 696 (3d Dept. 2016); Matter of Wisniewski v. Michalski, 114 A.D.3d 1188, 979 N.Y.S.2d 745 (4th Dept. 2014); Matter of Vigliotti v. State of New York, Executive Div. of Parole, 98 A.D.3d 789, 950 N.Y.S.2d 619 (3d Dept. 2012). The Board is mandated to consider the report and is entitled to rely on the information contained in the report. Executive Law § 259-i(2)(c)(A); 9 N.Y.C.R.R. § 8002.2(d)(7); Matter of Carter v. Evans, 81 A.D.3d 1031, 1031, 916 N.Y.S.2d 291, 293 (3d Dept.), lv. denied, 16 N.Y.3d 712, 923 N.Y.S.2d 416 (2011).

The Board denied release for many reasons, one of which was lack of insight. [REDACTED], is a part of this. Again, much of this information comes from the Pre-sentence Investigation Report.

Courts presume the Parole Board follows its statutory commands and internal policies in fulfilling its obligations. Garner v Jones, 529 U.S. 244, 120 S.Ct. 1362, 1371, 146 L.Ed2d 236 (2000).

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

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Since the Board's decision was sufficiently detailed to inform the inmate of the reasons for the denial of parole, it satisfied the criteria set out in section 259-i of the Executive Law. Siao-Pao v Dennison, 11 N.Y.3d 777, 866 N.Y.S.2d 602 (Ct. App. 2008); Matter of Whitehead v. Russi, 201 A.D.2d 825, 607 N.Y.S.2d 751 (3d Dept. 1993); Matter of Green v. New York State Division of Parole, 199 A.D.2d 677, 605 N.Y.S.2d 148 (3d Dept. 1993). In the absence of a convincing demonstration that the Board did not consider the statutory factors set out under Executive Law §259-i, it must be presumed that the Board fulfilled its duty. Jackson v Evans, 118 A.D.3d 701, 987 N.Y.S.2d 422 (2<sup>nd</sup> Dept. 2014); Tomches v Evans, 108 A.D.3d 724, 968 N.Y.S.2d 888 (3d Dept. 2013); Peo. ex rel. Herbert v. New York State Board of Parole, 97 A.D.2d 128, 133, 468 N.Y.S.2d 881 (1<sup>st</sup> Dept. 1983); People ex.rel. Haderxhanji v New York State Board of Parole, 97 A.D.2d 368, 467 N.Y.S.2d 38, 382, (1<sup>st</sup> Dept 1983); Garner v Jones, 529 U.S. 244, 120 S.Ct. 1362, 1371, 146 L.Ed.2d 236 (2000); McLean v New York State Division of Parole, 204 A.D.2d 456, 611 N.Y.S.2d 629 (2d Dept 1994); Zane v Travis, 231 A.D.2d 848, 647 N.Y.S.2d 886, 887 (4<sup>th</sup> Dept 1996). There is no merit to the inmate's contention that the parole interview was improperly conducted or that he was denied a fair interview. Black v New York State Board of Parole, 54 A.D.3d 1076, 863 N.Y.S.2d 521 (3d Dept. 2008); Rivers v Evans, 119 A.D.3d 1188, 989 N.Y.S.2d 400 (3d Dept. 2014); Mays v Stanford, 150 A.D.3d 1521, 55 N.Y.S.3d 502 (3d Dept. 2017).

**Recommendation:** Affirm.