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Administrative Appeal Decision - Day, Kevin (2019-10-21)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Day, Kevin

Facility: Attica CF

NYSID: [REDACTED]

Appeal Control No.: 07-006-19 B

DIN: 87-B-1354

Appearances: Norman P. Effman
Wyoming County Attica Legal Aid Bureau
18 Linwood Avenue
Warsaw, NY 14569

Decision appealed: June 2019 decision, denying discretionary release and imposing a hold of 12 months.

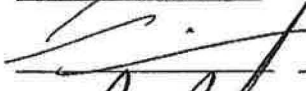
Board Member(s) who participated: Alexander, Coppola

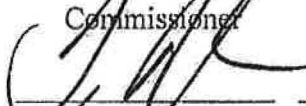
Papers considered: Appellant's Brief received August 16, 2019


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 10/21/19.
LB

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Day, Kevin

DIN: 87-B-1354

Facility: Attica CF

AC No.: 07-006-19 B

Findings: (Page 1 of 1)

Appellant challenges the June 2019 determination of the Board, denying release and imposing a 12-month hold. Appellant's instant offenses included robbery and attacking a woman with a broken bottle and cutting her before removing her clothes and attempting to rape her. Appellant raises the following issues: (1) the Board failed to consider Appellant's sentencing minutes; (2) the Board failed to consider Appellant's Transitional Accountability Plan (TAP); (3) the Board failed to consider Appellant's risk assessment; and (4) the Board's decision was arbitrary and capricious, and irrational bordering on impropriety.

A review by the Appeals Unit reveals that the Board failed to adequately consider the Transitional Accountability Plan (TAP) and risk assessment. 9 NYCRR §§ 8002.2(a), 8002.2(b). The interview contains no discussion of either the case plan or the COMPAS instrument. As such, a *de novo* interview is appropriate.

Recommendation: Vacate and remand for *de novo* interview.