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Administrative Appeal Decision - Jasper, Lawrence (2018-12-28)

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STATE OF NEW YORK – BOARD OF PAROLE

Administrative Appeal Decision Notice

Inmate Name: JASPER, LAWRENCE

Facility: Released

NYSID No [REDACTED]

Appeal Control #: 09-070-18 R

Dept. DIN#: 14R0028

Appearances:

For the Board, the Appeals Unit

For Appellant:

Lawrence Jasper (14R0028)
DHS-BELLEVUE 30TH ASSESSMENT
400 E 30th Street
New York, New York 10016-8310

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

Decision appealed from: 8/2018 Revocation of Parole; 8-month hold.

Pleadings considered:


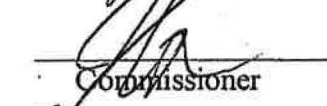

Brief on behalf of the Appellant submitted on: October 1, 2018.

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	<input type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed for De Novo Hearing	<input type="checkbox"/> Reversed - Violation Vacated
	<input type="checkbox"/> Vacated for De Novo Review of Time Assessment Only		<input type="checkbox"/> Modified to _____
 _____ Commissioner	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed for De Novo Hearing	<input type="checkbox"/> Reversed - Violation Vacated
	<input type="checkbox"/> Vacated for De Novo Review of Time Assessment Only		<input type="checkbox"/> Modified to _____
 _____ Commissioner	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed for De Novo Hearing	<input type="checkbox"/> Reversed - Violation Vacated
	<input type="checkbox"/> Vacated for De Novo Review of Time Assessment Only		<input type="checkbox"/> 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: JASPER, LAWRENCE
Dept. DIN#: 14R0028

Facility: Released
Appeal Control #: 09-070-18 R

Findings:

Appellant has filed an administrative appeal challenging a decision made by the Administrative Law Judge (hereinafter "ALJ") to revoke Appellant's parole and impose a 8-month time assessment. The Appeals Unit has reviewed each of the issues raised by Appellant, and finds that the issues have no merit.

Appellant was represented by counsel at the final revocation hearing. In addition, Appellant preserved no issues on the record at that time. He now raises the following issues in his brief: (1) the evidence at the final revocation hearing was insufficient to sustain the Charge he entered a plea of guilty to; (2) his delinquency date is incorrect; and (3) the time assessment should be changed.

9 N.Y.C.R.R. §8006.3(b) provides in part that "questions may be raised from a parole rescission or a final revocation determination, subject to the limitation that evidentiary or procedural challenges will be considered only if a timely objection was made at the hearing..." Appellant failed to make a timely objection at the final revocation hearing with respect to any issues. 9 N.Y.C.R.R. §8006.3(b). Therefore, all issues have been waived as there were no objections raised by Appellant at the final revocation hearing. 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, we note that 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).

Appellant is a Category 3 parole violator. Pursuant to the provisions of 9 N.Y.C.R.R. §8005.20(c)(3)(ii), the time assessment shall be calculated as follows: time served in custody on the parole violation warrant (in this case 5 months) plus three months (for a total of 8 months in this case). The time assessment imposed by the ALJ was, therefore, proper.

Recommendation:

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