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Administrative Appeal Decision - Vega, Luis (2019-03-22)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Vega, Luis Facility: Washington CF
NYSID: [REDACTED] Appeal Control No.: 10-103-18 B
DIN: 98-A-6392

Appearances: Luis Vega (98A6392)
Washington Correctional Facility
72 Lock Eleven Lane, Box 180
Comstock, New York 12821

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

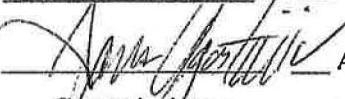
Board Member(s) who participated: Alexander, Drake.

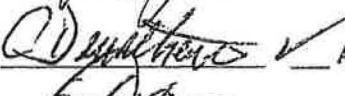
Papers considered: Appellant’s Brief received January 16, 2019

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 3/22/19 GC.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Vega, Luis

DIN: 98-A-6392

Facility: Washington CF

AC No.: 10-103-18 B

Findings: (Page 1 of 2)

Appellant challenges the September 2018 determination of the Board, denying release and imposing a 18-month hold.

Appellant raises the following issues in his brief: (1) the Board’s decision was irrational, bordering on impropriety, made in violation of applicable legal authority, and relied too heavily upon the serious nature of Appellant’s instant offense; and (2) Appellant’s positive accomplishments, insight, remorse, certain COMPAS scores, release plans and other factors were not provided sufficient weight.

As to the first and second issues, 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). “Although these standards are no longer repeated in the [Board’s] regulation, this in no way modifies the statutory mandate requiring their application.” Notice of Adoption, NY Reg, Sept. 27, 2017 at 2. 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 470, 477, 718 N.Y.S.2d 704, 708 (2000); 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 1268; Matter of Phillips v. Dennison, 41 A.D.3d 17, 21, 834 N.Y.S.2d 121, 124 (1st Dept. 2007).

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. 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; 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); Matter of Phillips v. Dennison, 41 A.D.3d 17. 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 Fuchino v. Herbert, 255 A.D.2d 914,

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914, 680 N.Y.S.2d 389, 390 (4th Dept. 1998); 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); People ex rel. Herbert, 97 A.D.2d 128.

Insight and remorse are relevant not only to rehabilitative progress but also to whether release would deprecate the severity of the offense. Matter of Phillips v. Dennison, 41 A.D.3d 17, 23, 834 N.Y.S.2d 121, 125 (1st Dept. 2007). Inasmuch as Appellant disputes the Board's finding with respect to insight and remorse, it was well within the Board's authority to make an assessment of Appellant's credibility (Matter of Siao-Pao v. Dennison, 51 A.D.3d 105, 108, 854 N.Y.S.2d 348, 351 (1st Dept.), aff'd, 11 N.Y.3d 777, 866 N.Y.S.2d 602 (2008)). Also, the Board is permitted to conclude that the serious nature of the inmate's offense, as well as limited insight and/or remorse, outweigh other factors. See, e.g., Matter of Silmon v. Travis, 95 N.Y.2d 470, 478, 718 N.Y.S.2d 704 (2000), aff'g 266 A.D.2d 296, 297, 698 N.Y.S.2d 685, 686 (2d Dept. 1999); Matter of Beodeker v. Stanford, 164 A.D.3d 1555, 82 N.Y.S.3d 669 (3d Dept. 2018); Matter of Crawford v. New York State Bd. of Parole, 144 A.D.3d 1308, 46 N.Y.S.3d 228 (3d Dept. 2016), lv. denied, 29 N.Y.3d 901, 57 N.Y.S.3d 704 (2017); Matter of Almeyda v. New York State Div. of Parole, 290 A.D.2d 505, 736 N.Y.S.2d 275 (2d Dept. 2002); Matter of Serrano v. N.Y. State Exec. Dep't-Div. of Parole, 261 A.D.2d 163, 164, 689 N.Y.S.2d 504, 505 (1st Dept. 1999).

Recommendation: Affirm.