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Administrative Appeal Decision - Willis, Mandie (2019-06-06)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Willis, Mandie

Facility: Bedford Hills CF

NYSID [REDACTED]

Appeal Control No.: 03-169-19 R

DIN: 17-G-0768

Appearances: Mandie Willis 17G0768
Bedford Hills Correctional Facility
P.O. Box 1000
Bedford Hills, New York 10507

Decision appealed: February 27, 2019 revocation of release and imposition of a time assessment of 7 months.

Final Revocation Hearing Date: February 27, 2019

Papers considered: Appellant's Letter-brief received March 21, 2019

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

Records relied upon: Notice of Violation, Violation of Release Report, Final Hearing Transcript, Parole Revocation Decision Notice

Final Determination: The undersigned determine that the decision appealed is hereby:

W. Williams

Commissioner

Affirmed Reversed, remanded for de novo hearing Reversed, violation vacated
 Vacated for de novo review of time assessment only Modified to _____

[Signature]

Commissioner

Affirmed Reversed, remanded for de novo hearing Reversed, violation vacated
 Vacated for de novo review of time assessment only Modified to _____

[Signature]

Commissioner

Affirmed Reversed, remanded for de novo hearing Reversed, violation vacated
 Vacated for de novo review of time assessment only 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 6/6/19 66.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Willis, Mandie **DIN:** 17-G-0768
Facility: Bedford Hills CF **AC No.:** 03-169-19 R

Findings: (Page 1 of 2)

Appellant challenges the February 27, 2019 determination of the administrative law judge (“ALJ”), revoking release and imposing a 7-month time assessment. Appellant is on parole for stealing items from stores and from the customers in the stores. The current sustained parole violation, which appellant pled guilty to and does not dispute on this appeal, [REDACTED] Appellant raises the following issues on appeal: 1) she was denied her right to counsel. 2) the time assessment imposed is harsh and excessive, and she should instead be sent to a rehabilitation program instead of prison.

Appellant’s parole was revoked at the hearing upon her unconditional plea of guilty. Given her failure to object and plea of guilty, all issues are now waived and/or moot and are not preserved for judicial review. Stanbridge v Hammock, 55 N.Y.2d 661, 663, 446 N.Y.S.2d 929 (1981); Herman v Blum, 54 N.Y.2d 677, 678, 442 N.Y.S.2d 510 (1981); Wescott v New York State Board of Parole, 256 A.D.2d 1179, 682 N.Y.S.2d 499 (4th Dept 1998); Kirk v Hammock, 119 A.D.2d 851, 500 N.Y.S.2d 424, 426 (3d Dept 1986); Chavis v Superintendent, 236 A.D.2d 892, 653 N.Y.S.2d 752 (4th Dept 1997).

As is explained in detail in the transcript, appellant had been sitting in the Broome County jail for three months on Cortland County parole charges, and was still waiting for an attorney to appear. This was a problem for all Cortland County parolees. So the ALJ stated he would make a much lower plea offer than normal for appellant due to this problem. Appellant understood and knowingly waived her right to an attorney.

The ALJ may impose a time assessment instead of providing rehabilitative treatment. Robinson v Travis, 295 A.D.2d 719, 743 N.Y.S.2d 330 (3d Dept 2002). A short time on parole before the violation also may be used. See Matter of Wilson v. Evans, 104 A.D.3d 1190, 1191, 960 N.Y.S.2d 807, 809 (4th Dept. 2013) (finding no impropriety in 30 month time assessment where releasee violated by consuming alcohol two days after release); Matter of Davidson v. N.Y. State Div. of Parole, 34 A.D.3d 998, 999, 824 N.Y.S.2d 466, 467 (3d Dept. 2006) (hold to ME was not excessive given violent attack and that it occurred less than four months after release), lv. denied, 8 N.Y.3d 803, 830 N.Y.S.2d 699 (2007); Matter of Drayton v. Travis, 5 A.D.3d 891, 892, 772 N.Y.S.2d 886 (3d Dept. 2004) (“ALJ properly considered petitioner’s short time on parole” in imposing 40 month time assessment for traveling outside city without permission and failing to report to parole officer following release for prior curfew violations). It is presumed the Administrative Law Judge considered all of the relevant factors. Ramirez v New York State Board of Parole, 214 A.D.2d 441, 625 N.Y.S.2d 505 (1st Dept 1995). The time assessment imposed is clearly permissible. Otero v New York State Board of Parole, 266 A.D.2d 771, 698 N.Y.S.2d 781 (3d Dept 1999), leave to appeal denied 95 N.Y.2d 758, 713 N.Y.S.2d 2 (2000); Carney v New York State Board of Parole, 244 A.D.2d 746, 665 N.Y.S.2d 687 (3d Dept

