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Administrative Appeal Decision - Peters, Matthew (2018-12-28)

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Administrative Appeal Decision Notice

Inmate Name: Peters, Matthew

Facility: Greene Correctional Facility.

NYSID No.: [REDACTED]

Appeal Control #: 07-005-18-R

Dept. DIN#: 12R1681

Appearances:

For the Board, the Appeals Unit

For Appellant: Matthew Peters 12R1681
Greene Correctional Facility
P.O. Box 975
Coxsackie, New York 12051

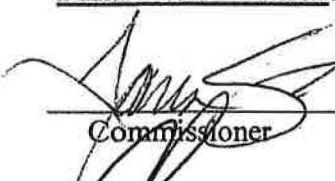

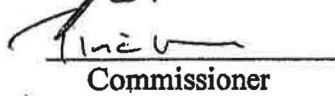
Board Member(s) who participated in appealed from decision: NONE

Decision appealed from: 6/2018-Revocation of release, with imposition of 20 month time assessment.

Pleadings considered: Letter (with attachments) on behalf of the pro se appellant received on October 2, 2018.
Statement of the Appeals Unit's Findings and Recommendation

Documents relied upon: Notice of Violation, Violation of Release Report, Final 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 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 _____
 _____ 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: Peters, Matthew

Facility: Greene Correctional Facility

Dept. DIN#: 12R1681

Appeal Control #: 07-005-18-R

Findings:

The now pro se appellant has submitted a letter (with attachments) to serve as the perfected appeal. The letter raises only one issue. Appellant claims the time assessment imposed is harsh and excessive.

In response, 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); Garner v Jones, 529 U.S. 244, 120 S.Ct. 1362, 1371, 146 L.Ed.2d 236 (2000). The time assessment imposed is clearly permissible, especially in light of the fact that one of the underlying criminal offenses is for a sex offense. Since some elements of his sustained parole violation are similar to the instant underlying criminal offenses as well, then per caselaw, the Board's decision is 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 1997); Issac v. New York State Division of Parole, 222 A.D.2d 913, 635 N.Y.S.2d 756 (3d Dept. 1995); Barner v Alexander, 55 A.D.3d 1182, 865 N.Y.S.2d 783 (3d Dept. 2008); Murchison v New York State Division of Parole, 91 A.D.3d 1005, 935 N.Y.S.2d 741 (3d Dept. 2012); Carney v New York State Division of Parole, 244 A.D.2d 746, 665 N.Y.S.2d 687 (3d Dept. 1997).

Three years' incarceration is permissible. Bush v. New York State Board of Parole, 223 A.D.2d 806, 636 N.Y.S.2d 158 (3d Dept 1995); Riley v Alexander, 139 A.D.3d 1206, 31 N.Y.S.3d 318 (3d Dept. 2016); Washington v Annucci, 144 A.D.3d 1541, 41 N.Y.S.3d 808 (4th Dept. 2016). A hold of 42 months is not unduly harsh and severe. Horace v Annucci, 133 A.D.3d 1263, 20 N.Y.S.3d 492 (4th Dept. 2015). A hold to ME of 53 months is permissible. Rago v Alexander, 60 A.D.3d 1123, 874 N.Y.S.2d 605 (3d Dept. 2009).

Recommendation:

Accordingly, it is recommended the decision of the Administrative Law Judge be affirmed.