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Administrative Appeal Decision - Coe, Michael (2019-03-22)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Coe, Michael

Facility: Attica CF

NYSID: [REDACTED]

Appeal Control No.: 08-010-18 B

DIN: 09-B-3934

Appearances: James Godemann, Esq.
Oneida County Public Defender
250 Boehlert Center at Union Station
Utica, NY 13501

Decision appealed: July 2018 decision, denying discretionary release and imposing a hold of 12 months.

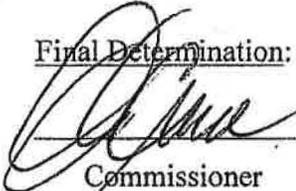
Board Member(s) who participated: Agostini, Drake

Papers considered: Appellant's Brief received November 27, 2018

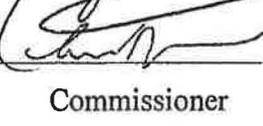
Appeals Unit Review: Statement of the Appeals Unit's Findings and Recommendation

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 66.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

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Findings: (Page 1 of 2)

Appellant challenges the July 2018 determination of the Board, denying release and imposing a 12-month hold. Appellant contends that the Board placed undue emphasis on the severity of his crimes of conviction, criminal history and previous failures at rehabilitation and failed to sufficiently consider his institutional successes, disciplinary record, release plans and expressions of remorse. Appellant further argues the Board’s decision failed to sufficiently explain its reasons for denial. Appellant’s contentions are unavailing.

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). Executive Law § 259-i(2)(c)(A) requires the Board to consider criteria which are 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, 718 N.Y.S.2d 704, 708 (2000). 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, 990 N.Y.S.2d at 717; 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, 21, 834 N.Y.S.2d 121, 124 (1st Dept. 2007).

In the matter at hand, the record reflects that during the interview the Board discussed appellant’s offenses—including conspiracy in the second degree for soliciting others to commit murder and attempted burglary in the third degree for entering his cousin’s home and stealing cash and jewelry—along with his prior criminal activity, program participation, employment history and prospects, release plans and family support, mental health treatment and the mixed results of his COMPAS risk and needs assessment. The interview also included significant discussion of appellant’s substance abuse issues, which he believed to be the source of his criminal behavior, the treatment he has received in that regard, the importance of sobriety to his continued rehabilitation. Although appellant claims his disciplinary history would support release, the Board

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noted the recent ticket for suboxone possession was disappointing. In light of appellant's view that his problems with alcohol and heroin were responsible for his criminal activity, recent possession of narcotic substances is particularly relevant.

Thus, the record does not reflect that the Board placed more emphasis on the offense and criminal history than other factors. However, even assuming this were so, the weight to be assigned each statutory factor is within the Board's discretion, and it would have committed no error by emphasizing the severity of the inmate's offense over the other factors it properly considered. See Matter of Robinson v. New York State Bd. of Parole, 162 A.D.3d 1450, 81 N.Y.S.3d 235 (3d Dept. 2018); Matter of Kirkpatrick v. Travis, 5 A.D.3d 385, 772 N.Y.S.2d 540 (2d Dept. 2004); Matter of Walker v. Travis, 252 A.D.2d 360, 676 N.Y.S.2d 52 (1st Dept. 1998).

Nor is the Board's written decision insufficiently detailed as it explains that although appellant has made progress while in custody, his recurring substance abuse issues and inadequately documented release plan led the panel to conclude that release would be incompatible with the welfare of society. Thus, the Board's decision satisfied the criteria set out in Executive Law § 259-i(2)(a), as it was sufficiently detailed to inform the inmate of the reasons for the denial of parole, particularly when read alongside the interview transcript. Matter of Siao-Pao v. Dennison, 11 N.Y.3d 777, 778, 866 N.Y.S.2d 602 (2008); Matter of Applegate v. New York State Bd. of Parole, 164 A.D.3d 996, 997, 82 N.Y.S.3d 240 (3d Dept. 2018); Matter of Kozlowski v. New York State Bd. of Parole, 108 A.D.3d 435, 968 N.Y.S.2d 87 (1st Dept. 2013)

Thus, appellant's contentions are without merit; the record reflects that appellant's interview was conducted according to law and the Board's determination was rational.

Recommendation: Affirm.