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Administrative Appeal Decision - Harris, Michael (2019-06-06)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Harris, Michael

Facility: Wyoming CF

NYSID [REDACTED]

Appeal Control No.: 11-161-18 R

DIN: 17-B-2816

Appearances: Michael Harris (17B2816)
Wyoming Correctional Facility
3203 Dunbar Road, Box 501
Attica, New York 14011-0501

Decision appealed: October 31, 2018 revocation of release and imposition of a time assessment of 12 months.


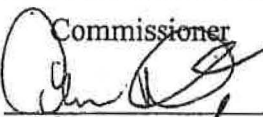

Final Revocation Hearing Date: October 31, 2018

Papers considered: Appellant's Brief received March 19, 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:

	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed, remanded for de novo hearing	<input type="checkbox"/> Reversed, violation vacated
Commissioner	<input type="checkbox"/> Vacated for de novo review of time assessment only	<input type="checkbox"/> Modified to _____	
	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed, remanded for de novo hearing	<input type="checkbox"/> Reversed, violation vacated
Commissioner	<input type="checkbox"/> Vacated for de novo review of time assessment only	<input type="checkbox"/> Modified to _____	
	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed, remanded for de novo hearing	<input type="checkbox"/> Reversed, violation vacated
Commissioner	<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 6/16/19 66.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Harris, Michael **DIN:** 17-B-2816
Facility: Wyoming CF **AC No.:** 11-161-18 R

Findings: (Page 1 of 2)

Appellant challenges the October 31, 2018 determination of the administrative law judge (“ALJ”), revoking release and imposing a 12-month time assessment. Appellant was represented by an attorney at the final revocation hearing.

Appellant is serving an indeterminate term of imprisonment of 1 to 3 years after having been convicted of the serious crime of Failing to Register as a Sex Offender 2nd Offense. Appellant was charged with eight separate parole violations alleging unlawful cocaine, methamphetamine and marijuana use on various occasions, [REDACTED]. Appellant entered a plea of guilty to one of the charges that he violated his conditions of parole release by using cocaine without proper medical authorization.

In his brief, Appellant raises the issue that the ALJ’s decision was arbitrary and capricious because he should have been restored to parole [REDACTED]

Appellant’s parole was revoked at the hearing upon his unconditional plea of guilty. Appellant was represented by counsel at the final hearing, and the Administrative Law Judge explained the substance of the plea agreement. The guilty plea was entered into knowingly, intelligently and voluntarily, and is therefore valid. *Matter of Steele v. New York State Div. of Parole*, 123 A.D.3d 1170, 998 N.Y.S.2d 244 (3d Dept. 2014); *Matter of James v. Chairman of N.Y. State Bd. of Parole*, 106 A.D.3d 1300, 965 N.Y.S.2d 235 (3d Dept. 2013); *Matter of Ramos v. New York State Div. of Parole*, 300 A.D.2d 852, 853, 752 N.Y.S.2d 159 (3d Dept. 2002). Consequently, his guilty plea forecloses this challenge. See *Matter of Steele*, 123 A.D.3d 1170, 998 N.Y.S.2d 244; *Matter of Gonzalez v. Artus*, 107 A.D.3d 1568, 1569, 966 N.Y.S.2d 710, 711 (4th Dept. 2013).

In addition, Appellant did not preserve any of the issues he now raises in his brief, and they have therefore been waived. See 9 N.Y.C.R.R. §8006.3(b); *Matter of Worrell v. Stanford*, 153 A.D.3d 1510, 59 N.Y.S.3d 922 (3d Dept. 2017); *Matter of Bowes v. Dennison*, 20 A.D.3d 845, 800 N.Y.S.2d 459 (3d Dept. 2005); *Matter of Currie v. New York State Board of Parole*, 298 A.D.2d 805, 748 N.Y.S.2d 712 (3d Dept. 2002).

Appellant is a Category 1 violator and, therefore, the ALJ must impose a minimum time assessment of 15 months, or a hold to the maximum expiration date of Appellant’s sentence, whichever is less. The ALJ may in certain cases reduce the minimum 15-month time assessment by up to three months, but this was not part of the stipulated settlement made on the record at the final revocation hearing. See 9 N.Y.C.R.R. §8005.20(c)(1). The 12-month time assessment imposed by the ALJ at the final revocation hearing was agreed to on the record by both Appellant and his attorney without objection, and was not excessive as the Executive Law does not place an

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Harris, Michael

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Findings: (Page 2 of 2)

outer limit on the length of the time assessment that may be imposed. Matter of Washington v. Annucci, 144 A.D.3d 1541, 41 N.Y.S.3d 808 (4th Dept. 2016); Matter of Wilson v. Evans, 104 A.D.3d 1190, 1191, 960 N.Y.S.2d 807, 809 (4th Dept. 2013); Murchison v. New York State Div. of Parole, 91 A.D.3d 1005, 1005, 935 N.Y.S.2d 741, 742 (3d Dept. 2012).

Recommendation: Affirm.