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Administrative Appeal Decision - Simmons, Morris (2019-02-27)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Simmons, Morris

Facility: Lincoln CF

NYSID: [REDACTED]

Appeal Control No.: 08-194-18 R

DIN: 14-B-1405

Appearances: Ann E. Connor, Esq.
Livingston Co. Public Defender
6 Court St., Room 109
Geneseo, New York 14454

Decision appealed: August 8, 2018 revocation of release and imposition of a time assessment of 18-months.

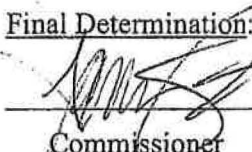
Final Revocation Hearing Date: August 8, 2018


Papers considered: Appellant's Brief received December 12, 2018


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:

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

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

 Affirmed Reversed, remanded for de novo hearing Reversed, violation vacated
Commissioner 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 2/27/19 GG.

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Simmons, Morris **DIN:** 14-B-1405
Facility: Lincoln CF **AC No.:** 08-194-18 R

Findings: (Page 1 of 1)

Appellant challenges the August 8, 2018 determination of the administrative law judge (“ALJ”), revoking release and imposing a 18-month time assessment.

Appellant raises the following issues in his brief: (1) the ALJ’s decision was arbitrary and capricious and made in violation of applicable laws; and (2) the 18-month hold was excessive.

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 18-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 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.