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STATE OF NEW YORK- BOARD OF PAROLE

Administrative Appeal Decision Notice

Inmate Name: White, Norris

Facility: Bare Hill Correctional Facility

NYSID No. [REDACTED]

Appeal Control #: 08-197-18-B

Dept. DIN#: 17R0512

Appearances:

For the Board, the Appeals Unit

For Appellant:

Norris White 17R0512
Bare Hill Correctional Facility
Caller Box 20
181 Brand Road
Malone, New York 12953

Board Member(s) who participated in appealed from decision: **Coppola, Davis, Smith**

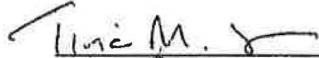
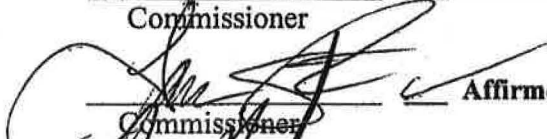
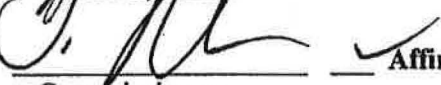
Decision appealed from: 8/2018-Denial of discretionary release, with imposition of 15 month hold.

Pleadings considered: Statements on behalf of the pro se appellant received on August 31, 2018 and October 2, 2018.

Statement of the Appeals Unit's Findings and Recommendation

Documents relied upon: Presentence Investigation Report, Parole Board Report, Interview Transcript, Parole Board Release Decision (Form 9026), COMPAS, TAP/Case Plan.

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 Interview	<input type="checkbox"/> Modified to _____
 _____ Commissioner	<input type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed for De Novo Interview	<input type="checkbox"/> Modified to _____
 _____ Commissioner	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed for De Novo Interview	<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(B) (5/2011)

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: White, Norris

Facility: Bare Hill Correctional Facility

Dept. DIN#: 17R0512

Appeal Control #: 08-197-18-B

Findings:

The pro se appellant has submitted two statements to serve as the perfected appeal. Together they raise three primary issues: 1) the Board decision is arbitrary and capricious in that appellant's institutional record is much better than it looks on paper; 2) the COMPAS has errors on it; 3) the 15 month hold is excessive.

Appellant's first claim is the decision is arbitrary and capricious in that his institutional record is overall much better than it appears from merely looking superficially at the documents in his file. Rather, a detailed review with an explanation reveals he should have been granted release.

In response, pursuant to Executive Law §259-i(2)(c), the Parole Board must consider criteria which is relevant to the specific inmate, including, but not limited to, the inmate's institutional record or criminal behavior, giving whatever emphasis they so choose to each factor. In re Garcia v. New York State Division of Parole, 239 A.D.2d 235, 657 N.Y.S.2d 415 (1st Dept. 1997); People ex rel. Herbert v. New York State Board of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881 (1st Dept. 1983). The Board is not required to give equal weight to each statutory factor. Arena v New York State Department of Corrections and Community Supervision, 156 A.D.3d 1101, 65 N.Y.S.3d 471 (3d Dept. 2017); Mays v Stanford, 150 A.D.3d 1521, 55 N.Y.S.3d 502 (3d Dept. 2017); Marszalek v Stanford, 152 A.D.3d 773, 59 N.Y.S.3d 432 (2d Dept. 2017); Paniagua v Stanford, 153 A.D.3d 1018, 56 N.Y.S.3d 894 (3d Dept. 2017); Esquilin v New York State Board of Parole, 144 A.D.3d 846, 40 N.Y.S.3d 279 (2nd Dept. 2016); Kenefick v Sticht, 139 A.D.3d 1380, 31 N.Y.S.3d 367 (4th Dept. 2016); LeGeros v New York State Board of Parole, 139 A.D.3d 1068, 30 N.Y.S.3d 834 (2d Dept. 2016); De la Cruz v Annucci, 122 A.D.3d 1413, 997 N.Y.S.2d 872 (4th Dept. 2014); Phillips v Dennison, 41 A.D.3d 17, 834 N.Y.S.2d 121 (1st Dept. 2007); That an inmate has numerous achievements within a prison's institutional setting does not automatically entitle him to parole release. Matter of Faison v. Travis, 260 A.D.2d 866, 688 N.Y.S.2d 782 (3d Dept. 1999); Pulliam v Dennison, 38 A.D.3d 963, 832 N.Y.S.2d 304 (3d Dept. 2007). Moreover, per Executive Law §259-i(2)(c), an application for parole release shall not be granted merely as a reward for appellant's good conduct or achievements while incarcerated. Larrier v New York State Board of Parole Appeals Unit, 283 A.D.2d 700, 723 N.Y.S.2d 902, 903 (3d Dept 2001); Vasquez v State of New York Executive Department, Division of Parole, 20 A.D.3d 668, 797 N.Y.S.2d 655 (3d Dept. 2005); Wellman v Dennison, 23 A.D.3d 974, 805 N.Y.S.2d 159 (3d Dept. 2005).

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

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Findings: (continued from page 1)

The Board may place particular emphasis upon the nature of the offense. Mullins v New York State Board of Parole, 136 A.D.3d 1141, 25 N.Y.S.3d 698 (3d Dept. 2016). The Board in its discretion properly placed greater emphasis on the present offenses, as it is not required to give equal weight to all requisite factors. Wiley v State of New York Department of Corrections and Community Supervision, 139 A.D.3d 1289, 32 N.Y.S.3d 370 (3d Dept. 2016); Peralta v New York State Board of Parole, 157 A.D.3d 1151, 69 N.Y.S.3d 885 (3d Dept. 2018).

Appellant's release plans are deficient. Executive Law 259-i(c)(1) clearly confers discretion upon the parole board as to whether and, if release is granted, when to release an inmate. Hodge v Griffin, 2014 WL 2453333(S.D.N.Y. 2014).

Denial of parole due to a need to take more rehabilitative programming is appropriate. Warburton v Department of Correctional Services, 254 A.D.2d 659, 680 N.Y.S.2d 26 (3d Dept 1998), appeal dismissed, leave to appeal denied 92 N.Y.2d 1041, 685 N.Y.S.2d 416 (1999); People ex rel. Justice v Russi, 226 A.D.2d 821, 641 N.Y.S.2d 143, 144 (3d Dept 1996); Odom v Henderson, 57 A.D.2d 710, 395 N.Y.S.2d 533 (4th Dept 1977); Connelly v New York State Division of Parole, 286 A.D.2d 792, 729 N.Y.S.2d 808, 809 (3d Dept 2001), appeal dismissed 97 N.Y.2d 677, 738 N.Y.S.2d 291 (2001).

Appellant's COMPAS had many poor scores. The COMPAS can contain negative factors that support the Board's conclusion. Wade v Stanford, 148 A.D.3d 1487, 52 N.Y.S.3d 508 (3d Dept. 2017).

Denial of parole is neither arbitrary nor capricious when the Parole Board relied on the factors defined by the New York statute. Hodge v Griffin, 2014 WL 2453333(S.D.N.Y. 2014) citing Romer v Travis, 2003 WL 21744079. An arbitrary action is one without sound basis in reason and without regard to the facts. Rationality is what is reviewed under an arbitrary and capricious standard. Hamilton v New York State Division of Parole, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014). An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts. Ward v City of Long Beach, 20 N.Y.3d 1042 (2013).

STATE OF NEW YORK - BOARD OF PAROLE

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Findings: (continued from page 2)

Since the Board's decision was sufficiently detailed to inform the inmate of the reasons for the denial of parole, it satisfied the criteria set out in section 259-i of the Executive Law. Siao-Pao v Dennison, 11 N.Y.3d 777, 866 N.Y.S.2d 602 (Ct. App. 2008); Matter of Whitehead v. Russi, 201 A.D.2d 825, 607 N.Y.S.2d 751 (3d Dept. 1993); Matter of Green v. New York State Division of Parole, 199 A.D.2d 677, 605 N.Y.S.2d 148 (3d Dept. 1993). Moreover, the reasons stated by the Parole Board members for holding appellant are sufficient grounds to support their decision. People ex rel. Yates v. Walters, 111 A.D.2d 839, 490 N.Y.S.2d 573 (2d Dept. 1985); Matter of Ganci v Hammock, 99 A.D.2d 546, 471 N.Y.S.2d 630 (2d Dept. 1984); Matter of Vuksanaj v. Hammock, 93 A.D.2d 958, 463 N.Y.S.2d 61 (3d Dept. 1983); Matter of Pina v. Hammock, 89 A.D.2d 799, 453 N.Y.S.2d 479 (4th Dept. 1982). Since the Board's challenged decision was made in accordance with the pertinent statutory requirements, it exercised proper discretion in denying appellant early release on parole. In the Matter of Hawkins v. Travis, 259 A.D.2d 813, 686 N.Y.S.2d 198 (3d Dept. 1999), app. disp. 93 N.Y.2d 1033, 697 N.Y.S.2d 556 (1999); Matter of Barrett v. New York State Division of Parole, 242 A.D.2d 763, 661 N.Y.S.2d 857 (3d Dept. 1997).

Appellant's second claim is the COMPAS has errors on it. No details are provided as to exactly what the alleged errors are.

In response, arguments concerning Executive Law 259-c(4) will be rejected if they don't allege in what manner the Board failed to comply with said amendments. Lashway v Evans, 110 A.D.3d 1420, 973 N.Y.S.2d 496 (3d Dept. 2013). There is no support in the record that the Board relied upon incorrect or erroneous information. Shark v New York State Division of Parole Chair, 110 A.D.3d 1134, 972 N.Y.S.2d 741 (3d Dept. 2013); Khatib v New York State Board of Parole, 118 A.D.3d 1207, 988 N.Y.S.2d 286 (3d Dept. 2014); Boccadisi v Stanford, 133 A.D.3d 1169, 20 N.Y.S.3d 477 (3d Dept. 2015); Peterson v Stanford, 151 A.D.3d 1960, 59 N.Y.S.3d 219 (4th Dept. 2017).

Appellant's final claim is the 15 month hold is excessive.

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

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Findings: (continued from page 3)

In response, appellant failed to demonstrate that the hold of 15 months was excessive. Hill v New York State Board of Parole, 130 A.D.3d 1130, 14 N.Y.S.3d 515 (3d Dept. 2015); Kalwasinski v Patterson, 80 A.D.3d 1065, 915 N.Y.S.2d 715 (3d Dept. 2011) lv.app.den. 16 N.Y.3d 710, 922 N.Y.S.2d 273 (2011); Matter of Madlock v. Russi, 195 A.D.2d 646, 600 N.Y.S.2d 283 (3d Dept. 1993); Confoy v New York State Division of Parole, 173 A.D.2d 1014, 569 N.Y.S.2d 846,848 (3d Dept 1991); Smith v New York State Division of Parole, 64 A.D.3d 1030, 882 N.Y.S.2d 759 (3d Dept. 2009); Smith v New York State Division of Parole, 81 A.D.3d 1026, 916 N.Y.S.2d 285 (3d Dept. 2011); Shark v New York State Division of Parole Chair, 110 A.D.3d 1134, 972 N.Y.S.2d 741 (3d Dept. 2013).

Recommendation:

Accordingly, it is recommended the decision of the Board be affirmed.