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Administrative Appeal Decision - Rosario, Osvaldo (2019-07-26)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Rosario, Osvaldo

Facility: Fishkill CF

NYSID: [REDACTED]

Appeal Control No.: 12-113-18 B

DIN: 10-A-0117

Appearances: Joshua Mitzman Esq.
11 Market Street
Suite 221
Poughkeepsie, New York 12601

Decision appealed: December 2018 decision, denying discretionary release and imposing a hold of 18 months.

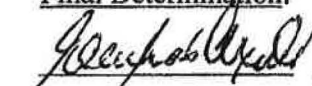
Board Member(s) who participated: Drake, Coppola

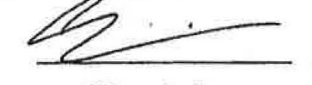
Papers considered: Appellant's Brief received April 18, 2019

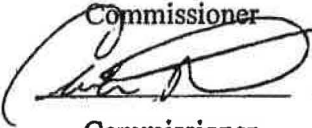
Appeals Unit Review: Statement of the Appeals Unit's Findings and Recommendation

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 7/26/2019.

LB

Distribution: Appeals Unit – Appellant - Appellant's Counsel - Inst. Parole File - Central File
P-2002(B) (11/2018)

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Rosario, Osvaldo

DIN: 10-A-0117

Facility: Fishkill CF

AC No.: 12-113-18 B

Findings: (Page 1 of 1)

Appellant challenges the December 2018 determination of the Board, denying release and imposing a 18-month hold. The instant offense involved the petitioner entering a house, displaying a gun and stealing a safe, and while fleeing again displaying a gun at a second individual while trying to steal her car. Appellant raises the following issues: 1) the decision is arbitrary and capricious in that the Board failed to consider and/or properly weigh the required statutory factors. 2) the decision illegally resentenced him. 3) no aggravating factors exist. 4) the decision lacks detail. 5) the decision lacks future guidance. 6) the decision violates the due process clause of the constitution. 7) the decision failed to mention any facts to support the statutory standard cited. 8) the DA letter was not turned over. 9) there should be three commissioners conducting the interview. 10) the decision was predetermined, due to bias. 11) the Parole Board Report is deficient when compared to the old Inmate Status Reports. 12) the decision was due to a political agenda of the Governor to deny release to all violent felons. 13) the 18 month hold is excessive. 14) the Board failed to comply with the 2011 amendments to the Executive Law in that the COMPAS was ignored, and the statutes are now evidence based. 15) the decision is based upon erroneous information in that appellant has no out of state arrests.

The Board decision states appellant has an out of state conviction. A review by the Appeals Unit shows this assertion to be incorrect, as appellant does not even have an out of state arrest. Since the decision is partially based upon erroneous information, a de novo is warranted.

Recommendation: Vacate and remand for de novo interview.