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Administrative Appeal Decision - Liles, Peter (2018-12-28)

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Administrative Appeal Decision Notice

Inmate Name: Liles, Peter

Facility: Ulster Correctional Facility

NYSID No. [REDACTED]

Appeal Control #: 09-045-18-B

Dept. DIN#: 18R0138

Appearances:

For the Board, the Appeals Unit

For Appellant:

Peter Liles 18R0138
Ulster Correctional Facility
Box 800
Napanach, New York 12458

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

Decision appealed from: 8/2018-Denial of Shock release, with imposition of hold to PIE date.

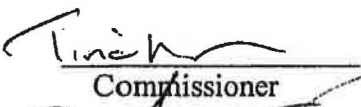
Pleadings considered: Handwritten letter on behalf of the pro se appellant received on October 22, 2018.
Statement of the Appeals Unit's Findings and Recommendation

Documents relied upon: Presentence Investigation Report, Parole Board Report, 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

✓ **Affirmed** ___ **Reversed for De Novo Interview** ___ **Modified to** _____


Commissioner

✓ **Affirmed** ___ **Reversed for De Novo Interview** ___ **Modified to** _____


Commissioner

✓ **Affirmed** ___ **Reversed for De Novo Interview** ___ **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.

LIB

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: Liles, Peter

Facility: Ulster Correctional Facility

Dept. DIN#: 18R0138

Appeal Control #: 09-045-18-B

Findings:

The pro se appellant has submitted a handwritten letter to serve as the perfected appeal. The letter raises only one issue. Appellant claims as he has successfully completed the SHOCK program, with outside clearance and work on many projects out in the community. So, the Board decision stating his release is contrary to public safety and welfare is totally incorrect. And that to send him back to prison, surrounded by drugs, is a bad decision.

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).

The Board may refer to a history of drug abuse by the inmate in its decision. People ex rel. Herbert v New York State Board of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881, 884 (1st Dept 1983); Concepcion v New York State Board of Parole, 71 A.D.2d 819, 419 N.Y.S.2d 396 (4th Dept 1979); Nunez v Dennison, 51 A.D.3d 1240, 857 N.Y.S.2d 810 (3d Dept. 2008); Cruz v Alexander, 67 A.D.3d 1240, 890 N.Y.S.2d 656 (3d Dept. 2009); Gonzalvo v Stanford, 153 A.D.3d 1021, 56 N.Y.S.3d 896 (3d Dept. 2017).

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

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Findings: (continued from page 1)

The Board is obligated to consider the inmate's prior criminal record. Matter of Partee v Evans, 117 A.D.3d 1258, 984 N.Y.S.2d 894 (3d Dept. 2014). The Board may put more weight on the inmate's criminal history. Bello v Board of Parole, 149 A.D.3d 1458, 53 N.Y.S.3d 715 (3d Dept. 2017); Hall v New York State Division of Parole, 66 A.D.3d 1322, 886 N.Y.S.2d 835 (3d Dept. 2009); Davis v Evans, 105 A.D.3d 1305, 963 N.Y.S.2d 485 (3d Dept. 2013); Jones v New York State Parole Board, 127 A.D.3d 1327, 6 N.Y.S.3d 774 (3d Dept. 2015); Wade v Stanford, 148 A.D.3d 1487, 52 N.Y.S.3d 508 (3d Dept. 2017). The fact that the Board afforded greater weight to the inmate's criminal history, and not to an alleged positive institutional adjustment, does not render the denial of parole for that reason irrational or improper. Matter of Ortiz v. Hammock, 96 A.D.2d 735, 465 N.Y.S.2d 341 (4th Dept 1983); Peo. ex rel. Yates v. Walters, 111 A.D.2d 839, 490 N.Y.S.2d 573 (2d Dept. 1985); Matter of Ristau v. Hammock, 103 A.D.2d 944, 479 N.Y.S.2d 760 (3d Dept. 1984) lv. to appeal den. 63 N.Y.2d 608, 483 N.Y.S.2d 1023 (1984); Torres v New York State Division of Parole, 300 A.D.2d 128, 750 N.Y.S.2d 759 (1st Dept 2002); Lashway v Evans, 110 A.D.3d 1420, 973 N.Y.S.2d 496 (3d Dept. 2013).

The denial of parole release based upon nature of conviction and criminal history is appropriate. In the Matter of Hawkins v. Travis, 259 A.D.2d 813, 686 N.Y.S.2d 198 (3d Dept. 1999); Farid v. Russi, 217 A.D.2d 832, 629 N.Y.S.2d 821 (3d Dept. 1995); Charlemagne v New York State Division of Parole, 281 A.D.2d 669, 722 N.Y.S.2d 74, 75 (3d Dept 2001); Burress v Evans, 107 A.D.3d 1216, 967 N.Y.S.2d 486 (3d Dept. 2013); Boccadisi v Stanford, 133 A.D.3d 1169, 20 N.Y.S.3d 477 (3d Dept. 2015); Bush v Annucci, 148 A.D.3d 1392, 50 N.Y.S.3d 180 (3d Dept. 2017); Holmes v Annucci, 151 A.D.3d 1954, 57 N.Y.S.3d 857 (4th Dept. 2017).

Per Executive Law 259-i(2)(c)(A), the Board is obligated to consider the inmate's prior criminal record and the nature of the instant offenses, and the fact that such consideration resulted in a parole denial does not reflect irrationality bordering on impropriety. Singh v Evans, 118 A.D.3d 1209, 987 N.Y.S.2d 271 (3d Dept. 2014).

The Board may consider the inmate had displayed an escalation of unlawful activities. Stanley v New York State Division of Parole, 92 A.D.3d 948, 939 N.Y.S.2d 132 (2d Dept. 2012).

The serious nature of the instant offense and past criminal history are sufficient grounds per se to deny parole release. Wiley v Travis, 244 A.D.2d 734, 664 N.Y.S.2d 657 (3d Dept 1997).

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Liles, Peter

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Findings: (continued from page 2)

The Board's emphasis on the serious nature of the crime does not demonstrate a showing of irrationality bordering on impropriety. Philips v Dennison, 41 A.D.3d 17, 834 N.Y.S.2d 121 (1st Dept. 2007); Cardenales v Dennison, 26 A.D.3d 614, 810 N.Y.S.2d 233 (1st Dept. 2007); Berry v New York State Division of Parole, 64 A.D.3d 1030, 882 N.Y.S.2d 759 (3d Dept. 2008); Smith v New York State Division of Parole, 64 A.D.3d 1030, 882 N.Y.S.2d 759 (3d Dept. 2009); Robles v Dennison, 449 F.Appx. 51, 53-54 (2nd Cir. 2011); Hodge v Griffin, 2014 WL 2453333(SDNY 2014); Perea v Stanford, 149 A.D.3d 1392, 53 N.Y.S.3d 231 (3d Dept. 2017).

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).

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. dismiss. 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).

The Board may impose a time assessment instead of providing rehabilitative treatment. Robinson v Travis, 295 A.D.2d 719, 743 N.Y.S.2d 330 (3d Dept 2002).

Recommendation:

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