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Administrative Appeal Decision - Vogel, Richard (2019-03-22)

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ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Vogel, Richard

Facility: Fishkill CF

NYSID: [REDACTED]

Appeal Control No.: 09-187-18 R

DIN: 13-A-0719

Appearances: Richard Vogel 13A0719
Fishkill Correctional Facility
Box 307
Prospect Street
Beacon, New York 12508

Decision appealed: September 5, 2018 revocation of release and imposition of a time assessment of 18 months.

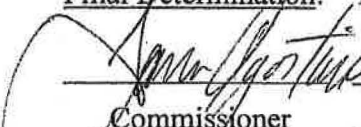

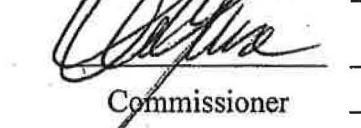
Final Revocation Hearing Date: September 5, 2018

Papers considered: Appellant's Letter-brief received January 17, 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:

 Commissioner	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed, remanded for de novo hearing	<input type="checkbox"/> Reversed, violation vacated
	<input type="checkbox"/> Vacated for de novo review of time assessment only		<input type="checkbox"/> Modified to _____
 Commissioner	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed, remanded for de novo hearing	<input type="checkbox"/> Reversed, violation vacated
	<input type="checkbox"/> Vacated for de novo review of time assessment only		<input type="checkbox"/> Modified to _____
 Commissioner	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed, remanded for de novo hearing	<input type="checkbox"/> Reversed, violation vacated
	<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 3/22/19 66.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Vogel, Richard

DIN: 13-A-0719

Facility: Fishkill CF

AC No.: 09-187-18 R

Findings: (Page 1 of 2)

Appellant challenges the September 5, 2018 determination of the administrative law judge (“ALJ”), revoking release and imposing a 18-month time assessment. Appellant is on parole for having sexual intercourse with a 12 year old girl. As for the parole revocation, appellant pled guilty to possessing alcohol. Appellant raises the following issues: 1) he is not guilty of the sustained charge, as there is no physical evidence to prove him guilty. 2) there was an error in the testimony of the witness at the Preliminary Violation Hearing. 3) his parole officer is at fault for these parole violation charges, as she never got him the help he needed.

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 inmate confirmed he understood and there is nothing to indicate he was confused. 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). Especially as to the first claim.

Defects allegedly attending the preliminary revocation hearing are “subsumed” into the final hearing once it is completed, thus rendering the matter moot. Matter of Collins v. Rodriguez, 138 A.D.2d 809, 525 N.Y.S.2d 728, 729 (3d Dept. 1988); see also Matter of Davis v. Laclair, 165 A.D.3d 1367, 1368, 85 N.Y.S.3d 623 (3d Dept. 2018); Matter of Sellers v. Stanford, 144 A.D.3d 691, 40 N.Y.S.3d 501 (2d Dept. 2016); People ex rel. Campolito v. Hale, 70 A.D.3d 1474, 893 N.Y.S.2d 917 (4th Dept. 2010); People ex rel. Frett v. Warden, Rikers Island Corr. Facility, 25 A.D.3d 472, 807 N.Y.S.2d 295 (1st Dept. 2006). Any challenges to the probable cause determination were rendered moot by the final revocation determination. People ex rel. Johnson v. O’Flynn, 141 A.D.3d 1107, 1008, 35 N.Y.S.3d 613 (4th Dept. 2016); People ex rel. David v New York State Div. of Parole, 12 A.D.3d 963, 784 N.Y.S.2d 912, 913 (3d Dept. 2004); People ex rel. Wilt v. Meloni, 166 A.D.2d 927, 561 N.Y.S.2d 673 (4th Dept. 1990); Matter of Collins v. Rodriguez, 138 A.D.2d 809, 525 N.Y.S.2d 728, 729 (3d Dept. 1988).

There are no rules, statutes, obligations or Court decisions whereby the State must offer or supervise alcohol and/or drug prevention and maintenance programs to a parolee. The State’s failure to do so does **not** obviate the parolee’s obligations to comply with agreed upon parole release conditions, nor does it estop the State from revoking parole status. The parole release conditions are by their very nature obligations imposed upon the parolees, not mandates

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

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DIN: 13-A-0719

Facility: Fishkill CF

AC No.: 09-187-18 R

Findings: (Page 2 of 2)

unilaterally imposed upon the State by itself. People ex.rel. Macon v New York State Division of Parole, Supreme Court, Bronx County, New York Law Journal, May 24, 2001, p.22, column 2.

Recommendation: Affirm.