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December 2020

### Administrative Appeal Decision - Edwards, Roger (2019-03-08)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Edwards, Roger

Facility: Wyoming CF

NYSID: [REDACTED]

Appeal Control No.: 07-080-18 R

DIN: 16-B-0047

Appearances: Norman P. Effman, Esq.  
Wyoming Co. Legal Aid  
18 Linwood Avenue  
Warsaw, New York 14569

Decision appealed: June 20, 2018 revocation of release and imposition of a time assessment of 24 months.

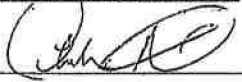


Final Revocation Hearing Date: June 20, 2018

Papers considered: Appellant's Brief received December 27, 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:

	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed, remanded for de novo hearing	<input type="checkbox"/> Reversed, violation vacated
Commissioner	<input checked="" type="checkbox"/> Vacated for de novo review of time assessment only	<input type="checkbox"/> Modified to _____	
	<input type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed, remanded for de novo hearing	<input type="checkbox"/> Reversed, violation vacated
Commissioner	<input type="checkbox"/> Vacated for de novo review of time assessment only	<input type="checkbox"/> Modified to _____	
	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed, remanded for de novo hearing	<input type="checkbox"/> Reversed, violation vacated
Commissioner	<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 3/8/19 66.

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Edwards, Roger

**DIN:** 16-B-0047

**Facility:** Wyoming CF

**AC No.:** 07-080-18 R

**Findings:** (Page 1 of 2)

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Appellant challenges the June 20, 2018 determination of the administrative law judge (“ALJ”), revoking release and imposing a 24-month time assessment.

Appellant raises the following issues in his brief: (1) the ALJ unlawfully modified a violation charge later sustained in violation of Appellant’s due process rights under the Constitution; (2) the 24-month hold was excessive.

As to the first issue, to sustain a violation charge, the administrative law judge (“ALJ”) must conclude that the parolee’s conduct constituted a violation of the cited condition “in an important respect.” Executive Law § 259-i(3)(f)(x); 9 N.Y.C.R.R. §§ 8005.19(e), 8005.20(b). The conclusion must be supported by a preponderance of the evidence. Executive Law § 259-i(3)(f)(viii); 9 N.Y.C.R.R. § 8005.19(e); Matter of Davis v. Laclair, 165 A.D.3d 1367, 1368, 85 N.Y.S.3d 623 (3d Dept. 2018).

The Appeals Unit has reviewed the witness testimony and accusatory instruments received into evidence at the final revocation hearing, as well as the ALJ’s detailed decision, and has determined that this evidence was sufficient to establish by a preponderance of the evidence that Appellant violated the conditions of release in an important respect, recognizing that it is the province of the ALJ to resolve credibility issues and to determine the relative weight to be accorded the evidence. Simpson v. Alexander, 63 A.D.3d 1495 (3d Dept. 2009); Matter of Santiago v. Dennison, 45 AD3d 994 (3d Dept. 2007).

While a parolee in an administrative proceeding is entitled to fair notice of the charges against him, due process requirements for the specificity of an indictment in a criminal proceeding are not fully applied in administrative proceedings, and the charges need only be reasonably specific enough to allow him to prepare an adequate defense. Matter of Block v. Ambach, 73 N.Y.2d 323, 540 N.Y.S.2d 6 (1989). Witness testimony at the final revocation hearing established facts sufficient to sustain Charge 3 of the Violation of Release Report which specifically references an arrest for Harassment in the second degree, and the circumstances surrounding that arrest. The ALJ sustained Charge 3 on the grounds that Appellant harassed his victim. Appellant was provided very specific allegations in Charge 3 despite his claim to the contrary.

As to the second issue, 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 24-

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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.