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Administrative Appeal Decision - Giraldo, Ronald (2019-03-22)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Giraldo, Ronald

Facility: Lakeview Shock CF

NYSID: [REDACTED]

Appeal Control No.: 07-177-18 B

DIN: 18-R-1325

Appearances: Marshall Nahan, Esq.
P.O. Box 4091
Kingston, NY 12402

Decision appealed: July 2018 decision, denying discretionary release and imposing a hold of 15 months.

Board Member(s) who participated: Davis, Agostini, Drake

Papers considered: Appellant's Brief received November 27, 2018

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 3/22/19 ee.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Giraldo, Ronald

DIN: 18-R-1325

Facility: Lakeview Shock CF

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Findings: (Page 1 of 2)

Appellant challenges the July 2018 determination of the Board, denying release and imposing a 15-month hold. Appellant contends that the Board gave insufficient consideration to his rehabilitative progress and failed to sufficiently explain the reasons for its decision. Appellant's contentions are unavailing.

Discretionary release to parole is not to be granted “merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law, **and** that his release is not incompatible with the welfare of society **and** will not so deprecate the seriousness of his crime as to undermine respect for the law.” Executive Law § 259-i(2)(c)(A) (emphasis added); accord Matter of Hamilton v. New York State Div. of Parole, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014). Executive Law § 259-i(2)(c)(A) requires the Board to consider criteria which are relevant to the specific inmate, including, but not limited to, the inmate's institutional record and criminal behavior. People ex rel. Herbert v. New York State Bd. of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881 (1st Dept. 1983).

While consideration of these factors is mandatory, “the ultimate decision to parole a prisoner is discretionary.” Matter of Silmon v. Travis, 95 N.Y.2d 470, 477, 718 N.Y.S.2d 704, 708 (2000). Thus, it is well settled that the weight to be accorded the requisite factors is solely within the Board's discretion. See, e.g., Matter of Delacruz v. Annucci, 122 A.D.3d 1413, 997 N.Y.S.2d 872 (4th Dept. 2014); Matter of Hamilton, 119 A.D.3d at 1271, 990 N.Y.S.2d at 717; Matter of Garcia v. New York State Div. of Parole, 239 A.D.2d 235, 239, 657 N.Y.S.2d 415, 418 (1st Dept. 1997). The Board need not explicitly refer to each factor in its decision, nor give them equal weight. Matter of Betancourt v. Stanford, 148 A.D.3d 1497, 49 N.Y.S.3d 315 (3d Dept. 2017); Matter of LeGeros v. New York State Bd. of Parole, 139 A.D.3d 1068, 30 N.Y.S.3d 834 (2d Dept. 2016); Matter of Phillips v. Dennison, 41 A.D.3d 17, 21, 834 N.Y.S.2d 121, 124 (1st Dept. 2007).

In the matter at hand, the record reflects that the Board properly considered appellant's crime of conviction, aggravated driving while intoxicated (DWI), along with his criminal history, which included prior convictions for aggravated DWI and DWI. The Board also considered his program completion, release plans and, significantly, substance abuse treatment. In light of his record of drinking and driving, appellant's admitted substance abuse problems and COMPAS risk and needs assessment regarding appellant's scale substance abuse history, the Board gave significant attention during the interview to appellant's treatment for and insight into his substance abuse issues. In light of his poor insight (referring to himself as a social drinker) and his conclusory statements of responsibility contradicted by his attempts to distance himself from culpability (such as by referring to his “predicament” in which he “had to remove the vehicle from the road”).

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

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Thus, the record reflects that the Board properly considered the applicable factors. That appellant has demonstrated a positive institutional adjustment does not entitle him to release, as discretionary release shall not be granted merely as a reward for good conduct or efficient performance of duties while confined. Executive Law § 259-i(2)(c)(A); Matter of Gutkaiss v. New York State Div. of Parole, 50 A.D.3d 1418, 857 N.Y.S.2d 755 (3d Dept. 2008); Matter of Faison v. Travis, 260 A.D.2d 866, 688 N.Y.S.2d 782, 783 (3d Dept.), appeal dismissed 93 N.Y.2d 1013, 697 N.Y.S.2d 567 (1999).

The Board's decision, when read alongside the transcript (Matter of Siao-Pao v. Dennison, 11 N.Y.3d 777, 778, 866 N.Y.S.2d 602 [2008]), adequately explained that it found appellant's continued escalation of behavior which places the public in danger, namely drinking and driving, to indicate that there to be a reasonable probability that he would not live and remain at liberty without violating the law and that release would be incompatible with the welfare of society. This is particularly appropriate in light of the Board's concerns regarding appellant's insight into the nature of his substance abuse issues. Consequently, the Board's decision satisfied the criteria set out in Executive Law § 259-i(2)(a), as it was sufficiently detailed to inform the inmate of the reasons for the denial of parole, particularly when read alongside the interview transcript. Matter of Applegate v. New York State Bd. of Parole, 164 A.D.3d 996, 997, 82 N.Y.S.3d 240 (3d Dept. 2018); Matter of Kozlowski v. New York State Bd. of Parole, 108 A.D.3d 435, 968 N.Y.S.2d 87 (1st Dept. 2013).

Thus, appellant's contentions are without merit; the record reflects that appellant's interview was conducted according to law and the Board's determination was rational.

Recommendation: Affirm.