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December 2020

### Administrative Appeal Decision - Gomez, Santiago (2019-03-08)

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**ADMINISTRATIVE APPEAL DECISION NOTICE**

Name: Gomez, Santiago

Facility: Westchester Co. Jail

NYSID



Appeal Control No.: 07-129-18R

DIN: 13A2110

Appearances: Gerald Zuckerman, Esq.  
P.O. Box 392  
Croton-on-Hudson, New York 10520

Decision appealed: July 11, 2018 revocation of release and imposition of a time assessment of 15-months.



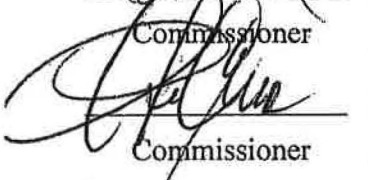
Final Revocation Hearing Date: July 11, 2018

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 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 _____
	<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:** Gomez, Santiago  
**Facility:** Westchester Co. Jail

**DIN:** 13A2110  
**AC No.:** 07-129-18R

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

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Appellant challenges the determination of the administrative law judge (“ALJ”), revoking release and imposing a 15-month time assessment.

Appellant raises the following issues in his brief: (1) the guilty plea was not voluntary; and (2) the time assessment was excessive.

A knowing and voluntary guilty plea establishes that the parolee violated parole in an important respect, and precludes a subsequent challenge to the sufficiency of the evidence. Matter of Harris v. Evans, 121 A.D.3d 1151, 993 N.Y.S.2d 790 (3d Dept. 2014); 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 Taylor v. NYS Division of Parole, 108 A.D.3d 953, 968 N.Y.S.2d 808, 809 (3d Dept. 2013); Matter of Holdip v. Travis, 9 A.D.3d 825, 779 N.Y.S.2d 382 (4th Dept. 2004); Matter of Fuller v. Goord, 299 A.D.2d 849, 849, 749 N.Y.S.2d 628, 629 (4th Dept. 2002), lv. denied, 100 N.Y.2d 531, 761 N.Y.S.2d 592 (2003). A guilty plea standing alone is sufficient to support a finding of guilt and it is not required the inmate admit it was a violation in an important respect. Matter of Horace v. Annucci, 133 A.D.3d 1263, 20 N.Y.S.3d 492 (4th Dept. 2015).

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 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).

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 15-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

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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.