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Administrative Appeal Decision - Saracina, Scott (2019-03-22)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Saracina, Scott

Facility: Attica CF

NYSID: [REDACTED]

Appeal Control No.: 11-150-18 B

DIN: 01-B-1383

Appearances: Scott Saracina 01B1383
Attica Correctional Facility
P.O. Box 149
Attica, New York 14011

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

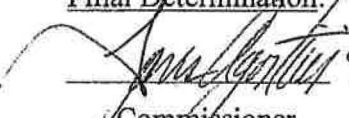
Board Member(s) who participated: Crangle, Shapiro


Papers considered: Appellant's Letter-brief received January 11, 2019

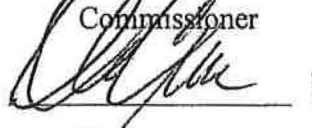
Appeals Unit Review: Statement of the Appeals Unit's Findings and Recommendation

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 60.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Saracina, Scott

DIN: 01-B-1383

Facility: Attica CF

AC No.: 11-150-18 B

Findings: (Page 1 of 2)

Appellant challenges the November 2018 determination of the Board, denying release and imposing a 15-month hold. Appellant raises the following claims: 1) the decision is arbitrary and capricious in that he did exactly what the 2016 Parole Board panel told him to do. 2) the negative scores on the COMPAS are all based upon old criminal history, which can't be changed. Whereas all the positive COMPAS scores are based on his rehabilitation.

There is no legal requirement that a second Board panel must follow the recommendation of a prior Board panel, nor that the same members should constitute both panels. Matter of Flores v New York State Bd. of Parole, 210 A.D.2d 555, 620 N.Y.S.2d 141, 142 (3d Dept. 1994).

The Board permissibly denied parole release as incompatible with the welfare of society based upon the violent nature of the instant offense. Matter of Warren v. New York State Div. of Parole, 307 A.D.2d 493, 493, 761 N.Y.S.2d 883 (3d Dept. 2003).

The Board may consider the inmate's past history of violent behavior. 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); People ex rel. Henson v Miller, 244 A.D.2d 729, 664 N.Y.S.2d 655 (3d Dept 1997), leave to appeal denied 91 N.Y.2d 809, 670 N.Y.S.2d 403 (1998); Vasquez v New York State Division of Parole, 215 A.D.2d 856, 626 N.Y.S.2d 332 (3d Dept 1995); Ward v New York State Division of Parole, 144 A.D.3d 1375, 40 N.Y.S.3d 803 (3d Dept. 2016); Mays v Stanford, 150 A.D.3d 1521, 55 N.Y.S.3d 502 (3d Dept. 2017); Allen v Stanford, 161 A.D.3d 1503, 78 N.Y.S.3d 445 (3d Dept. 2018).

"[T]here is a strong rehabilitative component in the statute that may be given effect by considering insight." Matter of Silmon v. Travis, 95 N.Y.2d 470, 478, 718 N.Y.S.2d 704 (2000).

The Board may consider an inmate's need to complete rehabilitative programming in denying parole. See Matter of Allen v. Stanford, 161 A.D.3d 1503, 1506, 78 N.Y.S.3d 445 (3d Dept.), lv. denied, 32 N.Y.3d 903 (2018); Matter of Barrett v. New York State Div. of Parole, 242 A.D.2d 763, 661 N.Y.S.2d 857 (3d Dept. 1997); see also Matter of Connelly v. New York State Div. of Parole, 286 A.D.2d 792, 729 N.Y.S.2d 808, 809 (3d Dept.), appeal dismissed 97 N.Y.2d 677, 738 N.Y.S.2d 291 (2001).

The Board may consider negative aspects of the COMPAS instrument. Matter of Bush v. Annucci, 148 A.D.3d 1392, 50 N.Y.S.3d 180 (3d Dept. 2017) (COMPAS instrument with mixed results including substance abuse relevant given use before crime); Matter of Wade v. Stanford, 148 A.D.3d 1487, 52 N.Y.S.3d 508 (3d Dept. 2017) (low risk felony violence but probable risk for substance abuse alcohol related crimes); Matter of Crawford v. New York State Bd. of Parole, 144 A.D.3d 1308, 46 N.Y.S.3d 228 (3d Dept. 2016) (scores not uniformly low including family support), lv. denied, 29 N.Y.3d 901, 57 N.Y.S.3d 704 (2017).

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

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Findings: (Page 2 of 2)

Arbitrary action is without sound basis in reason and is generally taken without regard to the facts'; or, put differently, '[r]ationality is what is reviewed under . . . the arbitrary and capricious standard.'" Hamilton v New York State Division of Parole, 119 A.D.3d 1268, 1270 n.1, 990 N.Y.S.2d 714, 716 (3d Dept. 2014) (quoting Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 231, 356 N.Y.S.2d 833, 839 (1974)).

Recommendation: Affirm.