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Administrative Appeal Decision - Casselman, Shane (2019-03-08)

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## STATE OF NEW YORK - BOARD OF PAROLE

# ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Casselman, Sl	Appeal Control No.: 08-108-18 R	
NYSID		
<b>DIN:</b> 12-B-2973		
Appearances:	Craig P. Schlanger, Esq. Hiscock Legal Aid Society 351 South Warren Street Syracuse, New York 13202	•
Decision appealed:	July 16, 2018 revocation of release and imposition of a time	me assessment of 48-months.
Final Revocation Hearing Date:	July 10, 2018	
Papers considered:	Appellant's Brief received December 18, 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 h	nereby:
	Affirmed Reversed, remanded for de novo hearing Vacated for de novo review of time assessment only  Affirmed Reversed, remanded for de novo hearing Vacated for de novo review of time assessment only  Affirmed Reversed, remanded for de novo hearing Vacated for de novo review of time assessment only  ation is at variance with Findings and Recommendation e Board's determination must be annexed hereto.	Modified to Reversed, violation vacated Modified to Reversed, violation vacated Modified to
	ion, the related Statement of the Appeals Unit's Findings a	nd the separate findings of
	ly, were mailed to the Inmate and the Inmate's Counsel, if	

### STATE OF NEW YORK – BOARD OF PAROLE

## APPEALS UNIT FINDINGS & RECOMMENDATION

Name:Casselman, ShaneDIN:12-B-2973Facility:Cape Vincent CFAC No.:08-108-18 R

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

Appellant challenges the July 16, 2018 determination of the administrative law judge ("ALJ"), revoking release and imposing a 48-month time assessment.

Appellant raises the following issues in his brief: (1) the ALJ's decision was not supported by a preponderance of the evidence; and (2) the time assessment of 48 months 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).

As to the second issue, Appellant is a Category 1 violator, so the ALJ must impose a minimum of 15 months as a time assessment, or a hold to maximum expiration of the sentence, whichever is less, unless a mitigating reduction of up to three months is applied for a violator who accepts responsibility for his or her conduct, or unless there are exceptional mitigating circumstances. 9 N.Y.C.R.R. §8005.20(c)(1); People ex rel. Newland v. Travis, 185 Misc.2d 881 (Sup. Ct., Bronx Co., 2000). The time assessment imposed by the ALJ was not excessive. See, e.g., Matter of Wilson v. Evans, 104 A.D.3d 1190 (4th Dept. 2013); Matter of Rosario v. New York State Division of Parole, 80 A.D.3d 1030 (3d Dept. 2011); Matter of Bell v. Lemons, 78 A.D.3d 1393 (3d Dept. 2010); Matter of Torres v. New York State Division of Parole, 58 A.D.3d 1039 (3d Dept. 2009).

**Recommendation:** Affirm.