

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

Parole Administrative Appeal Decisions

Parole Administrative Appeal Documents

December 2020

Administrative Appeal Decision - Truesdell, Steven (2019-04-15)

Follow this and additional works at: <https://ir.lawnet.fordham.edu/aad>

Recommended Citation

"Administrative Appeal Decision - Truesdell, Steven (2019-04-15)" (2020). Parole Information Project
<https://ir.lawnet.fordham.edu/aad/426>

This Parole Document is brought to you for free and open access by the Parole Administrative Appeal Documents at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Parole Administrative Appeal Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Truesdell, Steven Facility: Wyoming CF
NYSID: [REDACTED] Appeal Control No.: 09-186-18 B
DIN: 83-B-2097

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

Decision appealed: September 2018 decision, denying discretionary release and imposing a hold of 18 months.



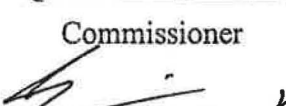
Board Member(s) who participated: Cruse, Demosthenes.

Papers considered: Appellant’s Brief received January 18, 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 2/15/19 66.

Distribution: Appeals Unit – Appellant - Appellant’s Counsel - Inst. Parole File - Central File P-2002(B) (11/2018)

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Truesdell, Steven

DIN: 83-B-2097

Facility: Wyoming CF

AC No.: 09-186-18 B

Findings: (Page 1 of 4)

Appellant challenges the September 2018 determination of the Board, denying release and imposing a 18-month hold.

Appellant raises the following issues in his brief: (1) the Board’s decision to deny Appellant’s immediate release back into the community was arbitrary, capricious and irrational and was made in violation of applicable legal authority; (2) the Board did not provide sufficient weight to Appellant’s institutional programming, vocational training, COMPAS scores, and certain other factors when making its determination to deny Appellant’s immediate release into the community; (3) the Board’s decision to deny Appellant’s release to community supervision was tantamount to a resentencing of Appellant; (4) the Board’s decision was conclusory and lacked sufficient detail; (5) sufficient consideration was not given to Appellant’s age at the time he committed the three felony convictions (Murder 2nd, two counts, and Robbery 1st); and (6) certain issues such as Appellant’s sentencing minutes were not sufficiently discussed at the time of the interview.

As to the first and second issues, 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). “Although these standards are no longer repeated in the [Board’s] regulation, this in no way modifies the statutory mandate requiring their application.” Notice of Adoption, NY Reg, Sept. 27, 2017 at 2. A conclusion that an inmate fails to satisfy **any one** of the considerations set forth in Executive Law § 259-i(2)(c)(A) is an independent basis to deny parole. See, e.g., Matter of Silmon v. Travis, 95 N.Y.2d 470, 477, 718 N.Y.S.2d 704, 708 (2000); Matter of Robles v. Fischer, 117 A.D.3d 1558, 1559, 985 N.Y.S.2d 386 (4th Dept. 2014); Matter of Hamilton v. New York State Div. of Parole, 119 A.D.3d 1268; Matter of Phillips v. Dennison, 41 A.D.3d 17, 21, 834 N.Y.S.2d 121, 124 (1st Dept. 2007).

Executive Law § 259-i(2)(c)(A) requires the Board to consider criteria which is 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. 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; Matter of Garcia v. New York State Div. of Parole, 239 A.D.2d

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Truesdell, Steven

DIN: 83-B-2097

Facility: Wyoming CF

AC No.: 09-186-18 B

Findings: (Page 2 of 4)

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. In the absence of a convincing demonstration that the Board did not consider the statutory factors, it must be presumed that the Board fulfilled its duty. Matter of Fuchino v. Herbert, 255 A.D.2d 914, 914, 680 N.Y.S.2d 389, 390 (4th Dept. 1998); Matter of McLain v. New York State Div. of Parole, 204 A.D.2d 456, 611 N.Y.S.2d 629 (2d Dept. 1994); Matter of McKee v. New York State Bd. of Parole, 157 A.D.2d 944, 945, 550 N.Y.S.2d 204, 205 (3d Dept. 1990); People ex rel. Herbert, 97 A.D.2d 128.

In 2011, the law was amended to require procedures incorporating risk and needs principles to “assist” the Board in making parole release decisions. Executive Law § 259–c(4); 9 N.Y.C.R.R. §8002.2(a). The Board satisfies this requirement in part by using the COMPAS instrument. Matter of Montane v. Evans, 116 A.D.3d 197, 202, 981 N.Y.S.2d 866, 870 (3d Dept. 2014); see also Matter of Hawthorne v. Stanford, 135 A.D.3d 1036, 1042, 22 N.Y.S.3d 640, 645 (3d Dept. 2016); 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 Robles v. Fischer, 117 A.D.3d 1558, 1559, 985 N.Y.S.2d 386, 387 (4th Dept. 2014). Notably, the 2011 amendments did not eliminate the requirement that the Board conduct a case-by-case review of each inmate by considering the statutory factors including the instant offense. The amendments also did not change the three substantive standards that the Board is required to apply when deciding whether to grant parole. See Executive Law § 259-i(2)(c)(A). Thus, the COMPAS instrument cannot mandate a particular result. Matter of King v. Stanford, 137 A.D.3d 1396, 26 N.Y.S.3d 815 (3d Dept. 2016). Rather, the COMPAS is an additional consideration that the Board must weigh along with the statutory factors for the purposes of deciding whether the three standards are satisfied. See Matter of Rivera v. N.Y. State Div. of Parole, 119 A.D.3d 1107, 1108, 990 N.Y.S.2d 295 (3d Dept. 2014); accord Matter of Dawes v. Annucci, 122 A.D.3d 1059, 994 N.Y.S.2d 747 (3d Dept. 2014); see also Matter of Gonzalvo v. Stanford, 153 A.D.3d 1021, 56 N.Y.S.3d 896 (3d Dept. 2017). Furthermore, declining to afford the COMPAS controlling weight does not violate the 2011 amendments. Matter of King v. Stanford, 137 A.D.3d 1396, 26 N.Y.S.3d 815 (3d Dept. 2016).

As to the third issue, Appellant’s assertion that the denial of parole release amounted to an improper resentencing is without merit inasmuch as the Board fulfilled its obligation to determine the propriety of release per Executive Law § 259-i(2)(c)(A) and after considering the factors set forth therein. See Executive Law § 259 et seq.; Penal Law § 70.40; Matter of Murray v. Evans, 83 A.D.3d 1320, 920 N.Y.S.2d 745 (3d Dept. 2011); Matter of Crews v. New York State Exec. Dept. Bd. of Parole Appeals Unit, 281 A.D.2d 672, 720 N.Y.S.2d 855 (3d Dept. 2001). Appellant has

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Truesdell, Steven

DIN: 83-B-2097

Facility: Wyoming CF

AC No.: 09-186-18 B

Findings: (Page 3 of 4)

not in any manner been resentenced. Matter of Mullins v. New York State Bd. of Parole, 136 A.D.3d 1141, 1142, 25 N.Y.S.3d 698 (3d Dept. 2016).

As to the fourth issue, the Board’s decision satisfied the criteria set out in Executive Law § 259-i(2)(a) and 9 N.Y.C.R.R. § 8002.3(d), as it was sufficiently detailed to inform the inmate of the reasons for the denial of parole. 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); Matter of Little v. Travis, 15 A.D.3d 698, 788 N.Y.S.2d 628 (3d Dept. 2005); Matter of Davis v. Travis, 292 A.D.2d 742, 739 N.Y.S.2d 300 (3d Dept. 2002); 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).

As to the fifth issue, pursuant to the court’s holding in the Hawkins case, for those inmates who are serving a maximum sentence of life imprisonment for a crime committed prior to attaining the age of 18, “the Board must consider youth and its attendant circumstances in relationship to the commission of the crime at issue.” See, Hawkins v. New York State Dep’t of Corr. & Cmty. Supervision, 140 A.D.3d 34 (3d Dept. 2016), affirming in relevant part, 51 Misc. 3d 1218(A) (Sup. Ct., Sullivan Co., 2015). Specifically, in those instances, the Board shall consider: (i) the diminished culpability of youth; and (ii) the growth and maturity of the inmate since the time of commission of the offense. In the instant matter, the Board had before it at the time of the interview all information compiled by the Department of Corrections and Community Supervision, Appellant’s criminal record, and any family court record of Appellant. The transcript of the interview reveals that the Board discussed and considered Appellant’s age at the time of commission of the Murder 2 offenses which carried the Life sentences, the circumstances of the serious crimes of conviction, his family situation at the time the crimes were committed, his schooling and relationships at that time, his sentencing minutes, that he was under the influence of marijuana when the crimes were committed, that he used marijuana, meth, and LSD prior to entering into prison, that he graduated to “harder drugs” when he entered prison, his work history prior to entering into prison, community support for his release, institutional programming, disciplinary record, COMPAS instrument, his parole packet, and release plans. The Board therefore conducted the interview in accordance with the requirements set forth in the Hawkins decision.

As to the sixth issue, Appellant was provided the opportunity to discuss with the Board during the interview any issues of interest, and cannot now be heard to complain that certain issues were not discussed, or the extent to which certain issues were discussed. See Matter of Serna v. New York State Division of Parole, 279 A.D.2d 684, 719 N.Y.S. 2d 166 (3d Dept. 2001); Matter of Garcia v. New York State Div. of Parole, 239 A.D.2d 235, 657 N.Y.S.2d 415 (1st Dept. 1997).

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Truesdell, Steven

DIN: 83-B-2097

Facility: Wyoming CF

AC No.: 09-186-18 B

Findings: (Page 4 of 4)

Recommendation: Affirm.