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Administrative Appeal Decision - Vong, Tahn (2019-02-06)

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STATE OF NEW YORK-- BOARD OF PAROLE

Administrative Appeal Decision Notice

Inmate Name: Vong, Tahn

Facility: Wyoming Correctional Facility

NYSID No.: [REDACTED]

Appeal Control #: 08-007-18-B

Dept. DIN#: 17B3322

Appearances:

For the Board, the Appeals Unit

For Appellant:

Norman Effman Esq.
Wyoming County Legal Aid
18 Linwood Avenue
Warsaw, New York 14569




Board Member(s) who participated in appealed from decision: Coppola, Demosthenes, Drake

Decision appealed from: 7/2018-Denial of discretionary release, with imposition of 18 month hold.

Pleadings considered: Brief on behalf of the appellant received on October 16, 2018.
Statement of the Appeals Unit's Findings and Recommendation

Documents relied upon: Presentence Investigation Report, Parole Board Report, Interview Transcript,
Parole Board Release Decision (Form 9026), COMPAS, TAP/Case Plan.

Final Determination: The undersigned have determined that the decision from which this appeal was taken
be and the same is hereby

 _____ Commissioner	_____ Affirmed <input checked="" type="checkbox"/> _____ Reversed for De Novo Interview _____ Modified to _____
 _____ Commissioner	_____ Affirmed <input checked="" type="checkbox"/> _____ Reversed for De Novo Interview _____ Modified to _____
 _____ Commissioner	_____ Affirmed <input checked="" type="checkbox"/> _____ Reversed for De Novo Interview _____ 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 2/5/2019.

LB

Distribution: Appeals Unit - Inmate - Inmate's Counsel - Inst. Parole File - Central File
P-2002(B) (5/2011)

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Vong, Tahn

Facility: Wyoming Correctional Facility

Dept. DIN#: 17B3322

Appeal Control #: 08-007-18-B

Findings:

Counsel for the appellant has submitted a brief to serve as the perfected appeal. The brief raises the following issues: 1) the decision is arbitrary and capricious, and irrational bordering on impropriety, because the Board decision lacks detail. 2) the Board ignored his constitutional liberty interest in early release. 3) the Board didn't properly consider his EEC; 4) the Board failed to review his sentencing minutes; 5) the Board failed to comply with the 2011 amendments to the Executive Law in the Case Plan is not the TAP, the COMPAS is inherently defective per se, and no reason for departing from the COMPAS was given, which is required by the regulations. Also, the 2011 Executive Law amendments are present/future based.

For the reason explained below, only one issue raised will be addressed. That issue is the issuance of the EEC.

Per Corrections Law 805, the Board may deny parole release to an inmate if the Board finds upon release there is a reasonable probability he will not remain at liberty without violating the law, and his release is not compatible with the welfare of society. This inmate has an EEC. So while the Board decision did conclude there is a reasonable probability that if released he would not live and remain at liberty without violating the law, they failed to state the release of this inmate is not compatible with the welfare of society. Since some of this required criteria is absent from the Board decision, a de novo is required.

Recommendation:

Accordingly, it is recommended the decision of the Board be vacated, and that a de novo interview be held in front of a different panel of Commissioners.