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December 2020

### Administrative Appeal Decision - Muhammad, Tehran (2019-11-12)

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**ADMINISTRATIVE APPEAL DECISION NOTICE**

Name: Muhammad, Tehran

Facility: Gouverneur CF

NYSID: [REDACTED]

Appeal Control No.: 01-121-19 R

DIN: 06-B-0006

Appearances: John Cirando Esq.  
101 South Salina Street  
Suite 1010  
Syracuse, New York 13202.

Decision appealed: December 20, 2018 revocation of release and imposition of a time assessment of 18 months.

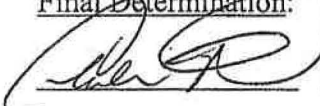

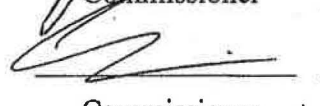
Final Revocation Hearing Date: December 4, 2018

Papers considered: Appellant's Letter-brief received July 1, 2019

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 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 _____
	<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 11/12/19.

TH

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Muhammad, Tehran                                      **DIN:** 06-B-0006  
**Facility:** Gouverneur CF                                         **AC No.:** 01-121-19 R

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

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Appellant challenges the December 20, 2018 determination of the administrative law judge (“ALJ”), revoking release and imposing a 18-month time assessment. Appellant’s underlying instant offense is for breaking into his former paramours house while she was asleep, holding a weapon to her head and raping her, and then threatening to kill her. The current parole revocation charges were for absconding, being discharged from a treatment facility due to being found with a half-dressed female in his room, cutting off his GPS device, and changing his residence without permission. At the final parole revocation hearing, a plea bargain was entered into. Appellant pled guilty to cutting off his GPS ankle device, and was given an 18 month time assessment. Appellant raises the following issues on appeal. 1) appellant did not plead guilty to violating the conditions of his parole in an important respect. 2) appellant did not understand the proceedings such that the plea was not knowing and voluntary. 3) the time assessment imposed is excessive.

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 inmate confirmed he understood and there is nothing to indicate he was confused. 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).

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, in that they bespeak a serious threat to public safety. Matter of Horace v. Annucci, 133 A.D.3d 1263, 20 N.Y.S.3d 492 (4th Dept. 2015).

Nor is there anything to indicate the appellant didn’t understand what was transpiring.

It is presumed the Administrative Law Judge considered all of the relevant factors. Ramirez v New York State Board of Parole, 214 A.D.2d 441, 625 N.Y.S.2d 505 (1<sup>st</sup> Dept 1995); Garner v Jones, 529 U.S. 244, 120 S.Ct. 1362, 1371, 146 L.Ed.2d 236 (2000). The time assessment imposed is clearly

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permissible. Otero v New York State Board of Parole, 266 A.D.2d 771, 698 N.Y.S.2d 781 (3d Dept 1999) leave to appeal denied 95 N.Y.2d 758, 713 N.Y.S.2d 2 (2000); Carney v New York State Board of Parole, 244 A.D.2d 746, 665 N.Y.S.2d 687 (3d Dept 1997); Issac v. New York State Division of Parole, 222 A.D.2d 913, 635 N.Y.S.2d 756 (3d Dept. 1995).

Penalty of reincarceration for 18 months upon finding that condition of parole was violated was not irrational. Ramirez v. New York State Board of Parole, 214 A.D.2d 441, 625 N.Y.S.2d 505 (1<sup>st</sup> Dept. 1995).

**Recommendation:** Affirm.