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December 2020

### Administrative Appeal Decision - Crosby, Timothy (2019-05-10)

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STATE OF NEW YORK – BOARD OF PAROLE

**ADMINISTRATIVE APPEAL DECISION NOTICE**

Name: Crosby, Timothy

Facility: Livingston CF

NYSID: [REDACTED]

Appeal Control No.: 10-108-18 R

DIN: 02-A-3255

Appearances: Ann Connor Esq.  
Livingston County Public Defender  
6 Court Street  
Room 109  
Geneseo, New York 14454

Decision appealed: October 3, 2018 revocation of release and imposition of a time assessment of 15 months.

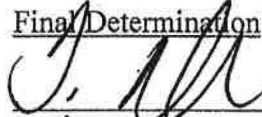
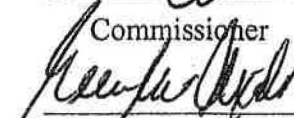

Final Revocation Hearing Date: October 3, 2018

Papers considered: Appellant's Brief received March 6, 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 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 5/10/19.

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Crosby, Timothy

**DIN:** 02-A-3255

**Facility:** Livingston CF

**AC No.:** 10-108-18 R

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

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Appellant challenges the October 3, 2018 determination of the administrative law judge (“ALJ”), revoking release and imposing a 15-month time assessment. Appellant’s instant offense is for breaking into a residence, having the victim tied up at gunpoint, raping her and stealing her property. The current parole revocation proceeding involves the appellant pleading guilty to illegal drug use. Appellant raises the following issues on appeal: 1) the Board failed to consider all of the factors listed in Executive Law 259-i(2)(c), as well those found in the 2011 amendments to the Executive Law, and thus illegally resentenced him. 2) [REDACTED]. 3) contrary to what the ALJ said at the hearing, there is no age limit for Willard. 4) the ALJ was clearly predisposed not to impose a lesser time assessment for this type of crime, which shows the time assessment is arbitrary and capricious.

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).

All matters listed in the first claim above are dismissed on relevance grounds, as they apply to Parole Board Release Interviews, and not to parole revocation hearings, which are governed by a different part of the statute.

[REDACTED]

[REDACTED] At most this would be harmless error. Even if an error is made by the Administrative Law Judge, if the principal objective is somehow proven anyway, the error is irrelevant. Bowes v Dennison, 20 A.D.3d 845, 800 N.Y.S.2d 459 (3d Dept. 2005).

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Crosby, Timothy                                 **DIN:**         02-A-3255  
**Facility:** Livingston CF                                 **AC No.:**     10-108-18 R

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

There is a presumption of honesty and integrity that attaches to Judges and administrative factfinders. People ex.rel. Johnson v New York State Board of Parole, 180 A.D.2d 914, 580 N.Y.S.2d 957, 959 (3d Dept 1992); Withrow v Larkin, 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed2d 712 (1975). The inmate has failed to show that the findings in the case by the ALJ flowed from any alleged bias. Ciccarelli v New York State Division of Parole, 11A.D32d 843, 784 N.Y.S.2d 173, 175 (3d Dept. 2004); Donahue v Fischer, 98 A.D.3d 784, 948 N.Y.S.2d 778 (3d Dept. 2012); Lafferty v Annucci, 148 A.D.3d 1628, 50 N.Y.S.3d 221 (4<sup>th</sup> Dept. 2017); Leno v Stanford, 165 A.D.3d 1334, 84 N.Y.S.3d 603 (3d Dept. 2018).

As for the length of the time assessment, 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). For a category 1 violator such as appellant, the time assessment generally must be a *minimum* of 15 months or a hold to the maximum expiration of the sentence, whichever is less. 9 N.Y.C.R.R. § 8005.20(c)(1). The Executive Law does not place an outer limit on the length of time that may be imposed. Matter of Washington v. Annucci, 144 A.D.3d 1541, 41 N.Y.S.3d 808 (4th Dept. 2016); Matter of Wilson v. Evans, 104 A.D.3d 1190, 1191, 960 N.Y.S.2d 807, 809 (4th Dept. 2013); Murchison v. New York State Div. of Parole, 91 A.D.3d 1005, 1005, 935 N.Y.S.2d 741, 742 (3d Dept. 2012). The ALJ properly considered the nature of the instant offense in assessing the time for reincarceration. Matter of Smith v. Travis, 253 A.D.2d 955, 955, 678 N.Y.S.2d 917, 918 (3d Dept. 1998).

**Recommendation:**     Affirm.