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December 2020

### Administrative Appeal Decision - O'Brien, Tracy (2018-12-28)

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Administrative Appeal Decision Notice

Inmate Name: OBRIEN, TRACY

Facility: Released

NYSID No. [REDACTED]

Appeal Control #: 07-134-18 R

Dept. DIN#: 15G0181

Appearances:

For the Board, the Appeals Unit

For Appellant:

Paul Hanft, Esq.  
Hiscock Legal Aid Society  
351 South Warren Street  
Syracuse, New York 13202

Board Member(s) who participated in appealed from decision: None.

Decision appealed from: 6/2018 Revocation of Parole; 12-month hold.


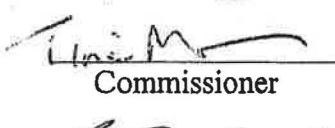

Pleadings considered:

Brief on behalf of the Appellant submitted on: October 9, 2018.  
Statement of the Appeals Unit's Findings and Recommendation.

Documents relied upon:

Notice of Violation, Violation of Release Report, Final Revocation Hearing Transcript, Parole Revocation Decision Notice.

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

 Commissioner	<input type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed for De Novo Hearing	<input type="checkbox"/> Reversed - Violation Vacated
	<input type="checkbox"/> Vacated for De Novo Review of Time Assessment Only		<input type="checkbox"/> Modified to _____
 Commissioner	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed for De Novo Hearing	<input type="checkbox"/> Reversed - Violation Vacated
	<input type="checkbox"/> Vacated for De Novo Review of Time Assessment Only		<input type="checkbox"/> Modified to _____
 Commissioner	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed for De Novo Hearing	<input type="checkbox"/> Reversed - Violation Vacated
	<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 12/28/18 (A11).

Distribution: Appeals Unit – Inmate - Inmate's Counsel - Inst. Parole File - Central File  
P-2002(R) (May 2011)

STATE OF NEW YORK - BOARD OF PAROLE

**STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION**

**Inmate Name:** OBRIEN, TRACY  
**Dept. DIN#:** 15G0181

**Facility:** Released  
**Appeal Control #:** 07-134-18 R

**Findings:**

Appellant raises a number of issues in the brief submitted in support of the administrative appeal initiated following the Administrative Law Judge's (ALJ) decision to revoke her parole and impose a hold of 12 months. The Appeals Unit has reviewed each of the issues raised by Appellant, and finds that the issues have no merit.

Appellant is serving a term of imprisonment of 1 ½ to 3 years after having been convicted of the crime of Grand Larceny in the fourth degree.

Appellant raises two issues in her brief: (1) the ALJ's decision was based upon the testimony of a witness who was not credible; and (2) the time assessment was excessive.

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); Matter of Ciccarelli v. NYS Division of Parole, 11 A.D.3d 843 (3d Dept. 2004); Poladian v. Travis, 8 A.D.3d 770 (3d Dept. 2004); Kravetz v. New York State Div. of Parole, 293 A.D.2d 843 (3d Dept. 2002), lv. denied, 98 N.Y.2d 610 (2002); Matter of Austin v. Division of Parole, 278 A.D.2d 731 (3d Dept. 2000); Matter of Herr v. New York State Division of Parole, 278 A.D.2d 544 (3d Dept. 2000); Matter of Cole v. Travis, 275 A.D.2d 874 (3d Dept. 2000). The testimony of Appellant to the contrary merely presented a credibility issue that the ALJ was entitled to resolve against her. Matter of Johnson v. Alexander, 59 A.D.3d 977 (4<sup>th</sup> Dept. 2009); Matter of Lamolli v. Marasa, 81 A.D.3d 1058 (3d Dept. 2011), lv. denied, 17 N.Y.3d 702 (2011); Matter of Hurd v. New York State Division of Parole, 72 A.D.3d 1388 (3d Dept. 2010); Matter of Lewis v. Alexander, 68 A.D.3d 1415 (3d Dept. 2009); Matter of Mack v. Alexander, 61 A.D.3d 1222 (3d Dept. 2009).

Appellant is a persistent violator. Pursuant to the provisions of 9 N.Y.C.R.R. §8005.20(c)(5), the ALJ must impose a time assessment not to exceed 12 months. The 12-month time assessment imposed by the ALJ was, therefore, proper.

**Recommendation:**

It is the recommendation of the Appeals Unit that the ALJ's decision be affirmed.