

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 - Caine, Trevor (2019-06-06)

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

Recommended Citation

"Administrative Appeal Decision - Caine, Trevor (2019-06-06)" (2020). Parole Information Project
<https://ir.lawnet.fordham.edu/aad/443>

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: Caine, Trevor

Facility: Clinton CF

NYSID [REDACTED]

Appeal Control No.: 12-126-18 R

DIN: 12-A-5432

Appearances: Trevor Caine 12A5432
Clinton Correctional Facility
P.O. Box 2001
Dannemora, New York 12929

Decision appealed: December 3, 2018 revocation of release and imposition of a time assessment of 12 months.


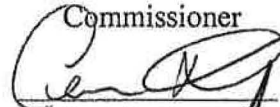

Final Revocation Hearing Date: November 27, 2018

Papers considered: Appellant's Letter-brief received March 18, 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 6/6/19 66.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Caine, Trevor **DIN:** 12-A-5432
Facility: Clinton CF **AC No.:** 12-126-18 R

Findings: (Page 1 of 2)

Appellant challenges the December 3, 2018 determination of the administrative law judge (“ALJ”), revoking release and imposing a 12-month time assessment. Appellant is on parole for raping a woman. The current sustained revocation charge is appellant while on parole was criminally convicted in the State of Alabama of Resisting Arrest. All parole revocation charges stemmed from the Alabama arrest incident. Appellant pled guilty to one of the parole charges. Appellant raises only one issue. Due to all mitigating factors, appellant claims the 12 month time assessment imposed is harsh and 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).

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). While the conduct giving rise to the violation did not constitute a new crime, the ALJ acted within his discretion to impose 12 month time assessment pursuant to 9 N.Y.C.R.R. § 8005.20(c), and the assessment was not excessive under the circumstances. See Matter of Bolden v. Dennison, 28 A.D.3d 1234, 814 N.Y.S.2d 477 (4th Dept.) (36-month assessment for curfew violation), lv. den. 7 N.Y.3d 705, 819 N.Y.S.2d 872 (2006); Matter of Smith v. Travis, 253 A.D.2d 955, 955, 678 N.Y.S.2d 917, (Mem)-918 (3d Dept. 1998) (36 month assessment was not excessive, notwithstanding that this was first parole violation 41 months after release, where releasee failed to report to parole officer); Matter of Folks v. Alexander, 58 A.D.3d 1038, 1039, 871 N.Y.S.2d 779, 780 (3d Dept. 2009) (24 month assessment by Board for failure to report 5 months after release); Matter of Ramirez v. New York State Board of Parole, 625 N.Y.S.2d 505 (1st Dept. 1995) (18 month assessment for moving to another state and not reporting to parole officer for three months). 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 (1st 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 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

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Caine, Trevor

DIN: 12-A-5432

Facility: Clinton CF

AC No.: 12-126-18 R

Findings: (Page 2 of 2)

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).

Recommendation: Affirm.