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Administrative Appeal Decision - Buroughs, Troy (2019-02-27)

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STATE OF NEW YORK – BOARD OF PAROLE

Administrative Appeal Decision Notice

Inmate Name: BURGHOUS, TROY

Facility: Orange County Jail

NYSID No. [REDACTED]

Appeal Control #: 11-058-18 R

Dept. DIN#: 15-R-1737

Appearances:

For the Board, the Appeals Unit

For Appellant:

Troy Buroughs (15-R-1737)
Orange County Jail
110 Wells Farm Road
Goshen, New York 10924

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

Decision appealed from: 10/2018 Revocation of Parole; 12-month hold.

Pleadings considered:

Brief on behalf of the Appellant submitted on: November 28, 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

Affirmed Reversed for De Novo Hearing
 Vacated for De Novo Review of Time Assessment Only

Reversed - Violation Vacated
 Modified to _____



Commissioner

Affirmed Reversed for De Novo Hearing
 Vacated for De Novo Review of Time Assessment Only

Reversed - Violation Vacated
 Modified to _____



Commissioner

Affirmed Reversed for De Novo Hearing
 Vacated for De Novo Review of Time Assessment Only

Reversed - Violation Vacated
 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 2/27/19 66.

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: BURGESS, TROY

Facility: Orange County Jail

Dept. DIN#: 15-R-1737

Appeal Control #: 11-058-18 R

Findings:

Appellant has filed an administrative appeal challenging a decision made by the Administrative Law Judge (hereinafter "ALJ") to revoke Appellant's parole and impose a 12-month time assessment. The Appeals Unit has reviewed each of the issues raised by Appellant, and finds that the issues have no merit.

9 N.Y.C.R.R. §8006.3(b) provides in part that "questions may be raised from a parole rescission or a final revocation determination, subject to the limitation that evidentiary or procedural challenges will be considered only if a timely objection was made at the hearing...." Appellant failed to make a timely objection at the final revocation hearing with respect to any issues. 9 N.Y.C.R.R. §8006.3(b). Therefore, all issues have been waived as there were no objections raised by Appellant at the final revocation hearing. 9 N.Y.C.R.R. §8006.3(b); Matter of Bowes v. Dennison, 20 A.D.3d 845 (3d Dept. 2005); People ex rel. Williams v. Allard, 19 A.D.3d 890 (3d Dept. 2005); Matter of Currie v. New York State Board of Parole, 298 A.D.2d 805 (3d Dept. 2002).

Additionally, we note that Appellant entered a plea of guilty at the final revocation hearing. A guilty plea at the final parole revocation hearing operates as a waiver of any antecedent claims, and acts in the same way as a criminal defendant's waiver of various rights after pleading guilty to a crime. See Tollett v. Henderson, 411 U.S. 258 1602 (1973); People v. Suarez, 55 N.Y.2d 940 (1982); People v. Di Raffaele, 55 N.Y.2d 234 (1982).

Appellant is a Category 1 violator, so the ALJ must impose a minimum of 15 months as a time assessment, or a hold to maximum expiration of the sentence, whichever is less, unless a mitigating reduction of up to three months is applied for a violator who accepts responsibility for his or her conduct, or unless there are exceptional mitigating circumstances. 9 N.Y.C.R.R. §8005.20(c)(1); People ex rel. Newland v. Travis, 185 Misc.2d 881 (Sup. Ct., Bronx Co., 2000). The time assessment imposed here was not excessive. See, e.g., Matter of Wilson v. Evans, 104 A.D.3d 1190 (4th Dept. 2013); Matter of Rosario v. New York State Division of Parole, 80 A.D.3d 1030 (3d Dept. 2011); Matter of Bell v. Lemons, 78 A.D.3d 1393 (3d Dept. 2010); Matter of Torres v. New York State Division of Parole, 58 A.D.3d 1039 (3d Dept. 2009).

Recommendation:

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