December 2020

Administrative Appeal Decision - Norris, Tyrell (2019-11-26)

STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Norris, Tyrell **Facility:** Mid-State CF

NYSID: [redacted] **Appeal Control No.:** 05-017-19 B

DIN: 02-R-4885

Appearances: Tyrell Norris, 02-R-4885
Mid-State Correctional Facility
P.O. Box 2500
Marcy, NY 13403

Decision appealed: April 2019 decision, denying discretionary release and imposing a hold of 18 months.

Board Member(s) who participated: **Agostini, Cruse**

Papers considered: Appellant's Letter-brief received July 11, 2019

Appeals Unit Review: Statement of the Appeals Unit's Findings and Recommendation

Records relied upon: Pre-Sentence Investigation Report, Parole Board Report, Interview Transcript, Parole Board Release Decision Notice (Form 9026), COMPAS instrument, Offender Case Plan.

Final Determination: The undersigned determine that the decision appealed is hereby:

_____ ___ **Affirmed** ___ **Vacated, remanded for de novo interview** ___ **Modified to** _____
Commissioner

_____ ___ **Affirmed** ___ **Vacated, remanded for de novo interview** ___ **Modified to** _____
Commissioner

_____ ___ **Affirmed** ___ **Vacated, remanded for de novo interview** ___ **Modified to** _____
Commissioner

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 11/26/19 LB.

Distribution: Appeals Unit – Appellant - Appellant's Counsel - Inst. Parole File - Central File
P-2002(B) (11/2018)

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

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Findings: (Page 1 of 3)

Appellant challenges the April 2019 determination of the Board, denying release and imposing an 18-month hold. The instant offenses involve possession of 25 ziplock bags of cocaine and running a narcotics trafficking enterprise in a housing development, bringing in large quantities of cocaine and heroin for processing, packaging, storing, preparing, and selling at street level. Appellant raises the following issues: 1) the Board failed to consider that he received a lack of assistance from his offender rehabilitation coordinator; 2) [redacted] 3) the Board relied on erroneous information in the COMPAS instrument; and 4) the decision violated due process. These arguments are without merit.

As an initial matter, discretionary release to parole is not to be granted "merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law, **and** that his release is not incompatible with the welfare of society **and** will not so deprecate the seriousness of his crime as to undermine respect for the law." Executive Law § 259-i(2)(c)(A) (emphasis added); accord Matter of Hamilton v. New York State Div. of Parole, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014). Executive Law § 259-i(2)(c)(A) requires the Board to consider criteria which is relevant to the specific inmate, including, but not limited to, the inmate's institutional record and criminal behavior. People ex rel. Herbert v. New York State Bd. of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881 (1st Dept. 1983).

While consideration of these factors is mandatory, "the ultimate decision to parole a prisoner is discretionary." Matter of Silmon v. Travis, 95 N.Y.2d 470, 477, 718 N.Y.S.2d 704, 708 (2000). Thus, it is well settled that the weight to be accorded the requisite factors is solely within the Board's discretion. See, e.g., Matter of Delacruz v. Annucci, 122 A.D.3d 1413, 997 N.Y.S.2d 872 (4th Dept. 2014); Matter of Hamilton, 119 A.D.3d at 1271, 990 N.Y.S.2d at 717; Matter of Garcia v. New York State Div. of Parole, 239 A.D.2d 235, 239, 657 N.Y.S.2d 415, 418 (1st Dept. 1997). The Board need not explicitly refer to each factor in its decision, nor give them equal weight. Matter of Betancourt v. Stanford, 148 A.D.3d 1497, 49 N.Y.S.3d 315 (3d Dept. 2017); Matter of LeGeros v. New York State Bd. Of Parole, 139 A.D.3d 1068, 30 N.Y.S.3d 834 (2d Dept. 2016); Matter of Phillips v. Dennison, 41 A.D.3d 17, 21, 834 N.Y.S.2d 121, 124 (1st Dept. 2007). In the absence of a convincing demonstration that the Board did not consider the statutory factors, it must be presumed that the Board fulfilled its duty. Matter of Fuchino v. Herbert, 255 A.D.2d 914, 914, 680 N.Y.S.2d 389, 390 (4th Dept. 1998); Matter of McLain v. New York State Div. of Parole, 204 A.D.2d 456, 611 N.Y.S.2d 629 (2d Dept. 1994); Matter of McKee v. New York State Bd. Of Parole, 157 A.D.2d 944, 945, 550 N.Y.S.2d 204, 205 (3d Dept. 1990); People ex rel. Herbert, 97 A.D.2d 128, 468 N.Y.S.2d 881.

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Findings: (Page 2 of 3)

The record as a whole, including the interview transcript, reflects that the Board considered the appropriate factors, including: the instant offense involving Appellant's role as a leader in a large scale drug-trafficking enterprise; Appellant's criminal history including prior convictions for selling drugs; his institutional efforts including improved disciplinary record, receipt of his GED, work as a mobile assistant, [redacted] and ART; and release plans to seek assistance from a reentry program and work in construction. The Board also had before it and considered, among other things, the case plan, the COMPAS instrument, the sentencing minutes, official statements from the Court and the District Attorney, and an email from Appellant's fiancée.

After considering all required factors, the Board acted within its discretion in determining release would not satisfy the standards provided for by Executive Law § 259-i(2)(c)(A). In reaching its conclusion, the Board permissibly relied on the instant offense and Appellant's criminal history including prior convictions for selling drugs. See Matter of Boccadisi v. Stanford, 133 A.D.3d 1169, 20 N.Y.S.3d 477 (3d Dept. 2015); Matter of Montane v. Evans, 116 A.D.3d 197, 981 N.Y.S.2d 866 (3d Dept. 2014); Matter of Davis v. Evans, 105 A.D.3d 1305, 963 N.Y.S.2d 485 (3d Dept. 2013); Matter of Lashway v. Evans, 110 A.D.3d 1417, 1418, 974 N.Y.S.2d 164, 165 (3d Dept. 2013); Matter of McKee v. New York State Bd. of Parole, 157 A.D.2d 944, 550 N.Y.S.2d 204 (3d Dept. 1990). In its decision, the Board noted Appellant's elevated COMPAS scores for negative social cognitions and low self-efficacy and optimism. See Matter of Espinal v. N.Y. State Bd. of Parole, 172 A.D.3d 1816, 100 N.Y.S.3d 777 (3d Dept. 2019); Matter of Bush v. Annucci, 148 A.D.3d 1392, 50 N.Y.S.3d 180 (3d Dept. 2017). The Board encouraged Appellant to maintain his improved disciplinary record and develop a more defined reentry plan. See Matter of Delrosario v. Stanford, 140 A.D.3d 1515, 34 N.Y.S.3d 696 (3d Dept. 2016).

To the extent Appellant contends he received a lack of assistance from his offender rehabilitation coordinator ("ORC") and that this should have been considered by the Board, his contention is without merit. That Appellant's written request to his ORC asking that she help proof and rewrite his personal statement was denied does not provide a basis to disturb the Board's decision.

[redacted]

Insofar as Appellant claims the Board relied on erroneous information in the COMPAS instrument, Appellant's objection is vague and seems to stem from the fact that his current COMPAS instrument differs from the one prepared prior to his last interview. A review of the record reveals most of Appellant's COMPAS scores, including those for negative social cognitions

APPEALS UNIT FINDINGS & RECOMMENDATION

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Findings: (Page 3 of 3)

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and low self-efficacy and optimism, improved on the latest COMPAS instrument. Appellant does not claim, nor is there any indication, that he sought to make changes to any scores prior to the interview. Appellant failed to raise the alleged deficiency during the interview and in fact attributed the scores in question to his personal outlook and attitude (Tr. at 7). As to the COMPAS procedures, Directive 8500 sets forth the operating procedures for the application of COMPAS Risk and Need Assessment. The Board does not prepare the COMPAS instrument, but merely considers the COMPAS and scores given to each risk or need. An administrative appeal to the Board is not the proper forum to challenge the COMPAS instrument.

Finally, an inmate has no Constitutional right to be conditionally released on parole before expiration of a valid sentence. Greenholtz v. Inmates of Nebraska Penal & Correctional Complex, 442 U.S. 1, 99 S. Ct. 2100, 2104 (1979); Matter of Russo v. Bd. of Parole, 50 N.Y.2d 69, 427 N.Y.S.2d 982 (1980); Matter of Vineski v. Travis, 244 A.D.2d 737, 664 N.Y.S.2d 391 (3d Dept. 1997). The New York State parole scheme "holds out no more than a possibility of parole" and thus does not create a protected liberty interest implicating the due process clause. Matter of Russo, 50 N.Y.2d at 75-76, 427 N.Y.S.2d at 985; see also Barna v. Travis, 239 F.3d 169, 171 (2d Cir. 2001); Matter of Freeman v. New York State Div. of Parole, 21 A.D.3d 1174, 800 N.Y.S.2d 797 (3d Dept. 2005).

Recommendation: Affirm.