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December 2020

### Administrative Appeal Decision - Martinez, Tyshaun (2019-04-15)

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ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Martinez, Tyshaun

Facility: Marcy CF

NYSID



Appeal Control No.: 10-097-18 R

DIN: 15-B-1980

Appearances: Tyshaun Martinez (15B1980)  
Marcy Correctional Facility  
9000 Old River Road, Box 3600  
Marcy, New York 13403

Decision appealed: September 11, 2018 revocation of release and imposition of a time assessment of hold to maximum expiration date.

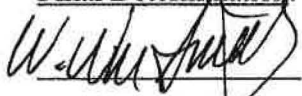
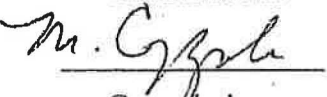

Final Revocation Hearing Date: September 11, 2018

Papers considered: Appellant's Brief received January 10, 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 4/15/19 66.

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Martinez, Tyshaun   **DIN:** 15-B-1980  
**Facility:** Marcy CF   **AC No.:** 10-097-18 R

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

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Appellant challenges the September 11, 2018 determination of the administrative law judge (“ALJ”), revoking release and imposing a hold to maximum expiration date.

Appellant was convicted by plea of Attempted Criminal Possession of a Weapon 3<sup>rd</sup>. Appellant was also convicted of Introducing Dangerous Contraband into Prison 1<sup>st</sup>, which is being served concurrently with the weapon conviction. His aggregate determinate term of imprisonment is 2 years, with 3 years of post-release supervision.

Appellant has a prior sustained parole violation. Appellant’s current violative behavior involved 6 separate alleged parole violation charges, including associating with a person he knew had a criminal record, riding in a car with two known gang members, tampering with a GPS unit, and fleeing local police and parole officers thereby threatening the safety and well-being of himself and others. Appellant entered a plea of guilty to the charge that he used/possessed a controlled substance without proper medical authorization.

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 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).

In addition, Appellant did not preserve any of the issues he now raises in his brief, and they have therefore been waived. See 9 N.Y.C.R.R. §8006.3(b); Matter of Worrell v. Stanford, 153 A.D.3d 1510, 59 N.Y.S.3d 922 (3d Dept. 2017); Matter of Bowes v. Dennison, 20 A.D.3d 845, 800 N.Y.S.2d 459 (3d Dept. 2005); Matter of Currie v. New York State Board of Parole, 298 A.D.2d 805, 748 N.Y.S.2d 712 (3d Dept. 2002).

Appellant is a Category 1 violator and, therefore, the ALJ must impose a minimum time assessment of 15 months, or a hold to the maximum expiration date of Appellant’s sentence, whichever is less. The ALJ may in certain cases reduce the minimum 15-month time assessment by up to three months, but this was not part of the stipulated settlement made on the record at the final revocation hearing. See 9 N.Y.C.R.R. §8005.20(c)(1). The hold to maximum expiration date imposed by the ALJ at the final revocation hearing was agreed to on the record by both Appellant

STATE OF NEW YORK – BOARD OF PAROLE

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

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and his attorney without objection, and was not excessive as the Executive Law does not place an outer limit on the length of the time assessment 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).

**Recommendation:** Affirm.