

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 - Texidor, Victor (2019-03-22)

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

Recommended Citation

"Administrative Appeal Decision - Texidor, Victor (2019-03-22)" (2020). Parole Information Project
<https://ir.lawnet.fordham.edu/aad/448>

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: Texidor, Victor

Facility: Greene CF

NYSID: [REDACTED]

Appeal Control No.: 09-026-18 R

DIN: 14-B-1784

Appearances: Victor Texidor 14B1784
Cape Vincent Correctional Facility
Route 12E
Box 599
Cape Vincent, New York 13618

Decision appealed: August 15, 2018 revocation of release and imposition of a time assessment of 18 months.

Final Revocation August 15, 2018

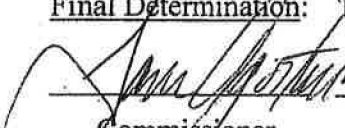
Hearing Date:


Papers considered: Appellant's Letter-brief received September 5, 2018


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

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:

 Affirmed Reversed, remanded for de novo hearing Reversed, violation vacated
Commissioner Vacated for de novo review of time assessment only Modified to _____

 Affirmed Reversed, remanded for de novo hearing Reversed, violation vacated
Commissioner Vacated for de novo review of time assessment only Modified to _____

 Affirmed Reversed, remanded for de novo hearing Reversed, violation vacated
Commissioner Vacated for de novo review of time assessment only 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 3/23/19 66.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Texidor, Victor **DIN:** 14-B-1784
Facility: Greene CF **AC No.:** 09-026-18 R

Findings: (Page 1 of 2)

Appellant challenges the August 15, 2018 determination of the administrative law judge (“ALJ”), revoking release and imposing a 18-month time assessment. Appellant raises two issues. 1) the testimony from the Preliminary Violation Hearing was not sufficient enough to sustain a finding of probable cause. 2) the time assessment imposed is harsh and excessive. Especially since the Governor is promoting alternatives to incarceration.

As an initial matter, 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).

Defects allegedly attending the preliminary revocation hearing are “subsumed” into the final hearing once it is completed, thus rendering the matter moot. Matter of Collins v. Rodriguez, 138 A.D.2d 809, 525 N.Y.S.2d 728, 729 (3d Dept. 1988); see also Matter of Davis v. Laclair, 165 A.D.3d 1367, 1368, 85 N.Y.S.3d 623 (3d Dept. 2018); Matter of Sellers v. Stanford, 144 A.D.3d 691, 40 N.Y.S.3d 501 (2d Dept. 2016); People ex rel. Campolito v. Hale, 70 A.D.3d 1474, 893 N.Y.S.2d 917 (4th Dept. 2010); People ex rel. Frett v. Warden, Rikers Island Corr. Facility, 25 A.D.3d 472, 807 N.Y.S.2d 295 (1st Dept. 2006). Any challenges to the probable cause determination were rendered moot by the final revocation determination. People ex rel. Johnson v. O’Flynn, 141 A.D.3d 1107, 1008, 35 N.Y.S.3d 613 (4th Dept. 2016); People ex rel. David v New York State Div. of Parole, 12 A.D.3d 963, 784 N.Y.S.2d 912, 913 (3d Dept. 2004); People ex rel. Wilt v. Meloni, 166 A.D.2d 927, 561 N.Y.S.2d 673 (4th Dept. 1990); Matter of Collins v. Rodriguez, 138 A.D.2d 809, 525 N.Y.S.2d 728, 729 (3d Dept. 1988).

Appellant is on parole for possessing a loaded gun, with intent to use it against someone. The parole revocation charges including absconding, curfew violation, and assault (striking a woman in her face, and causing swelling and bruising). Appellant pled to the curfew violation. While the conduct giving rise to the violation did not constitute a new crime, the ALJ acted within his discretion to impose an 18 month time assessment 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

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Texidor, Victor

DIN: 14-B-1784

Facility: Greene CF

AC No.: 09-026-18 R

Findings: (Page 2 of 2)

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).

Recommendation: Affirm.