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Administrative Appeal Decision - Gardner, Walter (2018-12-28)

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Administrative Appeal Decision Notice

Inmate Name: Gardner, Walter

Facility: Orleans Correctional Facility.

NYSID No. [REDACTED]

Appeal Control #: 06-141-18-R

Dept. DIN#: 11B0019

Appearances:

For the Board, the Appeals Unit

For Appellant: Joseph Frazier Esq.
Niagara County Public Defender
175 Hawley Street
Lockport, New York 14094

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

Decision appealed from: 5/2018-Revocation of release, with imposition of 12 month time assessment.

Pleadings considered: Letter-brief on behalf of the appellant received on October 23, 2018.
Statement of the Appeals Unit's Findings and Recommendation

Documents relied upon: Notice of Violation, Violation of Release Report, Final 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

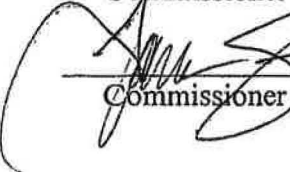
Affirmed Reversed for De Novo Hearing
 Vacated for De Novo Review of Time Assessment Only

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 12/28/18 GG.

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: Gardner, Walter

Facility: Orleans Correctional Facility

Dept. DIN#: 11B0019

Appeal Control #: 06-141-18-R

Findings:

New counsel for the appellant has submitted a letter-brief to serve as the perfected appeal. The letter-brief raises three primary issues: 1) his due process rights were violated when the Administrative Law Judge refused to grant an adjournment; 2) there was insufficient evidence to support the sustained charge; and 3) the time assessment imposed was harsh and excessive.

In response, appellant's parole was revoked at the hearing upon his unconditional plea of guilty. This was conducted pursuant to a plea bargain agreement, with his attorney being present. Given his failure to object and his plea of guilty, all issues are now waived and/or moot and are not preserved for judicial review. Stanbridge v Hammock, 55 N.Y.2d 661, 663, 446 N.Y.S.2d 929 (1981); Herman v Blum, 54 N.Y.2d 677, 678, 442 N.Y.S.2d 510 (1981); Wescott v New York State Board of Parole, 256 A.D.2d 1179, 682 N.Y.S.2d 499 (4th Dept 1998); Kirk v Hammock, 119 A.D.2d 851, 500 N.Y.S.2d 424, 426 (3d Dept 1986); Chavis v Superintendent, 236 A.D.2d 892, 653 N.Y.S.2d 752 (4th Dept 1997).

Recommendation:

Accordingly, it is recommended the decision of the Administrative Law Judge be affirmed.