

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 - Stewart, Wilson (2019-02-06)

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

---

#### Recommended Citation

"Administrative Appeal Decision - Stewart, Wilson (2019-02-06)" (2020). Parole Information Project  
<https://ir.lawnet.fordham.edu/aad/464>

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](mailto:tmelnick@law.fordham.edu).

STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Stewart, Wilson

Facility: Elmira CF

NYSID [REDACTED]

Appeal Control No.: 06-149-18 R

DIN: 10-B-2164

Appearances: Craig P. Schlanger, Esq.  
Hiscock Legal Aid Society  
351 South Warren Street  
Syracuse, New York 13202

Decision appealed: May 22, 2018 revocation of release and imposition of a time assessment of 30-months.

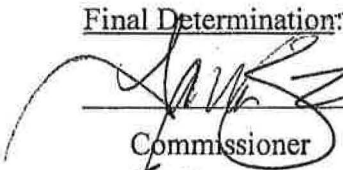


Final Revocation Hearing Date: May 22, 2018

Papers considered: Appellant's Brief received December 5, 2018

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 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 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 2/6/19 66.

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Stewart, Wilson

**DIN:** 10-B-2164

**Facility:** Elmira CF

**AC No.:** 06-149-18 R

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

---

Appellant challenges the May 22, 2018 determination of the administrative law judge (“ALJ”), revoking release and imposing a 30-month time assessment.

Appellant raises the following issues: (1) the ALJ’s decision was not supported by a preponderance of the evidence; and (2) the 30-month hold was excessive.

As to the first issue, to sustain a violation charge, the administrative law judge (“ALJ”) must conclude that the parolee’s conduct constituted a violation of the cited condition “in an important respect.” Executive Law § 259-i(3)(f)(x); 9 N.Y.C.R.R. §§ 8005.19(e), 8005.20(b). The conclusion must be supported by a preponderance of the evidence. Executive Law § 259-i(3)(f)(viii); 9 N.Y.C.R.R. § 8005.19(e); Matter of Davis v. Laclair, 165 A.D.3d 1367, 1368, 85 N.Y.S.3d 623 (3d Dept. 2018). “To the extent that [Appellant] disagrees with the witnesses’ versions of events upon which the charges were based, it is within the province of the Board to resolve issues of credibility, and to determine the relative weight to be assigned to the evidence.” Matter of Davis v. Laclair, 165 A.D.3d 1367, 1368, 85 N.Y.S.3d 623 (3d Dept. 2018) (citations omitted). The Administrative Law Judge was entitled to credit other witnesses over parolee’s version of events. See Matter of Partee v. Stanford, 159 A.D.3d 1294, 74 N.Y.S.3d 114 (3d Dept. 2018); Matter of Tambadou v. Annucci, 151 A.D.3d 1699, 53 N.Y.S.3d 857 (4th Dept. 2017); People ex rel. Wright v. Demars, 153 A.D.3d 1466, 62 N.Y.S.3d 549 (3d Dept. 2017).

The Appeals Unit has reviewed the witness testimony and accusatory instruments received into evidence at the final revocation hearing, as well as the ALJ’s detailed decision, and has determined that this evidence was sufficient to establish by a preponderance of the evidence that Appellant violated the conditions of release in an important respect, recognizing that it is the province of the ALJ to resolve credibility issues and to determine the relative weight to be accorded the evidence. Simpson v. Alexander, 63 A.D.3d 1495 (3d Dept. 2009); Matter of Santiago v. Dennison, 45 AD3d 994 (3d Dept. 2007).

As to the second issue, for a category 1 violator such as Appellant, the time assessment generally must be a *minimum* of 15 months or a hold to the maximum expiration of the sentence, whichever is less. 9 N.Y.C.R.R. § 8005.20(c)(1). The Executive Law does not place an outer limit on the length of time 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). The 30-month time assessment imposed by the ALJ was proper.

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Stewart, Wilson

**DIN:** 10-B-2164

**Facility:** Elmira CF

**AC No.:** 06-149-18 R

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

---

**Recommendation:** Affirm.