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December 2020

### Administrative Appeal Decision - Rivera, Paul (2019-06-21)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Rivera, Paul

Facility: Fishkill CF

NYSID: [REDACTED]

Appeal Control No.: 12-019-18 B

DIN: 86-A-3311

Appearances: Andre Sedlak, Esq.  
11 Market Street  
Suite 205  
Poughkeepsie, New York 12601

Decision appealed: November 2018 decision, denying discretionary release and imposing a hold of 15 months.

Board Member(s) who participated: Agostini, Davis.

Papers considered: Appellant's Brief received April 4, 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:

 Commissioner	<input type="checkbox"/> Affirmed	<input checked="" type="checkbox"/> Vacated, remanded for de novo interview	<input type="checkbox"/> Modified to _____
 Commissioner	<input type="checkbox"/> Affirmed	<input checked="" type="checkbox"/> Vacated, remanded for de novo interview	<input type="checkbox"/> Modified to _____
 Commissioner	<input type="checkbox"/> Affirmed	<input checked="" type="checkbox"/> Vacated, remanded for de novo interview	<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 6/21/19.

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**

**Name:** Rivera, Paul

**DIN:** 86-A-3311

**Facility:** Fishkill CF

**AC No.:** 12-019-18 B

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

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Appellant challenges the November 2018 determination of the Board, denying release and imposing a 15-month hold.

Appellant appeals the Board's decision to deny discretionary release on various grounds, among which is the argument that the Board did not have his sentencing minutes before it at the time it assessed his suitability for release to parole supervision. As to this ground, the appeal has merit.

The Appeals Unit has determined that the sentencing minutes had been provided to staff at Appellant's facility and should have been provided to the Board at the time of the interview, but were not. Accordingly, Appellant must be awarded a *de novo* interview. See Executive Law §259-i(2)(c)(A); 9 N.Y.C.R.R. §8002.2(d).

Given that a *de novo* interview is being recommended, a response to Appellant's remaining arguments is not warranted.

**Recommendation:**

It is the recommendation of the Appeals Unit that the Board's decision be reversed, and that a *de novo* interview be conducted before a panel of new Board members.