

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

Parole Administrative Appeal Decisions

Parole Administrative Appeal Documents

May 2021

Administrative Appeal Decision - Williams, Derrick (2020-01-03)

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

Recommended Citation

"Administrative Appeal Decision - Williams, Derrick (2020-01-03)" (2021). Parole Information Project
<https://ir.lawnet.fordham.edu/aad/483>

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.

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Williams, Derrick

Facility: Shawangunk CF

NYSID: [REDACTED]

Appeal Control No.: 03-080-19 B

DIN: 00-A-6019

Appearances: Cheryl Kates Esq.
P.O. Box 734
Fairport, New York 14450

Decision appealed: February 2019 decision, denying discretionary release and imposing a hold of 12 months.

Board Member(s) who participated: Berliner, Demosthenes

Papers considered: Appellant's Letter-brief received August 12, 2019
Appellant's Supplemental Letter-brief received November 27, 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:

Affirmed Vacated, remanded for de novo interview Modified to _____

Commissioner

Affirmed Vacated, remanded for de novo interview Modified to _____

Commissioner

Affirmed Vacated, remanded for de novo interview Modified to _____

Commissioner

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 1/3/2020.

LB

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Williams, Derrick

DIN: 00-A-6019

Facility: Shawangunk CF

AC No.: 03-080-19 B

Findings: (Page 1 of 7)

Appellant challenges the February 2019 determination of the Board, denying release and imposing a 12-month hold. Appellant's underlying instant offenses involved him committing 13 different robberies, 11 of them at gunpoint. Appellant raises the following issues: 1) the decision is arbitrary and capricious, and irrational bordering on impropriety, in that the Board failed to consider and/or properly weigh the required statutory factors. 2) the decision lacks details. 3) the letter to his criminal defense lawyer was sent to the wrong address. 4) all DA letters in opposition are void, as they violate the plea bargain contract. 5) the Parole Board Report has errors. 6) the decision resentenced appellant to life without parole. 7) the Board ignored all youth considerations in his criminal history. 8) the decision violates the due process clause of the constitution. 9) the decision failed to list any facts in support of the statutory standard cited. 10) the decision was predetermined. 11) the Board failed to comply with the 2011 amendments to the Executive Law, and the 2017 regulations, in that they are rehabilitation and forward based. Additionally, the COMPAS is evidence based and carries with it a presumption of release. The attempted departure was void. And the COMPAS had errors in it. 12) the 12 month hold is excessive.

Discretionary release to parole is not to be granted "merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law, **and** that his release is not incompatible with the welfare of society **and** will not so deprecate the seriousness of his crime as to undermine respect for the law." Executive Law § 259-i(2)(c)(A) (emphasis added); accord Matter of Hamilton v. New York State Div. of Parole, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014). Executive Law § 259-i(2)(c)(A) requires the Board to consider criteria which is relevant to the specific inmate, including, but not limited to, the inmate's institutional record and criminal behavior. People ex rel. Herbert v. New York State Bd. of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881 (1st Dept. 1983). While consideration of these factors is mandatory, "the ultimate decision to parole a prisoner is discretionary." Matter of Silmon v. Travis, 95 N.Y.2d 470, 477, 718 N.Y.S.2d 704, 708 (2000). Thus, it is well settled that the weight to be accorded the requisite factors is solely within the Board's discretion. See, e.g., Matter of Delacruz v. Annucci, 122 A.D.3d 1413, 997 N.Y.S.2d 872 (4th Dept. 2014); Matter of Hamilton, 119 A.D.3d at 1271, 990 N.Y.S.2d at 717; Matter of Garcia v. New York State Div. of Parole, 239 A.D.2d 235, 239, 657 N.Y.S.2d 415, 418 (1st Dept. 1997). The Board need not explicitly refer to each factor in its decision, nor give them equal weight. Matter of Betancourt v. Stanford, 148 A.D.3d 1497, 49 N.Y.S.3d 315 (3d Dept. 2017); Matter of LeGeros v. New York State Bd. of Parole, 139 A.D.3d 1068, 30 N.Y.S.3d 834 (2d Dept. 2016); Matter of Phillips v. Dennison, 41 A.D.3d 17, 21, 834 N.Y.S.2d 121, 124 (1st Dept. 2007).

Although the Board placed particular emphasis on the nature of the crime, the Board considered other factors and was not required to give equal weight to or discuss each factor considered. Matter

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Williams, Derrick

DIN: 00-A-6019

Facility: Shawangunk CF

AC No.: 03-080-19 B

Findings: (Page 2 of 7)

of Gordon v. Stanford, 148 A.D.3d 1502, 50 N.Y.S.3d 627 (3d Dept. 2017); Matter of Arena v. New York State Dep't of Corr. & Cmty. Supervision, 156 A.D.3d 1101, 65 N.Y.S.3d 471 (3d Dept. 2017); Matter of Peralta v. New York State Bd. of Parole, 157 A.D.3d 1151, 69 N.Y.S.3d 885 (3d Dept. 2018).

The Board decision may mention that he committed one offense while on parole. Matter of Webb v. Travis, 26 A.D.3d 614, 810 N.Y.S.2d 233 (3d Dept. 2006); Matter of Thompson v. New York State Bd. of Parole, 120 A.D.3d 1518, 1518-19, 992 N.Y.S.2d 464, 465 (3d Dept. 2014); Matter of Moore v. New York State Bd. of Parole, 137 A.D.3d 1375, 26 N.Y.S.3d 412, 413 (3d Dept. 2016). Matter of Ward v. New York State Div. of Parole, 144 A.D.3d 1375, 40 N.Y.S.3d 803 (3d Dept. 2016); Matter of Guzman v. Dennison, 32 A.D.3d 798, 799, 821 N.Y.S.2d 208, 208 (1st Dept. 2006).

The fact that the Board afforded greater weight to the inmate's criminal history, as opposed to other positive factors, does not render the denial of parole for that reason irrational or improper. Matter of Davis v. Evans, 105 A.D.3d 1305, 963 N.Y.S.2d 485 (3d Dept. 2013); Matter of Lashway v. Evans, 110 A.D.3d 1417, 1418, 974 N.Y.S.2d 164, 165 (3d Dept. 2013); Matter of McKee v. New York State Bd. of Parole, 157 A.D.2d 944, 550 N.Y.S.2d 204 (3d Dept. 1990).

The Board may consider an inmate's need to complete rehabilitative programming in denying parole. See Matter of Allen v. Stanford, 161 A.D.3d 1503, 1506, 78 N.Y.S.3d 445 (3d Dept.), lv. denied, 32 N.Y.3d 903 (2018); Matter of Barrett v. New York State Div. of Parole, 242 A.D.2d 763, 661 N.Y.S.2d 857 (3d Dept. 1997); see also Matter of Connelly v. New York State Div. of Parole, 286 A.D.2d 792, 729 N.Y.S.2d 808, 809 (3d Dept.), appeal dismissed 97 N.Y.2d 677, 738 N.Y.S.2d 291 (2001).

After considering the relevant factors, the Board was allowed to place greater emphasis on the inmate's criminal record including prior failures while under community supervision. See, e.g., Matter of Bello v. Bd. of Parole, 149 A.D.3d 1458, 53 N.Y.S.3d 715 (3d Dept. 2017); Matter of Davis v. Evans, 105 A.D.3d 1305, 963 N.Y.S.2d 485 (3d Dept. 2013); People ex rel. Herbert v. New York State Bd. of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881, 884 (1st Dept. 1983).

The Board may consider negative aspects of the COMPAS instrument. Matter of Espinal v. New York Bd. of Parole, 2019 NY Slip Op 04080, 2019 N.Y. App. Div. LEXIS 4057 (3d Dept. May 23, 2019) (COMPAS instrument yielded mixed results); Matter of Bush v. Annucci, 148 A.D.3d 1392, 50 N.Y.S.3d 180 (3d Dept. 2017) (COMPAS instrument with mixed results including substance abuse relevant given use before crime); Matter of Wade v. Stanford, 148 A.D.3d 1487, 52 N.Y.S.3d 508 (3d Dept. 2017) (low risk felony violence but probable risk for substance abuse alcohol related crimes); Matter of Crawford v. New York State Bd. of Parole, 144 A.D.3d 1308, 46 N.Y.S.3d 228

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Williams, Derrick

DIN: 00-A-6019

Facility: Shawangunk CF

AC No.: 03-080-19 B

Findings: (Page 3 of 7)

(3d Dept. 2016) (scores not uniformly low including family support), lv. denied, 29 N.Y.3d 901, 57 N.Y.S.3d 704 (2017).

There is a presumption of honesty and integrity that attaches to Judges and administrative fact-finders. See People ex rel. Carlo v. Bednosky, 294 A.D.2d 382, 383, 741 N.Y.S.2d 703 (2d Dept. 2002); People ex. rel. Johnson v. New York State Bd. of Parole, 180 A.D.2d 914, 916, 580 N.Y.S.2d 957, 959 (3d Dept. 1992). The Board is presumed to follow its statutory commands and internal policies in fulfilling its obligations. See Garner v. Jones, 529 U.S. 244, 256, 120 S. Ct. 1362, 1371 (2000). There is no evidence the Board’s decision was predetermined based upon the instant offense. Matter of Gonzalvo v. Stanford, 153 A.D.3d 1021, 56 N.Y.S.3d 896 (3d Dept. 2017); Matter of Hakim-Zaki v. New York State Div. of Parole, 29 A.D.3d 1190, 814 N.Y.S.2d 414 (3d Dept. 2006); Matter of Guerin v. New York State Div. of Parole, 276 A.D.2d 899, 695 N.Y.S.2d 622 (3d Dept. 2000). Nor was any penal philosophy discussed. Appellant has failed to overcome the presumption that the Board complied with its duty. See Matter of Davis v. New York State Div. of Parole, 114 A.D.2d 412, 494 N.Y.S.2d 136 (2d Dept. 1985).

That the Board “did not recite the precise statutory language of Executive Law § 259-i (2)(c)(A) in support of its conclusion to deny parole does not undermine its conclusion.” Matter of Mullins v. New York State Bd. of Parole, 136 A.D.3d 1141, 1142, 25 N.Y.S.3d 698 (3d Dept. 2016) (citation omitted); accord Matter of Reed v. Evans, 94 A.D.3d 1323, 942 N.Y.S.2d 387 (3d Dept. 2012). The language used by the Board was “only semantically different” from the statute. Matter of Miller v. New York State Div. of Parole, 72 A.D.3d 690, 691–92, 897 N.Y.S.2d 726, 727 (2d Dept. 2010); Matter of James v. Chairman of New York State Div. of Parole, 19 A.D.3d 857, 858, 796 N.Y.S.2d 735, 736 (3d Dept. 2005); see also People ex rel. Herbert v. New York State Bd. of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881 (1st Dept. 1983) (upholding decision that denied release as “contrary to the best interest of the community”); Matter of Murray v. Evans, 83 A.D.3d 1320, 920 N.Y.S.2d 745 (3d Dept. 2011) (Board provided adequate statutory rationale).

The Board’s decision satisfied the criteria set out in Executive Law § 259-i(2)(a), as it was sufficiently detailed to inform the inmate of the reasons for the denial of parole. Matter of Applegate v. New York State Bd. of Parole, 164 A.D.3d 996, 997, 82 N.Y.S.3d 240 (3d Dept. 2018); Matter of Kozlowski v. New York State Bd. of Parole, 108 A.D.3d 435, 968 N.Y.S.2d 87 (1st Dept. 2013); Matter of Little v. Travis, 15 A.D.3d 698, 788 N.Y.S.2d 628 (3d Dept. 2005); Matter of Davis v. Travis, 292 A.D.2d 742, 739 N.Y.S.2d 300 (3d Dept. 2002); People ex rel. Herbert v. New York State Bd. of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881 (1st Dept. 1983).

Appellant’s assertion that the denial of parole release amounted to an improper resentencing is without merit inasmuch as the Board fulfilled its obligation to determine the propriety of release per Executive Law § 259-i(2)(c)(A) and after considering the factors set forth therein. Executive

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Williams, Derrick

DIN: 00-A-6019

Facility: Shawangunk CF

AC No.: 03-080-19 B

Findings: (Page 4 of 7)

Law § 259 et seq.; Penal Law § 70.40; Matter of Murray v. Evans, 83 A.D.3d 1320, 920 N.Y.S.2d 745 (3d Dept. 2011); Matter of Crews v. New York State Exec. Dept. Bd. of Parole Appeals Unit, 281 A.D.2d 672, 720 N.Y.S.2d 855 (3d Dept. 2001). The Board was vested with discretion to determine whether release was appropriate notwithstanding the minimum period of incarceration set by the Court. Matter of Burress v. Dennison, 37 A.D.3d 930, 829 N.Y.S.2d 283 (3d Dept. 2007); Matter of Cody v. Dennison, 33 A.D.3d 1141, 1142, 822 N.Y.S.2d 677 (3d Dept. 2006), lv. denied, 8 N.Y.3d 802, 830 N.Y.S.2d 698 (2007). The appellant has not in any manner been resentenced. Matter of Mullins v. New York State Bd. of Parole, 136 A.D.3d 1141, 1142, 25 N.Y.S.3d 698 (3d Dept. 2016).

Nothing in the Board’s decision indicates a permanent denial of parole consideration. Hodge v Griffin, 2014 WL 2453333 (SDNY 2014).

An inmate has no Constitutional right to be conditionally released on parole before expiration of a valid sentence. Greenholtz v. Inmates of Nebraska Penal & Correctional Complex, 442 U.S. 1, 99 S. Ct. 2100, 2104 (1979); Matter of Russo v. Bd. of Parole, 50 N.Y.2d 69, 427 N.Y.S.2d 982 (1980); Matter of Vineski v. Travis, 244 A.D.2d 737, 664 N.Y.S.2d 391 (3d Dept. 1997). The New York State parole scheme “holds out no more than a possibility of parole” and thus does not create a protected liberty interest implicating the due process clause. Matter of Russo, 50 N.Y.2d at 75-76, 427 N.Y.S.2d at 985; see also Barna v. Travis, 239 F.3d 169, 171 (2d Cir. 2001); Matter of Freeman v. New York State Div. of Parole, 21 A.D.3d 1174, 800 N.Y.S.2d 797 (3d Dept. 2005).

Nothing in the due process clause requires the Parole Board to specify the particular evidence on which rests the discretionary determination an inmate is not ready for conditional release. Duemmel v Fischer, 368 Fed.Appx. 180, 182 (2d Cir. 2010). There is no due process requirement that the Parole Board disclose its release criteria. Haymes v Regan, 525 F.2d 540 (2d Cir. 1975). The due process clause is not violated by the Board’s balancing of the statutory criteria, and which is not to be second guessed by the courts. Mathie v Dennison, 2007 WL 2351072 (S.D.N.Y. 2007); MacKenzie v Cunningham, 2014 WL 5089395 (S.D.N.Y. 2014).

Parole is not constitutionally based, but is a creature of statute which may be imposed subject to conditions imposed by the state legislature. Banks v Stanford, 159 A.D.3d 134, 71 N.Y.S.3d 515 (2d Dept. 2018). Parole release is a statutory grant of a restricted form of liberty prior to the expiration of a sentence. Johnson v Superintendent Adirondack Correctional Facility, 174 A.D.3d 992, 106 N.Y.S.3d 408 (3d Dept. 2019).

The Board was aware of appellant’s age when dealing with his prior criminal history. But the cases cited by appellant don’t apply in this case as appellant was an adult when he committed these crimes.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Williams, Derrick

DIN: 00-A-6019

Facility: Shawangunk CF

AC No.: 03-080-19 B

Findings: (Page 5 of 7)

The DA letters do not violate any legal contractual agreement as criminal proceedings are totally different then contractual matters.

Erroneous information, if not used in the decision as a basis for parole denial, will not lead to a reversal. Matter of Khatib v. New York State Bd. of Parole, 118 A.D.3d 1207, 988 N.Y.S.2d 286 (3d Dept. 2014); Matter of Restivo v. New York State Bd. of Parole, 70 A.D.3d 1096, 895 N.Y.S.2d 555 (3d Dept. 2010) [status report]; Matter of Grune v. Bd. of Parole, 41 A.D.3d 1014, 838 N.Y.S.2d 694 (3d Dept. 2007)[status report]; see also Matter of Gordon v. Stanford, 148 A.D.3d 1502, 50 N.Y.S.3d 627 (3d Dept. 2017) [misstatement by commissioner in interview that inmate did not correct]; Matter of Perea v. Stanford, 149 A.D.3d 1392, 53 N.Y.S.3d 231 (3d Dept. 2017) [erroneous information in PBR which inmate corrected during interview].

The defense attorney letter was sent to the correct address.

Denial of parole is neither arbitrary nor capricious when the Parole Board relied on the factors defined by the New York statute. Hodge v Griffin, 2014 WL 2453333(S.D.N.Y. 2014) citing Romer v Travis, 2003 WL 21744079. An arbitrary action is one without sound basis in reason and without regard to the facts. Rationality is what is reviewed under an arbitrary and capricious standard. Hamilton v New York State Division of Parole, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014). An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts. Ward v City of Long Beach, 20 N.Y.3d 1042 (2013). Denial is neither arbitrary nor capricious when the Board relies on factors defined by New York statute. Siao-Paul v. Connolly, 564 F. Supp. 2d 232, 242 (S.D.N.Y. 2008); Hanna v New York State Board of Parole, 169 A.D.3d 503, 92 N.Y.S.3d 621 (1st Dept. 2019).

The appellant has failed to demonstrate that the Parole Board's determination was affected by a showing of irrationality bordering on impropriety. Matter of Silmon v Travis, 95 N.Y.2d 470, 718 N.Y.S.2d 704 (2001); Matter of Russo v New York State Board of Parole, 50 N.Y.2d 69, 77, 427 N.Y.S.2d 982 (1980).

In the absence of a convincing demonstration that the Board did not consider the statutory factors, it must be presumed that the Board fulfilled its duty. Matter of Fuchino v. Herbert, 255 A.D.2d 914, 914, 680 N.Y.S.2d 389, 390 (4th Dept. 1998); Matter of McLain v. New York State Div. of Parole, 204 A.D.2d 456, 611 N.Y.S.2d 629 (2d Dept. 1994); Matter of McKee v. New York State Bd. of Parole, 157 A.D.2d 944, 945, 550 N.Y.S.2d 204, 205 (3d Dept. 1990); People ex rel. Herbert, 97 A.D.2d 128, 468 N.Y.S.2d 881.

Appellant's claim that the Board failed to comply with the 2011 amendments to the Executive Law is rejected. Dolan v New York State Board of Parole, 122 A.D.3d 1058, 995 N.Y.S.2d 850 (3d Dept. 2014); Tran v Evans, 126 A.D.3d 1196, 3 N.Y.S.3d 633 (3d Dept. 2015); Boccadisi v Stanford, 133 A.D.3d 1169, 20 N.Y.S.3d 477 (3d Dept. 2015). Furthermore, the 2011 Executive Law

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Williams, Derrick

DIN: 00-A-6019

Facility: Shawangunk CF

AC No.: 03-080-19 B

Findings: (Page 6 of 7)

amendments have been incorporated into the regulations adopted by the Board in 2017. The 2017 amended regulations don't create any substantive right to release, but rather, merely increase transparency in the final decision. The amended regulation was intended to increase transparency in the Board's decision making by providing an explanation if and when the Board departs from scales in denying an inmate release. Notice of Adoption, NY Reg, Sept. 27, 2017 at 2.

The 2011 amendments to the Executive Law, as well as the state regulations governing parole, do not create a legitimate expectancy of release that would give rise to a due process interest in parole. Fuller v Evans, 586 Fed.Appx. 825 (2d Cir. 2014) cert.den. 135 S.Ct. 2807, 192 L.Ed2d 851.

The Board considered the COMPAS instrument and did not depart from it. That is, the decision was not impacted by a departure from a scale. Notice of Adoption, NY Reg, Sept. 27, 2017 at 2. The Board cited several negative parts of the COMPAS in its decision.

There is no merit to Appellant's claim that a favorable COMPAS instrument gives rise to a presumption of rehabilitation and release. Since 1977, the Board has been required to apply the same three-part substantive standard. Executive Law § 259-i(2)(c)(A). The 2011 amendments require the Board to incorporate risk and needs assessment principles to "assist" in measuring an inmate's rehabilitation and likelihood of success upon release. Executive Law § 259-c(4). The statute thus does not clearly create a presumption of rehabilitation based on a favorable risk and needs assessment, let alone a presumption of parole release requiring the Board to provide countervailing evidence. Indeed, while the Board might, for example, find an inmate sufficiently rehabilitated to satisfy the first prong of the standard—that the inmate will "live and remain at liberty without violating the law," the Board could also find, in its discretion, as it did here, that the inmate's release would be incompatible with the welfare of society or would unduly deprecate the seriousness of a crime. The text of the statute therefore flatly contradicts the inmate's assertion that even uniformly low COMPAS scores create a presumption of release. See Matter of King v. Stanford, 137 A.D.3d at 1397. The COMPAS is an additional consideration that the Board must weigh along with the statutory factors for purposes of deciding whether the three standards are satisfied. See Matter of Rivera v. N.Y. State Div. of Parole, 119 A.D.3d at 1108; accord Matter of Dawes v. Annucci, 122 A.D.3d at 1061. This is exactly what occurred here.

Appellant's contention that the Board failed to comply with the 2011 Amendments to the Executive Law is likewise without merit. Although Appellant alleges the amendments represented a fundamental change in the legal regime governing parole determinations requiring a focus on forward-looking factors, this proposition is not supported by the language of the statute itself, considering the relatively modest change to Section 259-c(4) and the absence of any substantive change to Section 259-i(2), which governs the discretionary release consideration process. The Board still must conduct a case-by-case review of each inmate by considering the statutory factors,

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Williams, Derrick

DIN: 00-A-6019

Facility: Shawangunk CF

AC No.: 03-080-19 B

Findings: (Page 7 of 7)

including the instant offense. Executive Law § 259-i(2)(c)(A); Matter of Montane v. Evans, 116 A.D.3d 197, 202, 981 N.Y.S.2d 866, 870 (3d Dept. 2014). Thus, even where the First Department has “take[n] the unusual step of affirming the annulment of a decision of [the Board]”, it has nonetheless reiterated that “[t]he Board is not obligated to refer to each factor, or to give every factor equal weight” and rejected any requirement that the Board prioritize “factors which emphasize forward thinking and planning over the other statutory factors.” Matter of Rossakis v. New York State Bd. of Parole, 146 A.D.3d 22, 29 (1st Dept. 2016).

Appellant did not raise any alleged COMPAS errors during the interview, thereby waiving the issue. . Matter of Morrison v. Evans, 81 A.D.3d 1073, 916 N.Y.S.2d 655 (3d Dept. 2011); Matter of Vanier v. Travis, 274 A.D.2d 797, 711 N.Y.S.2d 920 (3d Dept. 2000).

In the absence of impropriety, the reconsideration date set by the Board will not be disturbed. Matter of Tatta v. State of N.Y., Div. of Parole, 290 A.D.2d 907, 908, 737 N.Y.S.2d 163 (3d Dept. 2002); accord Matter of Evans v. Dennison, 13 Misc. 3d 1236(A), 831 N.Y.S.2d 353 (Sup. Ct. Westchester Co. 2006) (rejecting challenge to 24-month hold).

Recommendation: Affirm.