

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 - Adams, Kasim (2020-01-03)

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

Recommended Citation

"Administrative Appeal Decision - Adams, Kasim (2020-01-03)" (2021). Parole Information Project
<https://ir.lawnet.fordham.edu/aad/516>

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: Adams, Kasim

Facility: Otisville CF

NYSID: [REDACTED]

Appeal Control No.: 04-050-19 B

DIN: 99-A-6194

Appearances: Andrew Stavish, Esq.
Four Times Square
New York, New York 10036

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

Board Member(s) who participated: **Demosthenes, Davis, Cruse**

Papers considered: Appellant’s Brief received August 12, 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: Adams, Kasim

DIN: 99-A-6194

Facility: Otisville CF

AC No.: 04-050-19 B

Findings: (Page 1 of 4)

Appellant was sentenced to 22 years to life upon his conviction of Murder in the second degree. In the instant appeal Appellant challenges the March 2019 determination of the Board denying release and imposing a 12-month hold on the following grounds: (1) the decision is arbitrary and capricious because the Board focused almost exclusively on the instant offense without adequately weighing other factors such as Appellant’s institutional accomplishments, release plans and community support; (2) the decision is conclusory, unsupported and fails to state the reasons in detail; (3) the Board failed to adequately consider or justify its departure from the COMPAS scores; (4) the standard governing parole release under Executive Law § 259-i is unconstitutionally vague or arbitrary and capricious; (5) the Board was biased, applied personal opinion and penal philosophy and issued a predetermined decision; and (6) the decision was improper because DOCCS, in response to his record request prior to perfecting his administrative appeal, withheld information about substance abuse in the COMPAS. These arguments are without merit.

As an initial matter, 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). 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 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).

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Adams, Kasim

DIN: 99-A-6194

Facility: Otisville CF

AC No.: 04-050-19 B

Findings: (Page 2 of 4)

The record as a whole, including the interview transcript, reflects that the Board considered the appropriate factors, including: the instant offense wherein Appellant, while on parole, shot a co-worker in the head with an illegally owned weapon following an argument about his marijuana use and other behavior and then took money from the victim's pocket; Appellant's criminal history including a prior State term for a drug conviction; his history of substance abuse; his institutional record including religious endeavors, program completions, and discipline clean since 2007 but with multiple prior infractions that included drugs; statements of remorse; and release plans to reside with his wife and work. The Board also had before it and considered, among other things, the sentencing minutes, Appellant's case plan, the COMPAS instrument, and Appellant's submission and letters of support/assurance.

After considering all required factors and principles, the Board acted within its discretion in determining release would not satisfy the standards provided for by Executive Law § 259-i(2)(c)(A). In reaching its conclusion, the Board permissibly relied on the violent, heinous nature of the instant offense and that Appellant committed the offense while on parole. See 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 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 Kirkpatrick v. Travis, 5 A.D.3d 385, 772 N.Y.S.2d 540 (2d Dept. 2004); Matter of Guzman v. Dennison, 32 A.D.3d 798, 799, 821 N.Y.S.2d 208, 208 (1st Dept. 2006). The Board also noted the prior term of incarceration, discipline and elevated substance abuse score in the COMPAS instrument. See, e.g., Matter of Espinal v. New York Bd. of Parole, 172 A.D.3d 1816, 100 N.Y.S.3d 777 (3d Dept. 2019). See also Matter of Stanley v. New York State Div. of Parole, 92 A.D.3d 948, 948-49, 939 N.Y.S.2d 132, 134 (2d Dept.), lv. denied, 19 N.Y.3d 806, 949 N.Y.S.2d 343 (2012).

The Board's decision satisfied the criteria set out in Executive Law § 259-i(2)(a) and 9 N.Y.C.R.R. § 8002.3(d), 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). The Board addressed many of the factors and principles considered in individualized terms and explained those that ultimately weighed most heavily in its deliberations: namely, the nature of the instant offense, that Appellant was on parole from a prior term, and substance abuse risk. The Board's inclusion of the statutory rationale for parole denial was not improper. Matter of Murray v. Evans, 83 A.D.3d 1320, 920 N.Y.S.2d 745 (3d Dept. 2011); cf. Matter of Vaello v. Parole Bd. Div. of State of New York, 48 A.D.3d 1018, 1019, 851 N.Y.S.2d 745, 746-47 (3d Dept. 2008). Moreover, the reasons stated are sufficient to support the Board's decision.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Adams, Kasim

DIN: 99-A-6194

Facility: Otisville CF

AC No.: 04-050-19 B

Findings: (Page 3 of 4)

Appellant’s additional contention that the Board failed to comply with the 2011 amendments to the Executive Law and Board regulations is likewise without merit. The 2011 amendments require procedures incorporating risk and needs principles to “assist” the Board in making parole release decisions. Executive Law § 259–c(4). The Board satisfies this requirement in part by using the COMPAS instrument. Matter of Montane v. Evans, 116 A.D.3d 197, 202, 981 N.Y.S.2d 866, 870 (3d Dept. 2014); see also Matter of Hawthorne v. Stanford, 135 A.D.3d 1036, 1042, 22 N.Y.S.3d 640, 645 (3d Dept. 2016); 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 Robles v. Fischer, 117 A.D.3d 1558, 1559, 985 N.Y.S.2d 386, 387 (4th Dept. 2014). This is encompassed in the Board’s regulations. 9 N.Y.C.R.R. § 8002.2(a). However, the COMPAS is not predictive and was never intended to be the sole indicator of risk and needs as the Board gets risk and needs information from a variety of sources, including the statutory factors and the interview. Notably, the 2011 amendments did not eliminate the requirement that the Board conduct a case-by-case review of each inmate by considering the statutory factors, including the instant offense. The amendments also did not change the three substantive standards that the Board is required to apply when deciding whether to grant parole. Executive Law § 259-i(2)(c)(A). Thus, the COMPAS cannot mandate a particular result. Matter of King v. Stanford, 137 A.D.3d 1396, 26 N.Y.S.3d 815 (3d Dept. 2016). Rather, the COMPAS is an additional consideration that the Board must weigh along with the statutory factors for the purposes of deciding whether the three standards are satisfied. See Matter of Rivera v. N.Y. State Div. of Parole, 119 A.D.3d 1107, 1108, 990 N.Y.S.2d 295 (3d Dept. 2014); accord Matter of Dawes v. Annucci, 122 A.D.3d 1059, 994 N.Y.S.2d 747 (3d Dept. 2014); see also Matter of Gonzalvo v. Stanford, 153 A.D.3d 1021, 56 N.Y.S.3d 896 (3d Dept. 2017). That is exactly what occurred here.

The decision also is consistent with amended 9 NYCRR § 8002.2(a). Indeed, the Board cited the COMPAS instrument’s score for reentry substance abuse. This was reasonable in view of Appellant’s history, which included prior drug related offenses and drug infractions during this term of incarceration. Insofar as Appellant disagrees with the score, the Board does not prepare the COMPAS and an administrative appeal to the Board is not the proper forum to challenge it.

Appellant’s challenge to the parole scheme is without merit. Executive Law § 259-i is constitutional. See MacKenzie v. Cunningham, No. 12-CV-2452 NSR PED, 2014 WL 5089395 (S.D.N.Y. Sept. 23, 2014); West v. Alexander, No. 07-CV-2098 ARR/LB, 2009 WL 5172960, at *1 (E.D.N.Y. Dec. 30, 2009); Matter of MacKenzie v. Evans, 95 A.D.3d 1613, 945 N.Y.S.2d 471 (3d Dept. 2012); see also Matter of Lue-Shing v. Pataki, 301 A.D.2d 827, 754 N.Y.S.2d 96, 97 (3d Dept. 2003); Matter of Felder v. Travis, 278 A.D.2d 570, 717 N.Y.S.2d 683 (3d Dept. 2000); Matter of Jerrell v. Ibsen, 253 A.D.2d 917, 677 N.Y.S.2d 817, 818 (3d Dept. 1998).

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Adams, Kasim

DIN: 99-A-6194

Facility: Otisville CF

AC No.: 04-050-19 B

Findings: (Page 4 of 4)

Appellant's allegations of bias are without merit. There must be support in the record to prove an alleged bias and proof that the decision flowed from such bias. Matter of Hernandez v. McSherry, 271 A.D.2d 777, 706 N.Y.S.2d 647 (3d Dept. 2000), *lv. denied*, 95 N.Y.2d 769, 722 N.Y.S.2d 472 (2000); *see also* Matter of Gonzalvo v. Stanford, 153 A.D.3d 1021, 56 N.Y.S.3d 896 (3d Dept. 2017); Matter of Grune v. Board of Parole, 41 A.D.3d 1014, 838 N.Y.S.2d 694 (3d Dept. 2007). The Board's inquiry into the instant offense did not amount to bias. Moreover, the Board is permitted to consider the brutal and heinous nature of the offense. Executive Law § 259-i(2)(c)(a); Matter of Betancourt v. Stanford, 148 A.D.3d 1497, 49 N.Y.S.3d 315 (3d Dept. 2017); Matter of Marcus v. Alexander, 54 A.D.3d 476, 476, 862 N.Y.S.2d 414, 415 (3d Dept. 2008); Matter of Almeyda v. New York State Div. of Parole, 290 A.D.2d 505, 736 N.Y.S.2d 275 (2d Dept. 2002); Matter of Carrion v. New York State Bd. of Parole, 210 A.D.2d 403, 404, 620 N.Y.S.2d 420, 421 (2d Dept. 1994).

The Board did not thereby substitute its personal views on penal philosophy and the proper basis for a parole denial for that of the legislature, Matter of King v. New York State Div. of Parole, 83 N.Y.2d 788, 791, 610 N.Y.S.2d 954, 955 (1994), *aff'g* 190 A.D.2d 423, 432, 598 N.Y.S.2d 245, 251 (1st Dept. 1993), or resentence Appellant, 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). Rather, 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 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). There is no evidence the Board's decision was predetermined. 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).

As for Appellant's complaint about redactions to the COMPAS instrument concerning substance abuse, information was properly withheld pursuant to 9 N.Y.C.R.R. § 8000.5. Even if there were merit to Appellant's claim that he was improperly denied an unredacted COMPAS for the purposes of his administrative appeal (and there is not), it would not provide a basis to disturb the Board's decision denying parole release. *See* Matter of Clark v. New York Bd. of Parole, 166 A.D.3d 531, 89 N.Y.S.3d 134 (1st Dept. 2018); Matter of Collins v. Hammock, 96 A.D.2d 733, 465 N.Y.S.2d 84 (4th Dept. 1983).

Recommendation: Affirm.