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Administrative Appeal Decision - Cardew, Robert (2020-02-10)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Cardew, Robert

Facility: Five Points CF

NYSID: [REDACTED]

Appeal Control No.: 10-192-18 B

DIN: 82-C-0739

Appearances: Charles J. Greenberg, Esq.
3840 East Robinson Road - #318
Amherst, NY 14228-2001

Decision appealed: October 2018 decision, denying discretionary release and imposing a hold of 24 months.

Board Member(s) who participated: Cruse, Alexander

Papers considered: Appellant's Brief received September 23, 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 2/10/2020.

LB

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Cardew, Robert

DIN: 82-C-0739

Facility: Five Points CF

AC No.: 10-192-18 B

Findings: (Page 1 of 1)

Appellant challenges the October 2018 determination of the Board, denying release and imposing a 24-month hold. Appellant is incarcerated for two separate instant offenses. In one, Appellant went to the residence of the victim, broke open the front door, and struck the victim with his fists, knocking the victim down. In the second, Appellant caused the death of a female victim by strangling or stabbing her. Appellant raises the following issues: 1) the decision was arbitrary and capricious because the Board failed to consider all factors including Appellant's institutional record; 2) the Board denied Appellant a fair hearing by focusing almost exclusively on negative factors; 3) the decision violates due process because the Board emphasized Appellant's criminal history in the absence of aggravating factors, resentenced him and issued a predetermined decision; 4) the denial continues a pattern of denying parole based on Appellant's criminal record; 5) Appellant's record contrasts favorably with other parole applicants; and 6) the 24-month hold is excessive.

A review by the Appeals Unit reveals that the interview and decision contain no discussion of Appellant's institutional record. As such, a *de novo* interview is appropriate.

Recommendation: Vacate and remand for de novo interview.