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May 2021

### Administrative Appeal Decision - Carter, Jonathan (2020-02-24)

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**ADMINISTRATIVE APPEAL DECISION NOTICE**

**Name:** Carter, Jonathan

**Facility:** Mid-State CF

**NYSID:** [REDACTED]

**Appeal Control No.:** 08-147-19 B

**DIN:** 96-B-0156

Appearances: Jonathan Carter 96B0156  
Mid-State Correctional Facility  
P.O. Box 2500  
Marcy, New York 13403

Decision appealed: July 2019 decision, denying discretionary release and imposing a hold of 24 months.


Board Member(s) who participated: Cruse, Alexander

Papers considered: Appellant's Letter-brief received October 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.

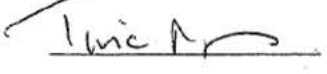
Final Determination: The undersigned determine that the decision appealed is hereby:

  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 2/24/2020 .

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Carter, Jonathan

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

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Appellant challenges the July 2019 determination of the Board, denying release and imposing a 24-month hold. Appellant is a drug dealer who is incarcerated for two separate crimes. In the first, while holding a family hostage in their home at gunpoint, he fired his gun at a police officer who arrived on the scene. In the second, he was involved in firing a gun at a house, and one of the bullets hit a minor child. Appellant raises only one primary issue, that being the Board decision is based upon three pieces of erroneous information. Specifically: 1) he was acquitted of the charges alleging in the first crime that he fired a gun at a police officer. 2) he was acquitted of the charge in the second crime of firing the gun that struck the child. 3) he had only one tier III ticket since his last Board interview, whereas the Board decision says he had more than one.

As for the first crime, this information comes from the Pre-sentence Investigation Report. Pursuant to Executive Law sections 259-i(2)(c)(A) and 259-k(1), the Board is required to obtain official reports and may rely on the information contained therein. See, e.g., Matter of Silmon v. Travis, 95 N.Y.2d 470, 474, 477, 718 N.Y.S.2d 704, 706, 708 (2000) (discussing former status report); Matter of Carter v. Evans, 81 A.D.3d 1031, 916 N.Y.S.2d 291 (3d Dept.) (presentence investigation report), lv. denied, 16 N.Y.3d 712, 923 N.Y.S.2d 416 (2011); see also Billiteri v. United States Bd. of Parole, 541 F.2d 938, 944-945 (2d Cir. 1976). To the extent Appellant contends the Board relied on erroneous information in the pre-sentence report, this is not the proper forum to raise the issue. Any challenge to the pre-sentence report must be made to the original sentencing court. Matter of Delrosario v. Stanford, 140 A.D.3d 1515, 34 N.Y.S.3d 696 (3d Dept. 2016); Matter of Wisniewski v. Michalski, 114 A.D.3d 1188, 979 N.Y.S.2d 745 (4th Dept. 2014); Matter of Vigliotti v. State of New York, Executive Div. of Parole, 98 A.D.3d 789, 950 N.Y.S.2d 619 (3d Dept. 2012). The Board is mandated to consider the report and is entitled to rely on the information contained in the report. Executive Law § 259-i(2)(c)(A); 9 N.Y.C.R.R. § 8002.2(d)(7); Matter of Carter v. Evans, 81 A.D.3d 1031, 1031, 916 N.Y.S.2d 291, 293 (3d Dept.), lv. denied, 16 N.Y.3d 712, 923 N.Y.S.2d 416 (2011). The Board may consider all of the circumstances surrounding the conviction, including conduct for which the inmate was not convicted, as long as evidence of said conduct is in the record, and it is not the sole basis for the Board's decision. Williams v Travis, 11 A.D.3d 788, 783 N.Y.S.2d 413 (3d Dept. 2004); Nunez v Dennison, 51 A.D.3d 1240, 857 N.Y.S.2d 810 (3d Dept. 2008); Fransua v Alexander, 52 A.D.3d 1140, 860 N.Y.S.2d 327 (3d Dept. 2008); Brower v Alexander, 57 A.D.3d 1060, 867 N.Y.S.2d 801(3d Dept. 2008) lv. den. 12 N.Y.3d 707, 879 N.Y.S.2d 53.

As for the second crime, the Board decision only says appellant was involved in the drive-by shooting, not that he actually did the shooting himself. So that part of the decision is not erroneous at all.

As for the disciplinary matter, the Commissioner's Worksheet, and the decision attached to the transcript, both use the singular for the tier III ticket that was received. The form 9026 decision

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contains a mere typing error putting the receipt of the tier III ticket into the plural. There is no support in the record that the Board relied upon incorrect or erroneous information. Shark v New York State Division of Parole Chair, 110 A.D.3d 1134, 972 N.Y.S.2d 741 (3d Dept. 2013); Khatib v New York State Board of Parole, 118 A.D.3d 1207, 988 N.Y.S.2d 286 (3d Dept. 2014); Boccadisi v Stanford, 133 A.D.3d 1169, 20 N.Y.S.3d 477 (3d Dept. 2015); Peterson v Stanford, 151 A.D.3d 1960, 59 N.Y.S.3d 219 (4<sup>th</sup> Dept. 2017). A mere clerical error by staff, made not by the Board and made after the interview, won't create any rights to a de novo interview.

**Recommendation:** Affirm.