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Administrative Appeal Decision - Delvalle, Ralph (2020-11-19)

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ADMINISTRATIVE APPEAL DECISION NOTICE

Name: del Valle, Ralph

Facility: Mid-State CF

NYSID: [REDACTED]

Appeal Control No.: 04-123-20 B

DIN: 13-A-2183

Appearances: Ralph del Valle, 13-A-2183
Mid-State Correctional Facility
P.O. Box 2500
Marcy, NY 13403

Decision appealed: April 2020 decision, denying discretionary release and imposing a hold of 24 months.

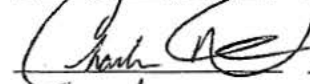
Board Member(s) who participated: **Smith, Crangle**


Papers considered: Appellant's Brief received August 10, 2020

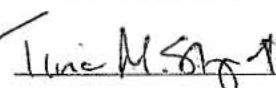
Appeals Unit Review: Statement of the Appeals Unit's Findings and Recommendation

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 11/19/2020 66.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: del Valle, Ralph

DIN: 13-A-2183

Facility: Mid-State CF

AC No.: 04-123-20 B

Findings: (Page 1 of 3)

Appellant challenges the April 2020 determination of the Board, denying release and imposing a 24-month hold. The instant offense involved Appellant entering two different banks on separate occasions, handing the teller a handwritten note, and leaving each bank with over \$3,000. Appellant raises the following issues: 1) the Board relied on erroneous information regarding his aggregate sentence; 2) the Board incorrectly stated that Appellant was refusing programs; 3) Appellant requested and was denied access to his current case plan; 4) the COMPAS instrument lacks basis or proper foundation for how scores were determined for reentry substance abuse and prison misconduct; 5) the Board is barred from relying on prison misconduct because punishment for the alleged conduct has been previously finalized by DOCCS; and 6) the Parole Board Criminal History Report contains erroneous information. 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); Matter of Phillips v. Dennison, 41 A.D.3d 17, 21, 834 N.Y.S.2d 121, 124 (1st Dept. 2007). 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).

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

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The record as a whole, including the interview transcript, reflects that the Board considered the appropriate factors, including: the instant offense of two counts of Robbery in the third degree; Appellant’s criminal history including two prior state terms of incarceration for robbery; Appellant’s ██████ status; Appellant’s institutional efforts featuring poor behavior including additional misbehavior reports since January 2018, denial of an Earned Eligibility Certificate (“EEC”), past program refusals, and the need to complete ██████; and release plans to live with his fiancée. The Board also had before it and considered, among other things, Appellant’s current case plan, the COMPAS instrument, the sentencing minutes, and document submissions including letters of assurance and a relapse prevention plan.

After considering all required factors, 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 Appellant’s poor disciplinary record, denial of an EEC, and Appellant’s need to complete required programs. See Matter of Almonte v. New York State Bd. of Parole, 145 A.D.3d 1307, 42 N.Y.S.3d 691 (3d Dept. 2016), *lv. denied*, 29 N.Y.3d 905 (2017); Matter of Karlin v. Cully, 104 A.D.3d 1285, 1286, 960 N.Y.S.2d 827, 828 (4th Dept. 2013); 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); Matter of Grigger v. Goord, 41 A.D.3d 1128, 840 N.Y.S.2d 174 (3d Dept. 2007); Matter of Jones v. N.Y. State Bd. of Parole, 175 A.D.3d 1652, 1652, 108 N.Y.S.3d 505, 506 (3rd Dept. 2019); 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). The Board also cited the COMPAS instrument’s elevated score for high prison misconduct. See Matter of Espinal v. N.Y. State Bd. Of Parole, 172 A.D.3d 1816, 100 N.Y.S.3d 777 (3d Dept. 2019); Matter of Bush v. Annucci, 148 A.D.3d 1392, 50 N.Y.S.3d 180 (3d Dept. 2017); Matter of Wade v. Stanford, 148 A.D.3d 1487, 52 N.Y.S.3d 508 (3d Dept. 2017).

Appellant’s contention that the Board relied on erroneous information – indicating he is serving a sentence of three to six years, when he is in fact serving an aggregate sentence of six to twelve years – is without merit. Appellant did not correct the misstatement during the interview (Tr. at 12.) and the length of his sentence was not cited in the decision. Erroneous information, if not used in the decision as a basis for parole denial, will not lead to a reversal. Matter of Gordon v. Stanford, 148 A.D.3d 1502, 50 N.Y.S.3d 627 (3d Dept. 2017). Appellant’s additional contention that the Board incorrectly stated that he was refusing programs is likewise without merit. A review of the record reveals the Board specifically cited program refusal notifications/notices, documenting past refusals, both during the interview (Tr. at 8.) and in the decision. The Board had before it a current case plan reflecting the fact that he was no longer refusing and was clearly aware that he was on the waiting list for programs at the time of the interview. (Tr. at 9.)

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

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Appellant's complaint concerning the release of records, specifically his case plan, by DOCCS is beyond the scope of this appeal. 9 NYCRR § 8006.3; *id.* §§ 8006 *et seq.* Nonetheless, there is no evidence Appellant submitted a timely request for records pursuant to 9 N.Y.C.R.R. § 8000.5 before the interview or filing this administrative appeal.

Appellant further argues that the COMPAS instrument lacks the basis or proper foundation for how scores were determined for reentry substance abuse and prison misconduct. Directive 8500 sets forth the operating procedures for the application of COMPAS Risk and Need Assessment. The Board does not prepare the COMPAS instrument, but merely considers the COMPAS and scores given to each risk or need. An administrative appeal to the Board is not the proper forum to challenge the COMPAS instrument.

There is no merit to Appellant's claim that the Board is barred from relying on prison misconduct because punishment for the alleged conduct has been previously finalized by DOCCS. The Board may consider an inmate's failure to comply with DOCCS rules in denying parole. Matter of Bush v. Annucci, 148 A.D.3d 1392, 50 N.Y.S.3d 180 (3d Dept. 2017); Matter of Byas v. Fischer, 120 A.D.3d 1586, 1586-87, 992 N.Y.S.2d 813, 814 (4th Dept. 2014); Matter of Smith v. New York State Div. of Parole, 81 A.D.3d 1026, 916 N.Y.S.2d 285 (3d Dept. 2011).

Finally, that the Parole Board Criminal History Report may have contained erroneous information does not provide a basis to disturb the decision. A review of the interview transcript and the Board's written decision demonstrates that the alleged error cited by Appellant played no role in the Board's determination. Matter of Tatta v. State, 290 A.D.2d 907, 908, 737 N.Y.S.2d 163, 164 (3d Dept.), *lv. denied*, 98 N.Y.2d 604, 746 N.Y.S.2d 278 (2002); *see also* Matter of Amen v. New York State Div. of Parole, 100 A.D.3d 1230, 1230, 954 N.Y.S.2d 276, 277 (3d Dept. 2012). Inasmuch as Appellant asserts the potential error made him ineligible for the presumptive release program, the matter is beyond the scope of the Board's jurisdiction. 9 NYCRR § 8006.3; *id.* §§ 8006 *et seq.*

Recommendation: Affirm.