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Administrative Appeal Decision - Espinal, Mauricio (2020-03-25)

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ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Espinal, Mauricio

Facility: Attica CF

NYSID: [REDACTED]

Appeal Control No.: 07-009-19 B

DIN: 90-T-3066

Appearances: Norman P. Effman, Esq.
Wyoming County-Attica Legal Aid Bureau
18 Linwood Avenue
Warsaw, NY 14569

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


Board Member(s) who participated: **Coppola, Alexander**

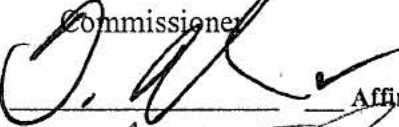
Papers considered: Appellant's Brief received November 15, 2019

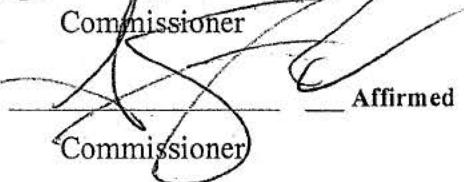
Appeals Unit Review: Statement of the Appeals Unit's Findings and Recommendation

Records relied upon: Pre-Sentence Investigation Report, Parole Board Report, Interview Transcript, Parole Board Release Decision Notice (Form 9026)

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 3/25/2020 (AH).

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Espinal, Mauricio

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Appellant challenges the June 2019 determination of the Board, denying release and imposing a 24-month hold. Appellant is incarcerated for four separate instant offenses. In one, Appellant forced his way into a convent with a gun and raped and sodomized a nun during a three-hour period. In the second, Appellant locked himself in an office with a female psychiatrist at a psychiatric center, grabbed her breasts, and beat her about the head with pieces of radiator pipe taped together. In the third, during a pre-sentence investigation review, Appellant armed himself with a weapon made from a bucket handle and held a female probation offer hostage for approximately seven hours. In the fourth, while incarcerated, Appellant was in possession of a 9” by 7/8” metal shank. Appellant raises the following issues: 1) the Board erroneously stated that it does not have the benefit of weighing Appellant’s risk and needs assessment; 2) the Board failed to consider Appellant’s program participation; and 3) Appellant should have been assigned counsel given the liberty interest in this case and the fact that Appellant did not understand the legal process involved in parole release. 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

STATE OF NEW YORK – BOARD OF PAROLE

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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.

The record as a whole, including the interview transcript, reflects that the Board considered the appropriate factors, including: the instant offenses of Rape in the first degree, two counts of Burglary in the second degree, Sodomy in the first degree, Kidnapping in the second degree, Attempted Assault in the first degree and Attempted Promotion of Prison Contraband in the first degree; Appellant’s final deportation order to Honduras; Appellant’s institutional efforts including an improved disciplinary record and refusal to participate in [REDACTED] ART, and sex offender programming; and Appellant’s refusal to complete the COMPAS for this interview. The Board also had before it and considered, among other things, the sentencing minutes and Appellant’s parole packet.

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 the serious instant offenses and failure to complete recommended programming. See Matter of Robinson v. New York State Bd. of Parole, 162 A.D.3d 1450, 81 N.Y.S.3d 235 (3d Dept. 2018); Matter of Jones v. New York State Dep’t of Corr. & Cmty. Supervision, 151 A.D.3d 1622, 57 N.Y.S.3d 265 (4th Dept. 2017); Matter of King v. Stanford, 137 A.D.3d 1396, 26 N.Y.S.3d 815 (3d Dept. 2016); Matter of Kirkpatrick v. Travis, 5 A.D.3d 385, 772 N.Y.S.2d 540 (2d Dept. 2004); Matter of Walker v. Travis, 252 A.D.2d 360, 676 N.Y.S.2d 52 (1st Dept. 1998); 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).

There is no merit to Appellant’s contention that the Board erroneously stated that it does not have the benefit of weighing his risk and needs assessment. The record is clear that Appellant refused to participate in preparation of a current COMPAS instrument. (Tr. at 6.) That a COMPAS instrument was prepared for Appellant in 2017 does not provide a basis to disturb the Board’s decision. A review of the transcript also reveals that the Board properly considered Appellant’s disciplinary history including a Tier II ticket in 2018. (Tr. at 13.)

Appellant’s claim that the Board failed to consider Appellant’s program participation is also without merit. The Board recognized that Appellant participated in some programs (Tr. at 13.) but Appellant confirmed that he refused [REDACTED] ART and the sex offender treat program because “it’s a waste of time.” (Tr. at 9.)

STATE OF NEW YORK – BOARD OF PAROLE

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Finally, Appellant argues that he should have been assigned counsel given the liberty interest in this case and the fact that he did not understand the legal process involved in parole release. 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). Pursuant to Executive Law §259-i(2)(a), Appellant had a Parole Board Release Interview, and not a hearing. The interview is not an adversarial proceeding and there is no right to have counsel assigned to help prepare for the interview or be present at the interview itself. See Matter of Russo v. New York State Board of Parole, 50 N.Y.2d 76, 427 N.Y.S.2d 982 (1980); Matter of Briguglio v. New York State Board of Parole, 24 N.Y.2d 21, 298 N.Y.S.2d 704 (1969); Menechino v. Oswald, 430 F.2d 403 (2d Cir. 1970); McCall v Pataki, 232 F.3d 321, 323 (2d Cir. 2000); Billiteri v. United States Bd. of Parole, 541 F.2d 938, 944-945 (2d Cir. 1976). That the Board suggested Appellant was confusing his conviction with the parole process (Tr. at 6.) does not provide a basis for the right to counsel.

Recommendation: Affirm.