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May 2021

### Administrative Appeal Decision - Everett, Jemel (2020-01-03)

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**ADMINISTRATIVE APPEAL DECISION NOTICE**

Name: Everett, Jemel

Facility: Rikers Island Correctional Facility

NYSID: [REDACTED]

Appeal Control No.: 05-208-19 R

DIN: 17-R-0707

Appearances: Jemel Everett, 17-R-0707  
Rikers Island Correctional Facility  
Anna M. Kross Center  
18-18 Hazen Street  
East Elmhurst, NY 11370

Decision appealed: April 24, 2019 revocation of release and imposition of a time assessment of 12 months.

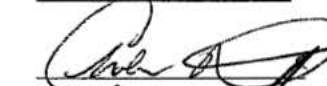

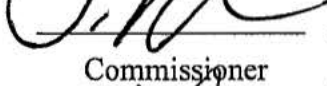
Final Revocation Hearing Date: April 12, 2019

Papers considered: Appellant's Letter-brief received August 5, 2019

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

Records relied upon: Notice of Violation, Violation of Release Report, Final Hearing Transcript, Parole Revocation Decision Notice

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

	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed, remanded for de novo hearing	<input type="checkbox"/> Reversed, violation vacated
Commissioner	<input type="checkbox"/> Vacated for de novo review of time assessment only	<input type="checkbox"/> Modified to _____	
	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed, remanded for de novo hearing	<input type="checkbox"/> Reversed, violation vacated
Commissioner	<input type="checkbox"/> Vacated for de novo review of time assessment only	<input type="checkbox"/> Modified to _____	
	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed, remanded for de novo hearing	<input type="checkbox"/> Reversed, violation vacated
Commissioner	<input type="checkbox"/> Vacated for de novo review of time assessment only	<input type="checkbox"/> Modified to _____	

**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:** Everett, Jemel

**DIN:** 17-R-0707

**Facility:**

**AC No.:** 05-208-19 R

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

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Appellant challenges the April 24, 2019 determination of the administrative law judge (“ALJ”), revoking release and imposing a 12-month time assessment. The instant offense involved the appellant forcibly stealing money from various business on six separate occasions in a span of less than three weeks. The parole revocation charges included failure to notify his parole officer of a change in address, possession of a controlled substance in open public view, and failure to make an office report. Appellant entered a plea of guilty to the charge that he failed to make an office report. Appellant raises the following issues: 1) the dates listed for Charge # 3 on the original Violation of Release Report differ from the dates for Charge # 3 on the 2<sup>nd</sup> amended version; 2) the 2<sup>nd</sup> amended Violation of Release Report is not signed and dated; and 3) the notice of violation was untimely. These arguments are without merit.

Appellant’s parole was revoked at the hearing upon his unconditional plea of guilty. Appellant was represented by counsel at the final hearing, and the ALJ explained the substance of the plea agreement. The inmate confirmed he understood and there is nothing to indicate he was confused. The guilty plea was entered into knowingly, intelligently and voluntarily, and is therefore valid. Matter of Steele v. New York State Div. of Parole, 123 A.D.3d 1170, 998 N.Y.S.2d 244 (3d Dept. 2014); Matter of James v. Chairman of N.Y. State Bd. of Parole, 106 A.D.3d 1300, 965 N.Y.S.2d 235 (3d Dept. 2013); Matter of Ramos v. New York State Div. of Parole, 300 A.D.2d 852, 853, 752 N.Y.S.2d 159 (3d Dept. 2002). Consequently, his guilty plea forecloses this challenge. See Matter of Steele, 123 A.D.3d 1170, 998 N.Y.S.2d 244; Matter of Gonzalez v. Artus, 107 A.D.3d 1568, 1569, 966 N.Y.S.2d 710, 711 (4th Dept. 2013). Challenges that were not raised during the hearing were waived. See Matter of Davis v. Laclair, 165 A.D.3d 1367, 1368, 85 N.Y.S.3d 623 (3d Dept. 2018).

A review of the record nonetheless reveals the Violation of Release report was amended twice to correct apparent typographical errors regarding the dates and the spelling of Appellant’s last name for Charge #3. The 2<sup>nd</sup> amended Violation of Release Report was in fact signed and dated by a parole officer, and corrections made to the errors in the original version do not provide a basis to disturb the decision. Furthermore, the Executive Law requires service of notice of the violation and violation of release report within three days of the warrant’s execution. Executive Law § 259-i(3)(c)(iii). The statute does *not* state that service must be within 72 hours; rather, it states that such service must occur “within three days” after execution of the violation warrant. Id. Thus, service on the third day was in accord with the statute. General Construction Law §§ 19, 20; see also Bacalokostas v. Nichols, 141 A.D.2d 482, 529 N.Y.S.2d 111 (2d Dept. 1988); Matter of Ellingham v. Morton, 116 A.D.2d 1032, 498 N.Y.S.2d 650 (4th Dept. 1986).

**Recommendation:** Affirm.