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Administrative Appeal Decision - Fernandez, Salvador (2020-03-31)

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STATE OF NEW YORK – BOARD OF PAROLE

AMENDED ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Fernandez, Salvador

Facility: Fishkill CF

NYSID: [REDACTED]

Appeal Control No.: 05-095-19 BMT

DIN: 14-A-1126

Appearances: Joseph Petito, Esq.
Petito & Petito, LLP
2 Austin Court
Poughkeepsie, NY 12603

Decision appealed: April 2019 decision, denying discretionary release and imposing a hold to the Parole Eligibility Date.

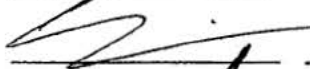
Board Member(s) who participated: **Demosthenes, Agostini**


Papers considered: Appellant’s Brief received October 7, 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 3/31/2020.
LB

STATE OF NEW YORK – BOARD OF PAROLE

AMENDED APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Fernandez, Salvador

DIN: 14-A-1126

Facility: Fishkill CF

AC No.: 05-095-19 BMT

Findings: (Page 1 of 1)

Appellant challenges the April 2019 determination of the Board, denying release and imposing a hold to the Parole Eligibility Date. The instant offense involved cocaine being recovered from a bedroom closet. Appellant was in possession of a key to the address and admitted ownership of the cocaine. Appellant also failed to return to court after being released on bail. Appellant raises the following issues: 1) the Board failed to follow the statutes and regulations regarding the risk and needs assessment; 2) the Board relied upon information that has not been provided to counsel; 3) the Board failed to consider the required deprecation element; 4) the Board relied upon incorrect information in that Appellant was issued an Earned Eligibility Certificate; 5) the Board did not adhere to its own minimum and maximum guidelines; 6) Appellant's due process rights were denied by the manner in which the interview was conducted; 7) the Board was biased insofar as the panel was comprised of two members; 8) the Board failed to consider all relevant statutory criteria including positive accomplishments; 9) the Board effectively imposed a sentence by mandating reconsideration at the Parole Eligibility Date and acted as the sentencing judge; and 10) the determination is conclusory and does not adequately state the basis for the decision.

A review by the Appeals Unit reveals that the decision lacked detail and the Board appeared to be departing from low risk COMPAS scores without providing an adequate explanation.

Recommendation: Vacate and remand for de novo interview.