May 2021

Administrative Appeal Decision - Gonzalez, Carlos (2020-03-25)

STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Gonzalez, Carlos **Facility:** Mid-State CF

NYSID: [redacted] **Appeal Control No.:** 07-117-19 B

DIN: 18-A-2599

Appearances: James Godemann, Esq.
Oneida County Public Defender
Boehlert Center at Union Station
321 Main Street
Utica, New York 13501

Decision appealed: June 2019 decision, denying discretionary release and imposing a hold of 15 months.

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

Papers considered: Appellant's Brief received November 19, 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 3/25/2020 AH

Distribution: Appeals Unit – Appellant - Appellant's Counsel - Inst. Parole File - Central File
P-2002(B) (11/2018)

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

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Findings: (Page 1 of 2)

Appellant was sentenced to two to four years upon his conviction of Criminal Contempt in the first degree. In the instant appeal, Appellant challenges the June 2019 determination of the Board denying release and imposing a 15-month hold on the following ground: (1) the Board erred in its decision by overemphasizing the present offense, prior criminal history and past failures at rehabilitation despite other factors such as his receipt of an EEC, good discipline, programming, and release plans; (2) the decision to deny release is unsupported in light of his EEC; and (3) the Board failed to explain how it weighed the applicable factors or adequately explain why parole was denied. These arguments are without merit.

Generally, discretionary release to parole is not to be granted unless the Board determines that an inmate meets three standards: "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). The Board must consider factors relevant to the specific inmate, including, but not limited to, the inmate's institutional record and criminal behavior. Executive Law § 259-i(2)(c)(A). Whereas here the inmate has received an EEC, the Board may deny release to parole on a finding that there is a reasonable probability that, if such inmate is released, the inmate will not live and remain at liberty without violating the law and that his release is not compatible with the welfare of society. Correction Law § 805; Matter of Walker v. Russi, 176 A.D.2d 1185, 576 N.Y.S.2d 51 (3d Dept. 1991), appeal dismissed, 79 N.Y.2d 89 7, 581 N.Y.S.2d 660 (1992). An EEC does not automatically guarantee release or eliminate consideration of the statutory factors, including the instant offense. Matter of Corley v. New York State Div. of Parole, 33 A.D.3d 1142, 1143, 822 N.Y.S.2d 817, 818 (3d Dept. 2006); Matter of Pearl v. New York State Div. of Parole, 25 A.D.3d 1058, 808 N.Y.S.2d 816, 817 (3d Dept. 2006); Matter of White v. Dennison, 29 A.D.3d 1144, 814 N.Y.S.2d 393 (3d Dept. 2006).

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 Corley, 33 A.D.3d at 1143, 822 N.Y.S.2d at 818. 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.

APPEALS UNIT FINDINGS & RECOMMENDATION

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Findings: (Page 2 of 2)

Matter of Fuchino v. Herbert, 255 A.D.2d 914, 914, 680 N.Y.S.2d 389, 390 (4th Dept. 1998); 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).

The record as a whole, including the interview transcript, reflects that the Board considered the appropriate factors, including: the instant offense involving the violation of orders of protection on multiple occasions; Appellant's criminal history including three prior State terms and prior criminal contempt offenses; his institutional record including completion of ART, receipt of an EEC, and discipline; and release plans without letters of assurance and with only recent outreach efforts reported in response to the prior Board decision. The Board also had before it and considered, among other things, the sentencing minutes, Appellant's case plan, and the COMPAS instrument.

After considering all required factors and principles, the Board acted within its discretion in determining release would not satisfy the applicable standards for release. In reaching its conclusion, the Board permissibly relied on the instant offense and that it represents Appellant's fourth State term, Appellant's need to gain more insight regarding the orders of protection, that there were no letters of reasonable assurance on file, and the COMPAS instrument's elevated score for risk of felony violence. Executive Law §§ 259-i(2)(c)(A), 259-c(4); Matter of Silmon, 95 N.Y.2d at 478, 718 N.Y.S.2d 704; Matter of Singh v. Evans, 118 A.D.3d 1209, 987 N.Y.S.2d 271 (3d Dept.), lv. denied, 24 N.Y.3d 906, 995 N.Y.S.2d 715 (2014); Matter of Wright v. Travis, 284 A.D.2d 544, 727 N.Y.S.2d 630 (2d Dept. 2001); Matter of Fuchino, 255 A.D.2d at 914, 680 N.Y.S.2d at 390. The Board acted within its discretion in determining these considerations rebutted any presumption created by the EEC and rendered discretionary release inappropriate at this time. See generally Matter of Neal v. Stanford, 131 A.D.3d 1320, 16 N.Y.S.3d 342 (3d Dept. 2015).

The Board's decision was sufficiently detailed to inform the inmate of the reasons for the denial of parole. Executive Law § 259-i(2)(a); Matter of Applegate v. New York State Bd. of Parole, 164 A.D.3d 996, 997, 82 N.Y.S.3d 240 (3d Dept. 2018); Matter of Kozlowski v. New York State Bd. of Parole, 108 A.D.3d 435, 968 N.Y.S.2d 87 (1st Dept. 2013); Matter of Little v. Travis, 15 A.D.3d 698, 788 N.Y.S.2d 628 (3d Dept. 2005); Matter of Davis v. Travis, 292 A.D.2d 742, 739 N.Y.S.2d 300 (3d Dept. 2002). The Board was not required to articulate the weight accorded to each factor. Matter of Allis v. New York State Div. of Parole, 68 A.D.3d 1309, 1309, 890 N.Y.S.2d 200, 201 (3d Dept. 2009); Matter of Porter v. Alexander, 63 A.D.3d 945, 946, 881 N.Y.S.2d 157, 158 (2d Dept. 2009); Matter of Garofolo v. Dennison, 53 A.D.3d 734, 735, 860 N.Y.S.2d 336, 338 (3d Dept. 2008).

Recommendation: Affirm.