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May 2021

### Administrative Appeal Decision - Goss, Samuel (2020-03-25)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Goss, Samuel

Facility: Woodbourne CF

NYSID: [REDACTED]

Appeal Control No.: 05-098-19 B

DIN: 96-A-5747

Appearances: Thomas Kaczowski, Esq.  
P.O. Box 203  
Wurtsboro, New York 12790

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

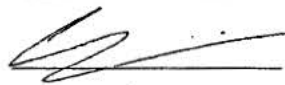
Board Member(s) who participated: **Cruse, Alexander**

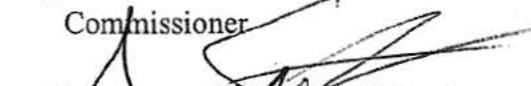
Papers considered: Appellant's Brief received November 13, 2019


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 (AA)

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

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Appellant was sentenced to 25 years to life upon her conviction of Murder in the second degree and Robbery in the third degree. In the instant appeal, Appellant challenges the May 2019 determination of the Board denying release and imposing a 24-month hold on the following grounds: (1) the Board improperly focused on the instant offense without citing any aggravating factors or properly considering other factors such as Appellant’s rehabilitative efforts and accomplishments, release plans and the “guideline time range”; (2) the decision is arbitrary and capricious and violates due process because the Board placed more weight on the instant offense than other factors; (3) the decision fails to provide adequate details; and (4) the 24-month hold is excessive. 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). Appellant’s reliance on the guideline ranges is misplaced inasmuch as the relevant provision was repealed.

In 2011, the law was amended to further require procedures incorporating risk and needs principles to “assist” the Board in making parole release decisions. Executive Law § 259–c(4). The Board satisfies this requirement in part by using the COMPAS instrument. Matter of Montane v. Evans, 116 A.D.3d 197, 202, 981 N.Y.S.2d 866, 870 (3d Dept. 2014); see also Matter of Hawthorne v. Stanford, 135 A.D.3d 1036, 1042, 22 N.Y.S.3d 640, 645 (3d Dept. 2016); 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 Robles v. Fischer, 117 A.D.3d 1558, 1559, 985 N.Y.S.2d 386, 387 (4th Dept. 2014). This is encompassed in the Board’s regulations. 9 N.Y.C.R.R. § 8002.2(a). Notably, the 2011 amendments did not eliminate the requirement that the Board conduct a case-by-case review of each inmate by considering the statutory factors, including the instant offense. The amendments also did not change the three substantive standards that the Board is required to apply when deciding whether to grant parole. Executive Law § 259-i(2)(c)(A). Thus, the COMPAS instrument cannot mandate a particular result. Matter of King v. Stanford, 137 A.D.3d 1396, 26 N.Y.S.3d 815 (3d Dept. 2016). Rather, the COMPAS is an additional consideration that the Board must weigh along with the statutory factors for the purposes of deciding whether the three standards are satisfied. See Matter of Rivera v. N.Y. State Div. of Parole, 119 A.D.3d 1107, 1108,

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990 N.Y.S.2d 295 (3d Dept. 2014); accord Matter of Dawes v. Annucci, 122 A.D.3d 1059, 994 N.Y.S.2d 747 (3d Dept. 2014); see also Matter of Gonzalvo v. Stanford, 153 A.D.3d 1021, 56 N.Y.S.3d 896 (3d Dept. 2017).

While consideration of the statutory 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, 139 A.D.3d 1068, 30 N.Y.S.3d 834. 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 McLain v. New York State Div. of Parole, 204 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).

The record as a whole, including the interview transcript, reflects that the Board considered the appropriate factors, including: the instant offenses wherein Appellant’s co-defendant, who she engaged to commit a robbery, shot the victim in the face while Appellant waited outside and separately Appellant stole merchandise from a store; Appellant’s criminal history including two prior State terms and that Appellant was on parole when she committed the instant offenses; her institutional record including completion of ART and discipline with two new Tier III infractions since her last Board; Appellant’s history of substance abuse [REDACTED]; and release plans to reside with her aunt or live in a shelter, work with the [REDACTED] and pursue work with youth. The Board also had before it and considered, among other things, 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 standards provided for by Executive Law § 259-i(2)(c)(A). In reaching its conclusion, the Board permissibly relied on the instant offenses, that they represent Appellant’s third State term and she committed the offenses while on parole, the COMPAS instrument’s elevated scores for arrest and abscond risk and reentry substance abuse, Appellant’s institutional behavior including the new Tier III infractions, [REDACTED] issues combined with a substance abuse history, and limited insight into the gravity of her behavior. See 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 Gonzalvo v. Stanford, 153 A.D.3d 1021, 56 N.Y.S.3d 896 (3d Dept. 2017); Matter of Thompson

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v. New York State Bd. of Parole, 120 A.D.3d 1518, 1518-19, 992 N.Y.S.2d 464, 465 (3d Dept. 2014); 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 Dudley v. Travis, 227 A.D.2d 863, 642 N.Y.S.2d 386 (3d Dept.), lv. denied, 88 N.Y.2d 812, 649 N.Y.S.2d 379 (1996); Matter of Scott v. Russi, 208 A.D.2d 931, 618 N.Y.S.2d 87 (2d. Dept. 1994). The Board encouraged Appellant to work on her insight, strengthen her release plan, continue to develop family ties and remain discipline free. See Executive Law §§ 259-i(2)(c)(A), 259-c(4). While the Board does not agree that aggravating factors are always required to support emphasis on an inmate's offense, Matter of Hamilton, 119 A.D.3d 1268, 990 N.Y.S.2d 714, the Board's decision here was based on additional considerations.

Furthermore, 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). 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).

The Board's decision satisfied the criteria set out in Executive Law § 259-i(2)(a) and 9 N.Y.C.R.R. § 8002.3(d), as it was sufficiently detailed to inform the inmate of the reasons for the denial of parole. 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 Kozłowski 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 addressed several factors and principles considered in individualized terms and explained those that ultimately weighed most heavily in its deliberations.

Finally, the Board's decision to hold an inmate for the maximum period of 24 months is within the Board's discretion and within its authority pursuant to Executive Law § 259-i(2)(a) and 9 N.Y.C.R.R. § 8002.3(b). Matter of Tatta v. State of N.Y., Div. of Parole, 290 A.D.2d 907, 737 N.Y.S.2d 163 (3d Dept. 2002), lv. denied, 98 N.Y.2d 604, 746 N.Y.S.2d 278 (2002); see also Matter of Campbell v. Evans, 106 A.D.3d 1363, 965 N.Y.S.2d 672 (3d Dept. 2013). Appellant has failed to demonstrate that a hold of 24 months for discretionary release was excessive or improper.

**Recommendation:** Affirm.