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Administrative Appeal Decision - Gross, Ira (2020-02-10)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Gross, Ira

Facility: Fishkill CF

NYSID: [REDACTED]

Appeal Control No.: 07-152-19-RESC.

DIN: 16-R-2903

Appearances: John Martin Esq.
Garfunkel Wild P.C.
111 Great Neck Road
Great Neck, New York 11021

Decision appealed: June 2019 decision, rescinding discretionary release and imposing a hold of 9 months.

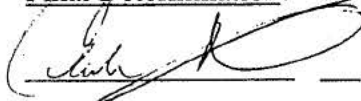
Board Member(s) who participated: Berliner, Demosthenes

Papers considered: Appellant’s Letter-brief received September 5, 2019

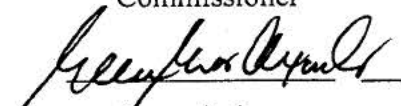
Appeals Unit Review: Statement of the Appeals Unit’s Findings and Recommendation

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 2/10/2020.
LB

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

Name: Gross, Ira

DIN: 16-R-2903

Facility: Fishkill CF

AC No.: 07-152-19-RESC.

Findings: (Page 1 of 1)

Appellant challenges the June 2019 determination of the Board, rescinding release and imposing a 9-month hold. Appellant's instant offense involved him, as a pharmacist, being part of a criminal enterprise that bilked the Medicaid system for over \$250 million dollars, and with the collateral result being many people did not receive their medications. Appellant raises the following issues: 1) the decision is arbitrary and capricious in that the documents commencing the rescission proceedings fail to give any detail as to what the new information the Parole Board has, thus depriving the appellant of a chance to defend against whatever the charges are. 2) the letter from the Attorney-General did not contain any new information that the Parole Board didn't already have. 3) the Parole Board decision wasn't based upon anything in the Attorney-General letter. 4) this is all in violation of the due process clause of the constitution.

An inmate's rights to due process are adequately protected by the procedures outlined in 9 N.Y.C.R.R. §8002.5(b)(5). Pugh v New York State Board of Parole, 19 A.D.3d 991, 798 N.Y.S.2d 182 (3d Dept. 2005), lv.den. 5 N.Y.3d 713 (2005). Unfortunately, here the procedures were not followed. Appellant is correct that the regulation requires proper factual notice as to the basis of the proposed rescission. However, the notice provided to appellant did not contain any details at all, let alone a conclusory allegation. Additionally, the SORC/ORC was never sworn in, and never testified or presented a case for rescission. Thus, no evidence was presented to justify a finding of rescission at the hearing. A de novo is warranted.

Recommendation: Vacate and remand for de novo interview.