May 2021

Administrative Appeal Decision - Langrin, Russell (2020-01-03)

STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Langrin, Russell **Facility:** Groveland CF

NYSID: [redacted] **Appeal Control No.:** 02-120-19 B

DIN: 97-A-0876

Appearances: Russell Langrin, 97-A-0876
Groveland Correctional Facility
7000 Sonyea Road
P.O. Box 50
Sonyea, NY 14556-0050

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

Board Member(s) who participated: **Berliner, Coppola**

Papers considered: Appellant's Letter-brief received July 23, 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 1/3/2020 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

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Appellant challenges the January 2019 determination of the Board, denying release and imposing a 24-month hold. Appellant is incarcerated for three separate instant offenses. In one, the appellant and two others took the victim's vehicle and other property at knifepoint. In the second, the appellant and two others forced their way into the victim's home at gunpoint and removed property and two vehicles. In the third, the appellant and three others engaged in two home invasion robberies in which the families were tied up and menaced with weapons before property was stolen. During the robberies, a male homeowner was stabbed to death by one of Appellant's co-defendants. Appellant raises the following issues: 1) Appellant's youth at the time of the offense was not taken into consideration; 2) the Board improperly considered the conduct of a co-defendant in denying parole and should not have questioned whether Appellant testified against the co-defendant; 3) the Board erroneously considered and made inappropriate comments regarding Appellant's lewd conduct tickets that are part of a pending investigation; 4) the Board did not consider the sentencing minutes; 5) Appellant's sentence is in violation of the Eighth Amendment; 6) the Board relied on erroneous information because Appellant's nervousness and social phobia did not allow him to fully participate in the interview; and 8) the 24-month hold was 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).

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 LeGeros v. New York State Bd. Of Parole, 139 A.D.3d 1068, 30 N.Y.S.3d 834 (2d Dept. 2016); Matter of Phillips v. Dennison, 41 A.D.3d 17, 21, 834 N.Y.S.2d 121, 124 (1st Dept. 2007). In the absence

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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 Fuchino v. Herbert, 255 A.D.2d 914, 914, 680 N.Y.S.2d 389, 390 (4th Dept. 1998); 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); People ex rel. Herbert, 97 A.D.2d 128, 468 N.Y.S.2d 881.

The record as a whole, including the interview transcript, reflects that the Board considered the appropriate factors, including: Appellant's instant offenses of Burglary in the first degree and two counts of Robbery in the first degree; [redacted]; Appellant's institutional efforts two Tier III violations for lewd conduct and two Tier II violations since his last Board interview, regressions in programming caused by disciplinary issues, completion of [redacted] and Phase I of Transitional Services, and work in lawn and grounds; and release plans to live with a friend and work in maintenance. The Board also had before it and considered, among other things, the case plan, the COMPAS instrument, and an official statement from the District Attorney.

After considering all required factors, 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 representing an escalation of criminal behavior, Appellant's ongoing disciplinary record, and official opposition to his release. See 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 Symmonds v. Dennison, 21 A.D.3d 1171, 1172, 801 N.Y.S.2d 90, 90 (3d Dept.), lv. denied, 6 N.Y.3d 701, 810 N.Y.S.2d 415 (2005); Matter of Warren v. New York State Div. of Parole, 307 A.D.2d 493, 493, 761 N.Y.S.2d 883 (3d Dept. 2003); Matter of Garcia v. New York State Div. of Parole, 239 A.D.2d 235, 239-40, 657 N.Y.S.2d 415, 418 (1st Dept. 1997); Matter of Almonte v. New York State Bd. of Parole, 145 A.D.3d 1307, 42 N.Y.S.3d 691 (3d Dept. 2016), lv. denied, 29 N.Y.3d 905 (2017); Matter of Karlin v. Cully, 104 A.D.3d 1285, 1286, 960 N.Y.S.2d 827, 828 (4th Dept. 2013); 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 Porter v. Alexander, 63 A.D.3d 945, 881 N.Y.S.2d 157 (2d Dept. 2009); Matter of Walker v. Travis, 252 A.D.2d 360, 676 N.Y.S.2d 52 (1st Dept. 1998); Matter of Walker v. New York State Bd. of Parole, 218 A.D.2d 891, 630 N.Y.S.2d 417 (3d Dept. 1995). The Board also cited the COMPAS instrument's medium risk score for felony violence. See Matter of Espinal v. N.Y. State Bd. Of Parole, 172 A.D.3d 1816, 100 N.Y.S.3d 777 (3d Dept. 2019); Matter of Bush v. Annucci, 148 A.D.3d 1392, 50 N.Y.S.3d 180 (3d Dept. 2017); Matter of Wade v. Stanford, 148 A.D.3d 1487, 52 N.Y.S.3d 508 (3d Dept. 2017).

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Insofar as Appellant objects that the Board failed to take into account his youth at the time of the instant offense, the Board was not required to treat his age (18 years old) as a mitigating factor. The Board is required to consider an inmate's youth in relation to the commission of an offense for which he is serving a maximum life sentence pursuant to the Third Department's decision in Matter of Hawkins v. New York State Dep't of Corr. & Cmty. Supervision, 140 A.D.3d 34, 39, 30 N.Y.S.3d 397, 400 (3d Dept. 2016), and the Board's amended regulations, 9 N.Y.C.R.R. § 8002.2(c). However, this requirement does not apply whereas here the inmate was an adult when he committed the offense and he is not serving a maximum life sentence. 9 N.Y.C.R.R. § 8002.2(c) (defining "minor offenders" as inmates serving a maximum sentence of life imprisonment for a crime committed prior to the individual attaining the age of 18 years of age); Matter of Cobb v Stanford, 153 A.D.3d 1500, 59 N.Y.S.3d 915 (3d Dept. 2017) (Hawkins inapplicable to offender who was over 18 at time of offense); cf. Miller v. Alabama, 567 U.S. 460,132 S. Ct. 2455 (2012) (holding unconstitutional mandatory life imprisonment without parole for juveniles under the age of 18 at the time of their crimes); Graham v. Florida, 560 U.S. 48, 130 S. Ct. 2011 (2010) (distinguishing juveniles under 18 from adults). Nothing in the Executive Law or current case law supports expanding minor offender consideration to adults.

There is no merit to Appellant's allegations that the Board improperly considered the conduct of a co-defendant and should not have questioned whether Appellant testified against the co-defendant. The Board may inquire into the circumstances of the offense, subsequent developments, and the inmate's state of mind consistent with the Executive Law. See, e.g., Matter of Hamilton, 119 A.D.3d at 1274, 990 N.Y.S.2d at 720. That the Board explored the details of the instant offense – including the actions of a co-defendant who stabbed a homeowner to death during the robbery – was not improper. Asking about the trial – including Appellant's plea, sentence, and whether he testified against the co-defendant – was also within the Board's discretion.

As for Appellant's assertion that the Board erroneously considered his lewd contact tickets, it is not improper for the Board to consider a DOCCS prison disciplinary finding against an inmate, even if the case is pending on appeal at the time of the Parole Board Release Interview. Matter of Arce v. Travis, 273 A.D.2d 564, 710 N.Y.S.2d 554 (3d Dept. 2000); see also Matter of Warmus v. New York State Dep't of Corrs. & Cmty. Supervision, Index No. 7516-17, *Decision, Order & Judgment* dated Sept. 10, 2018 (Sup. Ct. Albany Co.) (O'Connor, A.S.C.J.). Appellant is not automatically entitled to a new parole release interview due to the subsequent reversal of a DOCCS disciplinary violation. Matter of Collins v. Hammock, 52 N.Y.2d 798, 436 N.Y.S.2d 704 (1980).

Appellant's contention that a Commissioner made inappropriate comments regarding his lewd contact tickets is without merit. The transcript does not support Appellant's contention that the parole interview was conducted improperly or that he was denied a fair interview. Matter of Rivers

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v. Evans, 119 A.D.3d 1188, 989 N.Y.S.2d 400 (3d Dept. 2014); see also Matter of Mays v. Stanford, 55 N.Y.S.3d 502, 150 A.D.3d 1521 (3d Dept. 2017); Matter of Bonilla v. New York State Bd. of Parole, 32 A.D.3d 1070, 1071, 820 N.Y.S.2d 661, 662 (3d Dept. 2006). The transcript reveals the Commissioner sought clarification on Appellant's explanation for his lewd conduct tickets and Appellant responded by sharing relevant background information. (Tr. at 6.) Appellant's claims of nervousness and social phobia provide do not provide a basis to disturb the Board's decision.

While the Board did not possess the sentencing minutes despite a diligent effort to obtain them, the Appeals Unit has been able to obtain them since his appearance before the Board. A review of those minutes reveals the court made no recommendation with respect to parole. Accordingly, any error in failing to consider them is harmless and does not provide a basis for setting aside the appealed from decision. Matter of Almonte v. New York State Bd. of Parole, 145 A.D.3d 1307, 42 N.Y.S.3d 691 (3d Dept. 2016), lv. denied, 29 N.Y.3d 905 (2017); Matter of Davis v. Lemons, 73 A.D.3d 1354, 899 N.Y.S.2d 919 (3d Dept. 2010); Matter of Valerio v. New York State Div. of Parole, 59 A.D.3d 802, 872 N.Y.S.2d 606 (3d Dept. 2009).

As for the Eighth Amendment, the denial of parole under a statute invoking discretion in parole determinations does not violate the Eighth Amendment's prohibition against cruel and unusual punishment. Carnes v. Engler, 76 Fed. Appx. 79 (6th Cir. 2003); Lustgarden v. Gunter, 966 F.2d 552, 555 (10th Cir.), cert den. 506 U.S. 1008, 113 S. Ct. 624 (1992), rehearing denied 507 U.S. 955, 113 S. Ct. 1374 (1993); Pacheco v. Pataki, No. 9:07–CV–0850, 2010 WL 3909354, at *3 (N.D.N.Y. Sept. 30, 2010). Appellant's maximum sentence is forty years. The Board acted within its discretion to hold Appellant for another 24 months, after which he will have the opportunity to reappear before the Board.

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.