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Administrative Appeal Decision - Linares, Jorge L (2020-10-30)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Linares, Jorge Facility: Otisville CF
NYSID: [REDACTED] Appeal Control No.: 07-029-20 SC
DIN: 96-A-3483

Appearances: Jorge Linares 96A3483
Otisville Correctional Facility
P.O. Box 8
Otisville, New York 10963

Decision appealed: June 2020 decision, denying discretionary release and imposing a hold of 24 months.

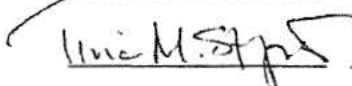
Board Member(s) who participated: Mitchell, Cruse

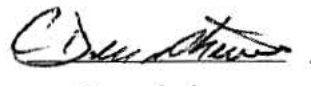
Papers considered: Appellant’s Letter-brief received July 30, 2020

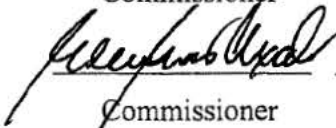
Appeals Unit Review: Statement of the Appeals Unit’s Findings and Recommendation

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 10/30/2020.
LB

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Linares, Jorge

DIN: 96-A-3483

Facility: Otisville CF

AC No.: 07-029-20 SC

Findings: (Page 1 of 1)

Appellant challenges the June 2020 determination of the Board, denying release and imposing a 24-month hold. Appellant's instant offense is for repeatedly raping and engaging in sexual activity with two of his minor children, as well forcing the children to engage in sexual conduct with each other. Appellant raises the following issues: 1) the Board failed to consider and/or properly weigh the required statutory factors. 2) no aggravating factors exist. 3) the decision lacks substantial evidence. 4) the Board failed to list any facts in support of the statutory standard cited. 5) the decision was due to a policy against sex offenders. 6) the decision lacks future guidance. 7) the decision illegally resentenced him. 8) community opposition is not allowed. 9) the decision lacks detail. 10) the Board failed to comply with the 2011 amendments to the Executive Law, and the 2017 regulations, in that the COMPAS was ignored, no individual scale was given for a departure, and the regulations also contain a constitutional liberty interest. Also, this de novo was for an invalid departure, and the de novo decision uses the same grounds once again for the departure.

The prior Board decision was held to be invalid because the reason given for the departure from the COMPAS (conviction after a jury trial) was not legally proper. This current Board decision states the departure from the COMPAS is due to the jury believing beyond a reasonable doubt that appellant was guilty of these heinous crimes against his own children, despite his claim of innocence. As the reason given for the departure this time is very similar to the invalid reason given for the departure at the prior interview, a second de novo interview is warranted.

Recommendation: Vacate and remand for de novo interview.