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May 2021

### Administrative Appeal Decision - Linares, Jorge L (2020-04-14)

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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.: 12-021-19 B

DIN: 96-A-3483

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

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

Board Member(s) who participated: Lee, Agostini, Samuels

Papers considered: Appellant's Letter-brief received December 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 4/14/2020.

LB

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Linares, Jorge

**DIN:** 96-A-3483

**Facility:** Otisville CF

**AC No.:** 12-021-19 B

**Findings:** (Page 1 of 1)

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Appellant challenges the November 2019 determination of the Board, denying release and imposing a 24-month hold. Appellant is incarcerated for repeatedly raping and sexually abusing several of his minor children, and threatening them if they told what happened. Appellant raises the following issues: 1) the decision is arbitrary and capricious in that 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 an facts in support of the statutory standard cited. 5) the decision lacks future guidance. 6) the decision illegally resentenced him. 7) the decision lacks detail. 8) the Board violated his rights under the due process clause of the constitution. 9) the decision violated his constitutional right to counsel. 10) the Board failed to comply with the 2011 amendments to the Executive Law, and the 2017 regulations, in that the COMPAS was ignored, the attempted departure was illegally done, and statistically he is not a risk to re-offend. Also, the 2017 regulation creates a constitutional liberty interest in early release.

All of appellant's COMPAS scores are in the low or unlikely category. The Board decision says it is departing from the COMPAS due to his conviction after a jury trial. That is not a proper reason for a departure. As such, a de novo is warranted.

**Recommendation:** Vacate and remand for de novo interview.