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May 2021

### Administrative Appeal Decision - Marshall, Robert (2020-02-10)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Marshall, Robert

Facility: Elmira CF

NYSID: [REDACTED]

Appeal Control No.: 05-143-19 B

DIN: 11-A-3351

Appearances: Roland R. Acevedo, Esq.  
27 Whitehall Street, 5th Floor  
New York, NY 10004

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

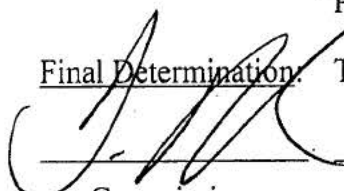
Board Member(s) who participated: **Davis, Alexander**

Papers considered: Appellant's Brief received August 29, 2019

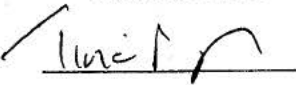
Appeals Unit Review: Statement of the Appeals Unit's Findings and Recommendation

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

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Marshall, Robert

**DIN:** 11-A-3351

**Facility:** Elmira CF

**AC No.:** 05-143-19 B

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

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Appellant challenges the April 2019 determination of the Board, denying release and imposing a 24-month hold. The instant offense involved the appellant entering the home of the 88-year-old female victim, demanding money from her, “manhandling” her, tying her hands and feet with cord, placing a mattress on top of her, and leaving the scene. The victim suffered from blunt force trauma to the head, upper extremities, and torso, and had a compression of the neck, and died the next day. Appellant raises the following issues: 1) the decision was arbitrary and capricious because the Board failed to apply the new future-focused regulations and focused primarily on the instant offense and Appellant’s criminal history; 2) the Board relied on erroneous information regarding Appellant’s crime and disciplinary record; and 3) a Commissioner was biased and improperly based his decision on his personal opinion regarding Appellant’s crime.

A review by the Appeals Unit reveals that the Board relied on erroneous information insofar as they included details of the instant offense – that Appellant took a shower and made a sandwich while the victim lay dying – that were not included in the presentence investigation report. As such, a *de novo* interview is appropriate.

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