

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

Parole Administrative Appeal Decisions

Parole Administrative Appeal Documents

May 2021

Administrative Appeal Decision - Murray, Michael L Jr (2020-02-24)

Follow this and additional works at: <https://ir.lawnet.fordham.edu/aad>

Recommended Citation

"Administrative Appeal Decision - Murray, Michael L Jr (2020-02-24)" (2021). Parole Information Project
<https://ir.lawnet.fordham.edu/aad/609>

This Parole Document is brought to you for free and open access by the Parole Administrative Appeal Documents at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Parole Administrative Appeal Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Murray, Michael

Facility: Mohawk CF

NYSID: [REDACTED]

Appeal Control No.: 08-118-19 B

DIN: 18-A-4570

Appearances: Michael Murray 18A4570
Mohawk Correctional Facility
6514 Route 26
P.O. Box 8450
Rome, New York 13442

Decision appealed: July 2019 decision, denying discretionary release and imposing a hold of 18 months.


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

Papers considered: Appellant’s Letter-brief received October 4, 2019

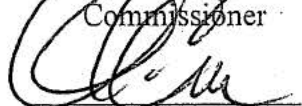
Appeals Unit Review: Statement of the Appeals Unit’s Findings and Recommendation

Records relied upon: Pre-Sentence Investigation Report, Parole Board Report, Interview Transcript, Parole Board Release Decision Notice (Form 9026), COMPAS instrument, Offender Case Plan.

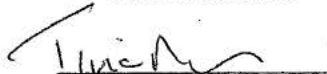
Final Determination: The undersigned determine that the decision appealed is hereby:

 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 2/24/2020 .

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Murray, Michael

DIN: 18-A-4570

Facility: Mohawk CF

AC No.: 08-118-19 B

Findings: (Page 1 of 2)

Appellant challenges the July 2019 determination of the Board, denying release and imposing a 18-month hold. Appellant is incarcerated for several different crimes. Appellant broke into the same store three times and stole over \$5,000 worth of merchandise. In another matter, he went to a victim's house in violation of an Order of Protection. Appellant for the most part doesn't raise legal issues per se. Rather, he offers mitigating factors in that he claims to be "devil possessed" and that the instant offenses were committed with extenuating circumstances. Also, the 18 month hold is excessive in that he can comply with programming needs well within that time period.

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).

Although the Board placed emphasis on the crime, the record reflects it also considered other appropriate factors and it was not required to place equal weight on each factor considered. Matter of Peralta v. New York State Bd. of Parole, 157 A.D.3d 1151, 69 N.Y.S.3d 885 (3d Dept. 2018). Although the Board placed emphasis on the crime, it was free to do so given all factors need not be given equal weight. Matter of Arena v. New York State Dep't of Corr. & Cmty. Supervision, 156 A.D.3d 1101, 65 N.Y.S.3d 471 (3d Dept. 2017); Matter of Gordon v. Stanford, 148 A.D.3d 1502, 50 N.Y.S.3d 627 (3d Dept. 2017); Matter of Mullins v. New York State Bd. of Parole, 136 A.D.3d 1141, 25 N.Y.S.3d 698 (3d Dept. 2016).

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Murray, Michael

DIN: 18-A-4570

Facility: Mohawk CF

AC No.: 08-118-19 B

Findings: (Page 2 of 2)

The fact that the Board afforded greater weight to the inmate's criminal history, as opposed to other positive factors, does not render the denial of parole for that reason irrational or improper. Matter of Davis v. Evans, 105 A.D.3d 1305, 963 N.Y.S.2d 485 (3d Dept. 2013); Matter of Lashway v. Evans, 110 A.D.3d 1417, 1418, 974 N.Y.S.2d 164, 165 (3d Dept. 2013); Matter of McKee v. New York State Bd. of Parole, 157 A.D.2d 944, 550 N.Y.S.2d 204 (3d Dept. 1990).

The Board was allowed to place greater emphasis on the inmate's criminal record including prior failures while under community supervision. See, e.g., Matter of Bello v. Bd. of Parole, 149 A.D.3d 1458, 53 N.Y.S.3d 715 (3d Dept. 2017); Matter of Davis v. Evans, 105 A.D.3d 1305, 963 N.Y.S.2d 485 (3d Dept. 2013); People ex rel. Herbert v. New York State Bd. of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881, 884 (1st Dept. 1983).

The Board may consider an inmate's need to complete rehabilitative programming in denying parole. See Matter of Allen v. Stanford, 161 A.D.3d 1503, 1506, 78 N.Y.S.3d 445 (3d Dept.), lv. denied, 32 N.Y.3d 903 (2018); Matter of Barrett v. New York State Div. of Parole, 242 A.D.2d 763, 661 N.Y.S.2d 857 (3d Dept. 1997); see also Matter of Connelly v. New York State Div. of Parole, 286 A.D.2d 792, 729 N.Y.S.2d 808, 809 (3d Dept.), appeal dismissed 97 N.Y.2d 677, 738 N.Y.S.2d 291 (2001).

The Board may take into consideration an inmate's apparent need for [REDACTED] in denying parole. Matter of Baker v. Russi, 188 A.D.2d 771, 591 N.Y.S.2d 540 (3d Dept. 1992); Matter of Wright v. Parole Div., 132 A.D.2d 821, 517 N.Y.S.2d 823 (3d Dept. 1987).

In the absence 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.

In the absence of impropriety, the reconsideration date set by the Board will not be disturbed. Matter of Tatta v. State of N.Y., Div. of Parole, 290 A.D.2d 907, 908, 737 N.Y.S.2d 163 (3d Dept. 2002); accord Matter of Evans v. Dennison, 13 Misc. 3d 1236(A), 831 N.Y.S.2d 353 (Sup. Ct. Westchester Co. 2006) (rejecting challenge to 24-month hold). Appellant has failed to demonstrate that a hold of 24 months for discretionary release was excessive or improper.

Recommendation: Affirm.