

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 - Salonich, Ray A (2020-11-19)

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

---

#### Recommended Citation

"Administrative Appeal Decision - Salonich, Ray A (2020-11-19)" (2021). Parole Information Project  
<https://ir.lawnet.fordham.edu/aad/639>

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](mailto:tmelnick@law.fordham.edu).

STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Salonich, Ray

Facility: Washington CF

NYSID: [REDACTED]

Appeal Control No.: 08-026-19 B

DIN: 18-A-2210

Appearances: Alyson Clark Esq.  
Washington County Public Defenders Office  
383 Broadway  
Fort Edward, New York 12828

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

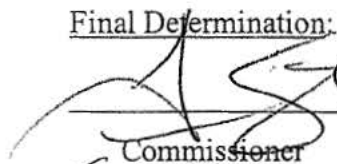
Board Member(s) who participated: Davis, Berliner

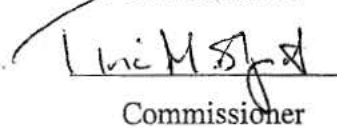
Papers considered: Appellant's Brief received August 26, 2020


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 11/19/2020

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Salonich, Ray

**DIN:** 18-A-2210

**Facility:** Washington CF

**AC No.:** 08-026-19 B

**Findings:** (Page 1 of 7)

---

Appellant challenges the July 2019 determination of the Board, denying release and imposing a 24-month hold. Appellant's instant offense is for drinking at least several beers and then driving a car, crossing the yellow line, and striking two people, which caused the death of one of them. Appellant raises the following issues: 1) the decision is arbitrary and capricious, and irrational bordering on impropriety, in that the Board failed to consider and/or properly weigh the required statutory factors. 2) the Board ignored his EEC. 3) the Board violated his due process legitimate expectation of early release. 4) the decision was predetermined. 5) the decision was due to bias. 6) the decision illegally resentenced him. 7) the Board didn't have his sentencing minutes. 8) the decision is based upon erroneous information in that alcohol played no role in the crime. 9) the Board failed to comply with the 2011 amendments to the Executive Law in that the COMPAS was ignored, and the statutes are now forward and rehabilitation based.

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). Whereas here the inmate has received an EEC, the Board may deny release to parole on a finding that there is a reasonable probability that, if such inmate is released, the inmate will not live and remain at liberty without violating the law and that his release is not compatible with the welfare of society. Correction Law § 805; Matter of Heitman v. New York State Bd. of Parole, 214 A.D.2d 673, 625 N.Y.S.2d 264 (2d Dept. 1995); Matter of Salcedo v. Ross, 183 A.D.2d 771, 771, 583 N.Y.S.2d 502, 503 (1st Dept. 1992); Matter of Walker v. Russi, 176 A.D.2d 1185, 576 N.Y.S.2d 51 (3d Dept. 1991), appeal dismissed, 79 N.Y.2d 89 7, 581 N.Y.S.2d 660 (1992). 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).

Although the Board placed particular emphasis on the nature of the crime, the Board considered other factors and was not required to give equal weight to or discuss each factor considered. Matter of Gordon v. Stanford, 148 A.D.3d 1502, 50 N.Y.S.3d 627 (3d Dept. 2017); 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 Peralta v. New York State Bd. of Parole, 157 A.D.3d 1151, 69 N.Y.S.3d 885 (3d Dept. 2018).

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.

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Salonich, Ray

**DIN:** 18-A-2210

**Facility:** Washington CF

**AC No.:** 08-026-19 B

**Findings:** (Page 2 of 7)

---

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 may emphasize the nature of the instant offense and that it was an escalation in illegal behavior. 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).

The Board may cite an inmate's prior history of irresponsible driving in its decision. Confoy v New York State Division of Parole, 173 A.D.2d 1014, 569 N.Y.S.2d 846, 847 (3d Dept 1991); Wade v Stanford, 148 A.D.3d 1487, 52 N.Y.S.3d 508 (3d Dept. 2017). The Board may consider an inmate's history of drug and/or alcohol abuse. Matter of Espinal v. New York Bd. of Parole, 172 A.D.3d 1816, 100 N.Y.S.3d 777 (3d Dept. 2019) (substance abuse history); Matter of Gonzalvo v. Stanford, 153 A.D.3d 1021, 56 N.Y.S.3d 896 (3d Dept. 2017) (substance abuse history and risk of future drug abuse); Matter of Dean v. New York State Div. of Parole, 21 A.D.3d 1207, 1208, 801 N.Y.S.2d 92, 93 (3d Dept. 2005) (involvement with weapons and drugs), *lv. denied*, 6 N.Y.3d 705, 812 N.Y.S.2d 34 (2006); Matter of Sanchez v. Dennison, 21 A.D.3d 1249, 801 N.Y.S.2d 423 (3d Dept. 2005) (history of drug abuse); Matter of Llull v. Travis, 287 A.D.2d 845, 846, 731 N.Y.S.2d 405, 406 (3d Dept. 2001) (drug abuse); Matter of Brant v. New York State Bd. of Parole, 236 A.D.2d 760, 761, 654 N.Y.S.2d 207, 208 (3d Dept. 1997) (history of alcohol and drug abuse); Matter of McLain v. New York State Div. of Parole, 204 A.D.2d 456, 611 N.Y.S.2d 629 (2d Dept. 1994) (history of alcohol abuse); 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) (drug addiction); Matter of Maciag v. Hammock, 88 A.D.2d 1106, 453 N.Y.S.2d 56 (3d Dept. 1982) (problem of alcohol and drug abuse with the concomitant need for programmed counseling).

The Board may consider the inmate's limited expression of remorse. Beodeker v Stanford, 164 A.D.3d 1555, 82 N.Y.S.3d 669 (3d Dept. 2018). "[T]here is a strong rehabilitative component in the statute that may be given effect by considering remorse and insight." Matter of Silmon v. Travis, 95 N.Y.2d 470, 478, 718 N.Y.S.2d 704 (2000). Insight and remorse are relevant not only to rehabilitative progress but also to whether release would deprecate the severity of the offense. Matter of Phillips v. Dennison, 41 A.D.3d 17, 23, 834 N.Y.S.2d 121, 125 (1st Dept. 2007).

The Board may consider the potential danger an inmate would pose to the community if the inmate were to be released Bridget v Travis, 300 A.D.2d 776, 750 N.Y.S.2d 795 (3d Dept 2002) or that the inmate would place the public at risk. Valerio v Dennison, 35 A.D.3d 938, 825 N.Y.S.2d 574 (3d

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Salonich, Ray

**DIN:** 18-A-2210

**Facility:** Washington CF

**AC No.:** 08-026-19 B

**Findings:** (Page 3 of 7)

---

Dept. 2006); Arena v New York State Department of Corrections and Community Supervision, 156 A.D.3d 1101, 65 N.Y.S.3d 471 (3d Dept. 2017); Constant v Stanford, 157 A.D.3d 1175, 67 N.Y.S.3d 508 (3d Dept. 2018).

Receipt of an EEC does not preclude denial of parole. Matter of Milling v. Berbary, 31 A.D.3d 1202, 1203, 819 N.Y.S.2d 373, 374 (4th Dept.), lv. denied, 7 N.Y.3d 808, 809, 822 N.Y.S.2d 481 (2006); Matter of Romer v. Dennison, 24 A.D.3d 866, 867, 804 N.Y.S.2d 872, 873 (3d Dept. 2005); Matter of Barad v. New York State Bd. of Parole, 275 A.D.2d 856, 713 N.Y.S.2d 775, 776 (3d Dept. 2000), lv. denied, 96 N.Y.2d 702, 722 N.Y.S.2d 793 (2001). An EEC does not automatically entitle an inmate to discretionary release or eliminate consideration of the statutory factors including the instant offense. Matter of Corley v. New York State Div. of Parole, 33 A.D.3d 1142, 1143, 822 N.Y.S.2d 817, 818 (3d Dept. 2006); Matter of Pearl v. New York State Div. of Parole, 25 A.D.3d 1058, 808 N.Y.S.2d 816, 817 (3d Dept. 2006); Matter of White v. Dennison, 29 A.D.3d 1144, 814 N.Y.S.2d 393 (3d Dept. 2006). Moreover, the Board is not required to give each factor equal weight. Matter of Corley, 33 A.D.3d 1142, 1143, 822 N.Y.S.2d 817, 818; Matter of Pearl, 25 A.D.3d 1058, 808 N.Y.S.2d 816, 817. The Board may deny release to parole on a finding that there is a reasonable probability that, if such inmate is released, the inmate will not live and remain at liberty without violating the law and that his release is not compatible with the welfare of society. Correction Law § 805; Matter of Heitman v. New York State Bd. of Parole, 214 A.D.2d 673, 625 N.Y.S.2d 264 (2d Dept. 1995); Matter of Salcedo v. Ross, 183 A.D.2d 771, 771, 583 N.Y.S.2d 502, 503 (2d Dept. 1992); Matter of Walker v. Russi, 176 A.D.2d 1185, 576 N.Y.S.2d 51 (3d Dept. 1991), appeal dismissed, 79 N.Y.2d 89 7, 581 N.Y.S.2d 660 (1992). The Board acted within its discretion in determining other considerations rebutted any presumption created by the EEC and rendered discretionary release inappropriate at this time. See generally Matter of Bello v. Bd. of Parole, 149 A.D.3d 1458, 53 N.Y.S.3d 715 (3d Dept. 2017); Matter of Wade v. Stanford, 148 A.D.3d 1487, 52 N.Y.S.3d 508 (3d Dept. 2017); Matter of Furman v. Annucci, 138 A.D.3d 1269, 28 N.Y.S.3d 352 (3d Dept. 2016); Matter of Neal v. Stanford, 131 A.D.3d 1320, 16 N.Y.S.3d 342 (3d Dept. 2015); Matter of Singh v. Evans, 107 A.D.3d 1274, 1275, 968 N.Y.S.2d 648, 649-50 (3d Dept. 2013).

There is a presumption of honesty and integrity that attaches to Judges and administrative fact-finders. See People ex rel. Carlo v. Bednosky, 294 A.D.2d 382, 383, 741 N.Y.S.2d 703 (2d Dept. 2002); People ex. rel. Johnson v. New York State Bd. of Parole, 180 A.D.2d 914, 916, 580 N.Y.S.2d 957, 959 (3d Dept. 1992). The Board is presumed to follow its statutory commands and internal policies in fulfilling its obligations. See Garner v. Jones, 529 U.S. 244, 256, 120 S. Ct. 1362, 1371 (2000). There is no evidence the Board's decision was predetermined based upon the instant offense. Matter of Gonzalvo v. Stanford, 153 A.D.3d 1021, 56 N.Y.S.3d 896 (3d Dept. 2017); Matter of Hakim-Zaki v. New York State Div. of Parole, 29 A.D.3d 1190, 814 N.Y.S.2d 414 (3d Dept. 2006); Matter of Guerin v. New York State Div. of Parole, 276 A.D.2d 899, 695 N.Y.S.2d 622 (3d Dept.

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Salonich, Ray

**DIN:** 18-A-2210

**Facility:** Washington CF

**AC No.:** 08-026-19 B

**Findings:** (Page 4 of 7)

---

2000). Nor was any penal philosophy discussed. Appellant has failed to overcome the presumption that the Board complied with its duty. See Matter of Davis v. New York State Div. of Parole, 114 A.D.2d 412, 494 N.Y.S.2d 136 (2d Dept. 1985).

There must be support in the record to prove an alleged bias and proof that the decision flowed from such bias. Matter of Hernandez v. McSherry, 271 A.D.2d 777, 706 N.Y.S.2d 647 (3d Dept. 2000), lv. denied, 95 N.Y.2d 769, 722 N.Y.S.2d 472 (2000); see also Matter of Gonzalvo v. Stanford, 153 A.D.3d 1021, 56 N.Y.S.3d 896 (3d Dept. 2017) (rejecting bias claim); Matter of Grune v. Board of Parole, 41 A.D.3d 1014, 838 N.Y.S.2d 694 (3d Dept. 2007).

Appellant's assertion that the denial of parole release amounted to an improper resentencing is without merit inasmuch as the Board fulfilled its obligation to determine the propriety of release per Executive Law § 259-i(2)(c)(A) and after considering the factors set forth therein. Executive Law § 259 et seq.; Penal Law § 70.40; Matter of Murray v. Evans, 83 A.D.3d 1320, 920 N.Y.S.2d 745 (3d Dept. 2011); Matter of Crews v. New York State Exec. Dept. Bd. of Parole Appeals Unit, 281 A.D.2d 672, 720 N.Y.S.2d 855 (3d Dept. 2001). The Board was vested with discretion to determine whether release was appropriate notwithstanding the minimum period of incarceration set by the Court. Matter of Burress v. Dennison, 37 A.D.3d 930, 829 N.Y.S.2d 283 (3d Dept. 2007); Matter of Cody v. Dennison, 33 A.D.3d 1141, 1142, 822 N.Y.S.2d 677 (3d Dept. 2006), lv. denied, 8 N.Y.3d 802, 830 N.Y.S.2d 698 (2007). The appellant has not in any manner been resentenced. Matter of Mullins v. New York State Bd. of Parole, 136 A.D.3d 1141, 1142, 25 N.Y.S.3d 698 (3d Dept. 2016).

An inmate has no Constitutional right to be conditionally released on parole before expiration of a valid sentence. Greenholtz v. Inmates of Nebraska Penal & Correctional Complex, 442 U.S. 1, 99 S. Ct. 2100, 2104 (1979); Matter of Russo v. Bd. of Parole, 50 N.Y.2d 69, 427 N.Y.S.2d 982 (1980); Matter of Vineski v. Travis, 244 A.D.2d 737, 664 N.Y.S.2d 391 (3d Dept. 1997). The New York State parole scheme "holds out no more than a possibility of parole" and thus does not create a protected liberty interest implicating the due process clause. Matter of Russo, 50 N.Y.2d at 75-76, 427 N.Y.S.2d at 985; see also Barna v. Travis, 239 F.3d 169, 171 (2d Cir. 2001); Matter of Freeman v. New York State Div. of Parole, 21 A.D.3d 1174, 800 N.Y.S.2d 797 (3d Dept. 2005).

Nothing in the due process clause requires the Parole Board to specify the particular evidence on which rests the discretionary determination an inmate is not ready for conditional release. Duемmel v Fischer, 368 Fed.Appx. 180, 182 (2d Cir. 2010). There is no due process requirement that the Parole Board disclose its release criteria. Haymes v Regan, 525 F.2d 540 (2d Cir. 1975). The due process clause is not violated by the Board's balancing of the statutory criteria, and which is not to be second guessed by the courts. Mathie v Dennison, 2007 WL 2351072 (S.D.N.Y. 2007); MacKenzie v Cunningham, 2014 WL 5089395 (S.D.N.Y. 2014).

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Salonich, Ray

**DIN:** 18-A-2210

**Facility:** Washington CF

**AC No.:** 08-026-19 B

**Findings:** (Page 5 of 7)

---

Parole is not constitutionally based, but is a creature of statute which may be imposed subject to conditions imposed by the state legislature. Banks v Stanford, 159 A.D.3d 134, 71 N.Y.S.3d 515 (2d Dept. 2018). Parole release is a statutory grant of a restricted form of liberty prior to the expiration of a sentence. Johnson v Superintendent Adirondack Correctional Facility, 174 A.D.3d 992, 106 N.Y.S.3d 408 (3d Dept. 2019).

There is no dispute that the Board neither had nor considered the sentencing minutes. However, since the appellant's appearance before the Board, the Appeals Unit has been able to obtain and review the subject's sentencing minutes. A review of the sentencing minutes reveals that at no time during the proceeding did the court proffer any recommendation in favor of or in opposition to the appellant's possible release to parole supervision. That the Parole Board neither had nor considered the sentencing minutes when they fail to contain any recommendation in favor of or in opposition to an inmate's possible release to parole supervision constitutes harmless error and does not provide a basis for setting aside the appealed from decision. Schettino v New York State Division of Parole, 45 A.D.3d 1086, 845 N.Y.S.2d 569 (3d Dept. 2007); Motti v Alexander, 54 A.D.3d 1114 (3d Dept. 2007); Valerio v New York State Division of Parole, 59 A.D.3d 802, 872 N.Y.S.2d 606 (3d Dept. 2009); Abbas v New York State Division of Parole, 61 A.D.3d 1228, 877 N.Y.S.2d 512 (3d Dept. 2009); Cruz v Alexander, 67 A.D.3d 1240, 890 N.Y.S.2d 656 (3d Dept. 2009); Davis v Lemons, 73 A.D.3d 1354, 899 N.Y.S.2d 919 (3d Dept. 2010); Ruiz v New York State Division of Parole, 70 A.D.3d 1162, 894 N.Y.S.2d 582 (3d Dept. 2010).

The Pre-sentence Investigation Report states appellant remembers drinking several beers before driving, and can't remember much else as to what happened. Thus, the decision is not based upon erroneous information. Pursuant to Executive Law sections 259-i(2)(c)(A) and 259-k(1), the Board is required to obtain official reports and may rely on the information contained therein. See, e.g., Matter of Silmon v. Travis, 95 N.Y.2d 470, 474, 477, 718 N.Y.S.2d 704, 706, 708 (2000) (discussing former status report); Matter of Carter v. Evans, 81 A.D.3d 1031, 916 N.Y.S.2d 291 (3d Dept.) (presentence investigation report), lv. denied, 16 N.Y.3d 712, 923 N.Y.S.2d 416 (2011); see also Billiteri v. United States Bd. of Parole, 541 F.2d 938, 944-945 (2d Cir. 1976). To the extent Appellant contends the Board relied on erroneous information in the pre-sentence report, this is not the proper forum to raise the issue. Any challenge to the pre-sentence report must be made to the original sentencing court. Matter of Delrosario v. Stanford, 140 A.D.3d 1515, 34 N.Y.S.3d 696 (3d Dept. 2016); Matter of Wisniewski v. Michalski., 114 A.D.3d 1188, 979 N.Y.S.2d 745 (4th Dept. 2014); Matter of Vigliotti v. State, 98 A.D.3d 789, 950 N.Y.S.2d 619 (3d Dept. 2012). The Board is mandated to consider the report and is entitled to rely on the information contained in the report. Executive Law § 259-i(2)(c)(A); 9 N.Y.C.R.R. § 8002.2(d)(7); Matter of Carter v. Evans, 81 A.D.3d 1031, 1031, 916 N.Y.S.2d 291, 293 (3d Dept.), lv. denied, 16 N.Y.3d 712, 923 N.Y.S.2d 416 (2011).

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Salonich, Ray

**DIN:** 18-A-2210

**Facility:** Washington CF

**AC No.:** 08-026-19 B

**Findings:** (Page 6 of 7)

---

Denial of parole is neither arbitrary nor capricious when the Parole Board relied on the factors defined by the New York statute. Hodge v Griffin, 2014 WL 2453333(S.D.N.Y. 2014) citing Romer v Travis, 2003 WL 21744079; Siao-Paul v. Connolly, 564 F. Supp. 2d 232, 242 (S.D.N.Y. 2008); Hanna v New York State Board of Parole, 169 A.D.3d 503, 92 N.Y.S.3d 621 (1<sup>st</sup> Dept. 2019). An arbitrary action is one without sound basis in reason and without regard to the facts. Rationality is what is reviewed under an arbitrary and capricious standard. Hamilton v New York State Division of Parole, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014); Ward v City of Long Beach, 20 N.Y.3d 1042 (2013).

The appellant has failed to demonstrate that the Parole Board’s determination was affected by a showing of irrationality bordering on impropriety. Matter of Silmon v Travis, 95 N.Y.2d 470, 718 N.Y.S.2d 704 (2001); Matter of Russo v New York State Board of Parole, 50 N.Y.2d 69, 77, 427 N.Y.S.2d 982 (1980); Schendel v Stanford, 185 A.D.3d 1365, 126 N.Y.S.3d 428 (3d Dept. 2020).

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.

Appellant’s claim that the Board failed to comply with the 2011 amendments to the Executive Law is rejected. Dolan v New York State Board of Parole, 122 A.D.3d 1058, 995 N.Y.S.2d 850 (3d Dept. 2014); Tran v Evans, 126 A.D.3d 1196, 3 N.Y.S.3d 633 (3d Dept. 2015); Boccardi v Stanford, 133 A.D.3d 1169, 20 N.Y.S.3d 477 (3d Dept. 2015).

The Board is not required to give the COMPAS and case plan greater weight than the other statutory factors. Matter of Gonzalvo v. Stanford, 153 A.D.3d 1021, 56 N.Y.S.3d 896 (3d Dept. 2017); accord Matter of Lewis v. Stanford, 153 A.D.3d 1478, 59 N.Y.S.3d 726 (3d Dept. 2017). The Board still is entitled to place greater emphasis on the instant offense. See Matter of Montane v. Evans, 116 A.D.3d 197, 203, 981 N.Y.S.2d 866, 871 (3d Dept. 2014); see also Matter of Gonzalvo v. Stanford, 153 A.D.3d 1021, 56 N.Y.S.3d 896 (3d Dept. 2017); Matter of Lewis v. Stanford, 153 A.D.3d 1478, 59 N.Y.S.3d 726 (3d Dept. 2017).

Contrary to Appellant’s claim, the 2011 amendments and 9 NYCRR § 8002.2(a) as amended do not represent a rehabilitation/forward-looking shift requiring the COMPAS to be the fundamental basis for release decisions. This proposition is not supported by the language of the statute itself, considering the relatively modest change to Section 259-c(4) and the absence of any substantive change to Section 259-i(2), which governs the discretionary release consideration process. In 2011, the Executive Law was amended to require procedures incorporating risk and needs principles to “assist” the Board in making parole release decisions. Executive Law § 259–c(4). The Board



STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Salonich, Ray

**DIN:** 18-A-2210

**Facility:** Washington CF

**AC No.:** 08-026-19 B

**Findings:** (Page 7 of 7)

---

satisfies this requirement in part by using the COMPAS instrument. Matter of Montane v. Evans, 116 A.D.3d 197, 202, 981 N.Y.S.2d 866, 870 (3d Dept. 2014); see also Matter of Hawthorne v. Stanford, 135 A.D.3d 1036, 1042, 22 N.Y.S.3d 640, 645 (3d Dept. 2016); Matter of LeGeros, 139 A.D.3d 1068, 30 N.Y.S.3d 834; Matter of Robles v. Fischer, 117 A.D.3d 1558, 1559, 985 N.Y.S.2d 386, 387 (4th Dept. 2014). However, the COMPAS is not predictive and was never intended to be the sole indicator of risk and needs as the Board gets risk and needs information from a variety of sources, including the statutory factors and the interview. Notably, the 2011 amendments did not eliminate the requirement that the Board conduct a case-by-case review of each inmate by considering the statutory factors, including the instant offense. Executive Law § 259-i(2)(c)(A); Matter of Montane, 116 A.D.3d at 202, 981 N.Y.S.2d at 870. The amendments also did not change the three substantive standards that the Board is required to apply when deciding whether to grant parole. Executive Law § 259-i(2)(c)(A). Thus, the COMPAS instrument cannot mandate a particular result. Matter of King, 137 A.D.3d 1396, 26 N.Y.S.3d 815. Rather, the COMPAS is an additional consideration that the Board must weigh along with the statutory factors for the purposes of deciding whether all three statutory standards are satisfied. See Matter of Rivera v. N.Y. State Div. of Parole, 119 A.D.3d 1107, 1108, 990 N.Y.S.2d 295 (3d Dept. 2014); accord Matter of Dawes v. Annucci, 122 A.D.3d 1059, 994 N.Y.S.2d 747 (3d Dept. 2014); see also Matter of Gonzalvo v. Stanford, 153 A.D.3d 1021, 56 N.Y.S.3d 896 (3d Dept. 2017).

**Recommendation:** Affirm.