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May 2021

### Administrative Appeal Decision - Simko, Joshua M (2020-04-14)

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STATE OF NEW YORK – BOARD OF PAROLE

**ADMINISTRATIVE APPEAL DECISION NOTICE**

Name: Simko, Joshua

Facility: Collins CF

NYSID: [REDACTED]

Appeal Control No.: 11-107-19 B

DIN: 18-B-1738

Appearances: Joshua Simko, 18-B-1738  
Collins Correctional Facility  
Middle Road  
P.O. Box 490  
Collins, NY 14034-0490

Decision appealed: November 2019 decision, denying discretionary release and imposing a hold of 12 months.

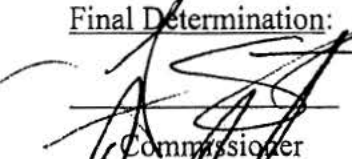
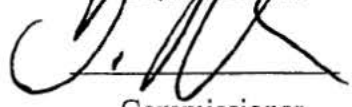

Board Member(s) who participated: Smith, Coppola, Cruse

Papers considered: Appellant’s Brief received December 9, 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:

 Commissioner	<input type="checkbox"/> Affirmed	<input checked="" type="checkbox"/> Vacated, remanded for de novo interview	<input type="checkbox"/> Modified to _____
 Commissioner	<input type="checkbox"/> Affirmed	<input checked="" type="checkbox"/> Vacated, remanded for de novo interview	<input type="checkbox"/> Modified to _____
 Commissioner	<input type="checkbox"/> Affirmed	<input type="checkbox"/> Vacated, remanded for de novo interview	<input type="checkbox"/> Modified to _____

**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

Distribution: Appeals Unit – Appellant - Appellant’s Counsel - Inst. Parole File - Central File  
P-2002(B) (11/2018)

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Simko, Joshua

**DIN:** 18-B-1738

**Facility:** Collins CF

**AC No.:** 11-107-19 B

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

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Appellant challenges the November 2019 determination of the Board, denying release and imposing a 12-month hold. Appellant is currently serving an aggregate sentence of 1½ to 4½ years incarceration as a result of his convictions for attempted criminal possession of a weapon in the 3<sup>rd</sup> degree, 1<sup>st</sup> degree reckless endangerment and possession of controlled substance in the 5<sup>th</sup> degree. Appellant contends that the Board’s decision was based on erroneous information.

Appellant argues that the Board erroneously stated in its decision that appellant “failed to be deterred from committing those offenses despite prior sanctions to local jail and probation for previous controlled substance convictions.” Appellant was initially sentenced to probation after his convictions for 1st degree reckless endangerment and 5<sup>th</sup> degree possession of controlled substance, but this probation was subsequently revoked and he was resentenced to the terms of incarceration which are components of his current aggregate sentence. His criminal record reflects no other sentences of probation imposed for convictions prior to the instant offenses. Therefore, the Board’s decision was based, in part, on erroneous information.

In light of the foregoing, appellant’s remaining contentions need not be addressed.

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