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May 2021

### Administrative Appeal Decision - Smith, Lavonne (2020-01-16)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Smith, Lavonne

Facility: Eastern NY CF

NYSID: [REDACTED]

Appeal Control No.: 04-141-19 B

DIN: 96-A-1337

Appearances: Lorraine McEvelley Esq.  
Legal Aid Society  
199 Water Street, 6th Floor  
New York, New York 10038

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

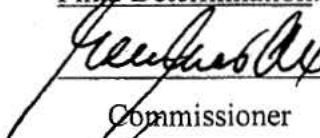
Board Member(s) who participated: Agostini, Demosthenes, Shapiro

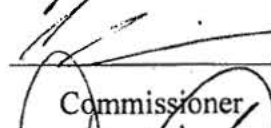
Papers considered: Appellant’s Brief received August 16, 2019

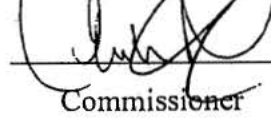
Appeals Unit Review: Statement of the Appeals Unit’s Findings and Recommendation

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 1/16/2020.  
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:** Smith, Lavonne

**DIN:** 96-A-1337

**Facility:** Eastern NY CF

**AC No.:** 04-141-19 B

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

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Appellant challenges the March 2019 determination of the Board, denying release and imposing a 12-month hold. Appellant's instant offense involved him and co-defendants committing an armed robbery of a store, during which a shootout occurred with responding police officers, killing one of the officers. Appellant raises the following issues: 1) the decision is arbitrary and capricious in that that the Board failed to consider and/or properly weigh the required statutory factors. 2) as appellant was only 16 years old at the time of the crime, the Board failed to consider youth and its attendant circumstances. 3) the Board decision usurped the powers of the Legislature by illegally resentencing him. 4) the Board failed to list any facts in support of the statutory standard cited. 5) community opposition falsely accuses appellant of being armed and of shooting the policeman, as it was done by co-defendants. 6) the decision lacks details. 7) no aggravating factors exist. 8) the Board never sought the opinion of the former criminal defense lawyer. 9) Executive Law 259-i is unconstitutionally vague. 10) the Board failed to comply with the 2011 amendments to the Executive Law, and with the 2017 regulations, in that no departure from the COMPAS was done, the Board ignored the totally positive COMPAS score, and the Board erroneously stated the COMPAS score was only mostly positive. Also, the statutes are now future/forward focused.

The Board decision does mention the instant offense took place. No further reasons or facts are mentioned. Thus, the Board decision lacks details, and lacks an articulate basis for the decision. A de novo is warranted.

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