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May 2021

### Administrative Appeal Decision - Taylor, Rasaan D (2020-01-16)

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ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Taylor, Rasaan

Facility: Greene CF

NYSID: [REDACTED]

Appeal Control No.: 03-103-19 B

DIN: 19-B-1070

Appearances: N. Jane Murphy, Esq.  
737 Hayts Road  
Ithaca, NY 14850

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


Board Member(s) who participated: **Smith, Agostini**

Papers considered: Appellant's Letter-brief received August 12, 2019

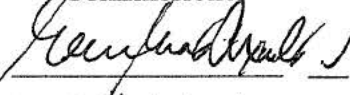
Appeals Unit Review: Statement of the Appeals Unit's Findings and Recommendation

Records relied upon: Pre-Sentence Investigation Report, Parole Board Report, Interview Transcript, Parole Board Release Decision Notice (Form 9026)

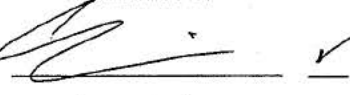
Final Determination: The undersigned determine that the decision appealed is hereby:

  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 1/16/20 (AW).

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Taylor, Rasaan

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Appellant challenges the February 2019 determination of the Board, denying release and imposing a 24-month hold. The instant offense involved the appellant using a sawed-off shotgun to shoot and kill the victim in a mini-mart. Appellant raises the following issues: 1) the Board did not properly consider Appellant's release plans because of a mistaken reference to Appellant living with his father instead of his mother; and 2) the Board did not consider Appellant's youth and his constitutional rights as a juvenile offender have been denied by a hold that exceeds his Conditional Release date. These arguments are without merit.

As an initial matter, 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 (1<sup>st</sup> 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 (4<sup>th</sup> 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 (1<sup>st</sup> 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 (1<sup>st</sup> Dept. 2007). 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 (4<sup>th</sup> 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.

The record as a whole, including the interview transcript, reflects that the Board considered the appropriate factors, including: the instant offense, wherein Appellant used a sawed-off shotgun to

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shoot and kill the victim at close range; Appellant's age at the time of the crime; Appellant's juvenile record including being placed on probation for a robbery offense; Appellant's institutional efforts including enrollment in a community college course, four Level 2 violations, and ten Level 3 violations; and release plans to live with his mother and go to a trade school. The Board also had before it and considered, among other things, the sentencing minutes and Appellant's program certificates.

After considering all required factors, the Board acted within its discretion in determining release would not satisfy the standards provided for by Executive Law § 259-i(2)(c)(A). In reaching its conclusion, the Board permissibly relied on the instant offense of Manslaughter in the first degree and Appellant's recent Level 3 rule violations for assaultive and disruptive behavior. See Matter of Robinson v. New York State Bd. of Parole, 162 A.D.3d 1450, 81 N.Y.S.3d 235 (3d Dept. 2018); Matter of Jones v. New York State Dep't of Corr. & Cmty. Supervision, 151 A.D.3d 1622, 57 N.Y.S.3d 265 (4th Dept. 2017); Matter of King v. Stanford, 137 A.D.3d 1396, 26 N.Y.S.3d 815 (3d Dept. 2016); Matter of Kirkpatrick v. Travis, 5 A.D.3d 385, 772 N.Y.S.2d 540 (2d Dept. 2004); Matter of Walker v. Travis, 252 A.D.2d 360, 676 N.Y.S.2d 52 (1st Dept. 1998); Matter of Allen v. Stanford, 161 A.D.3d 1503, 1506, 78 N.Y.S.3d 445 (3d Dept.).

Appellant's claim that the Board did not properly consider Appellant's release plans because of a mistaken reference to Appellant living with his father instead of his mother is without merit. Erroneous information, if not used in the decision as a basis for parole denial, will not lead to a reversal. Matter of Khatib v. New York State Bd. of Parole, 118 A.D.3d 1207, 988 N.Y.S.2d 286 (3d Dept. 2014); Matter of Restivo v. New York State Bd. of Parole, 70 A.D.3d 1096, 895 N.Y.S.2d 555 (3d Dept. 2010); Matter of Grune v. Bd. of Parole, 41 A.D.3d 1014, 838 N.Y.S.2d 694 (3d Dept. 2007); see also Matter of Gordon v. Stanford, 148 A.D.3d 1502, 50 N.Y.S.3d 627 (3d Dept. 2017); Matter of Perea v. Stanford, 149 A.D.3d 1392, 53 N.Y.S.3d 231 (3d Dept. 2017). Here, the Board clearly acknowledged that Appellant hoped to live with his mother (Tr. at 2-3) and a later misstatement that Appellant did not correct does not provide a basis to disturb the decision.

Contrary to Appellant's assertion, the Board was not required to consider the impact that age had on his decisions and the attendant characteristics of youth. Such consideration does not apply to every inmate who was a minor at the time of his crime without regard to the sentence. Matter of Hawkins v. New York State Dep't of Corr. & Cmty. Supervision, 140 A.D.3d 34, 30 N.Y.S.3d 397, 400 (3d Dept. 2016). Hawkins was predicated on a right of juvenile homicide offenders not to be punished with a life sentence if the crime reflects transient immaturity. 140 A.D.3d 34, 30 N.Y.S.3d at 398. To ensure that right, the Court held that "the Board must consider youth and its attendant characteristics in relationship to the commission of the crime at issue" in the case of "persons

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convicted of crimes committed as juveniles who, but for a favorable parole determination will be punished by life in prison.” 140 A.D.3d 34, 30 N.Y.S.3d at 400. Because Appellant is not serving a life sentence, such consideration is not required.

Nonetheless, the Board considered Appellant’s youth at the time of the crime but ultimately placed greater emphasis on other factors, including the seriousness of his crime and recent disciplinary record. See Matter of Allen v. Stanford, 161 A.D.3d 1503, 78 N.Y.S.3d 445 (3d Dept.), lv. denied, 32 N.Y.3d 903 (2018); see also Matter of Campbell v. Stanford, 2019 N.Y. App. Div. LEXIS 4900 (2d Dept. June 19, 2019). The Board explicitly discussed Appellant’s age at the time of the crime, whether he was attending school, his living circumstances, and his placement in a foster home. (Tr. at 4-5.)

Furthermore, Appellant’s contention that the decision somehow is resulting in an improper hold beyond his Conditional Release date is mistaken. The Board’s determination with respect to discretionary release is a distinct basis for release that has no impact on conditional release. Appellant has also lost good time for multiple disciplinary infractions.

In conclusion, Appellant has failed to demonstrate the Board’s decision was not made in accordance with the pertinent statutory requirements or was irrational “bordering on impropriety.” Matter of Silmon v. Travis, 95 N.Y.2d 470, 476, 718 N.Y.S.2d 704 (2000) (quoting Matter of Russo v. New York State Bd. of Parole, 50 N.Y.2d 69, 427 N.Y.S.2d 982 (1980)).

**Recommendation:** Affirm.