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Administrative Appeal Decision - Watkins, Cheerefe (2020-03-16)

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ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Watkins, Cheerefe

Facility: Ulster CF

NYSID: [REDACTED]

Appeal Control No.: 07-047-19 B

DIN: 18-R-2337

Appearances: Lyle Hajdu, Esq.
Erickson Webb Scolton & Hajdu
414 East Fairmount Ave.
P.O. Box 414
Lakewood, New York 14750-0414

Decision appealed: June 2019 Hold to Preliminary Eligibility Date.

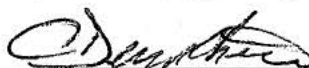
Board Member(s) who participated: **Coppola, Crangle**

Papers considered: Appellant’s Brief received October 25, 2019


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

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

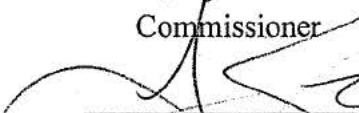
Final Determination: The undersigned determine that the decision appealed is hereby:

 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 03/16/2020 66

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

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Appellant is serving an aggregate term of four years-three months-ten days to five years upon his conviction of Conspiracy in the fourth degree, Attempted CPCS in the third degree, and CPCS in the third degree. In anticipation of his successful completion of the SHOCK program, the Board reviewed his record in June 2019 and denied parole. This appeal ensued. Appellant challenges the Board's June 2019 determination holding him until his preliminary eligibility date, raising the following issues: (1) the Board improperly denied release based almost entirely on the instant offense without adequate consideration of other factors such as his successful participation in SHOCK; (2) the decision is arbitrary and capricious in view of his receipt of an EEC and positive institutional record; (3) the decision is vague and conclusory and therefore violates due process; and (4) if interviewed, Appellant was denied due process because the department failed to record his interview and make a transcript available to counsel. These arguments are without merit.

After considering all required factors and principles – including Appellant's participation in the SHOCK program and anticipated issuance of an EEC – the Board acted within its discretion in determining that, if released at this time, there is a reasonable probability Appellant would not live and remain at liberty without violating the law and release would be incompatible with the public safety and welfare. In reaching its conclusion, the Board permissibly emphasized the instant offenses together with Appellant's repeated criminal conduct in the community. See 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 Singh v. Evans, 118 A.D.3d 1209, 987 N.Y.S.2d 271 (3d Dept.), lv. denied, 24 N.Y.3d 906, 995 N.Y.S.2d 715 (2014); Matter of Davis v. Evans, 105 A.D.3d 1305, 963 N.Y.S.2d 485 (3d Dept. 2013). The Board expressed concern with the continuation of drug related offenses. Indeed, as the Board noted, Appellant committed CPCS in the third degree while awaiting disposition on two of the other charges. The Board was troubled by the fact that his many prior contacts with the law and prior terms of incarceration and community supervision failed to change his negative behavior, pointing out this is his third State term and he was unsuccessful while on parole in the past. That the Board found Appellant's postconviction activities and achievements outweighed by his criminal record does not constitute convincing evidence that the Board did not consider them, see 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), or render the decision irrational, see Matter of Furman v. Annucci, 138 A.D.3d 1269, 28 N.Y.S.3d 352 (3d Dept. 2016).

The Board's decision was not vague and conclusory. To the contrary, it was sufficiently detailed to inform the inmate of the reasons for the denial of parole. Matter of Applegate v. New York State Bd. of Parole, 164 A.D.3d 996, 997, 82 N.Y.S.3d 240 (3d Dept. 2018); Matter of Kozlowski v. New York State Bd. of Parole, 108 A.D.3d 435, 968 N.Y.S.2d 87 (1st Dept. 2013); Matter of Little v. Travis, 15 A.D.3d 698, 788 N.Y.S.2d 628 (3d Dept. 2005); Matter of Davis v. Travis, 292 A.D.2d 742, 739 N.Y.S.2d 300 (3d Dept. 2002). The Board addressed several of the

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

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factors considered in individualized terms and explained those that ultimately weighed most heavily in its deliberations. The Board was not required to explicitly mention each factor considered. Matter of Betancourt v. Stanford, 148 A.D.3d 1497, 49 N.Y.S.3d 315 (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).

As for Appellant's claim concerning a transcript, there are no interviews in SHOCK release cases. See Executive Law § 259-i(2)(e); 9 N.Y.C.R.R. § 8010.2.

Recommendation: Affirm.