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Administrative Appeal Decision - Larson, David R (2020-02-10)

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ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Larson, David

Facility: Wyoming CF

NYSID: [REDACTED]

Appeal Control No.: 07-022-19 B

DIN: 85-B-2226

Appearances: David Larson, 85-B-2226
Wyoming Correctional Facility
P.O. Box 501
Attica, NY 14011-0501

Decision appealed: June 2019 decision, denying discretionary release and imposing a hold of 9 months.


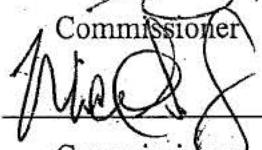

Board Member(s) who participated: **Coppola, Alexander**

Papers considered: Appellant's Brief received September 25, 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:

	<input type="checkbox"/> Affirmed	<input type="checkbox"/> Vacated, remanded for de novo interview	<input type="checkbox"/> Modified to _____
Commissioner			
	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Vacated, remanded for de novo interview	<input type="checkbox"/> Modified to _____
Commissioner			
	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Vacated, remanded for de novo interview	<input type="checkbox"/> 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 2/10/2020

LB

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

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Appellant challenges the June 2019 determination of the Board, denying release and imposing a 9-month hold. The instant offense involved Appellant causing the death of the 14-year-old female victim by stabbing her numerous times in the body. Appellant raises the following issues: 1) the Board failed to consider all of the required factors including Appellant’s release plans; 2) the decision was arbitrary and capricious because it was based exclusively on the serious nature of the instant offense in the absence of any other aggravating factors; and 3) the decision should be set aside because the Board was fully aware that Appellant cannot continue his rehabilitative efforts in prison. 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 (1st 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 (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). 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 (1st 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 (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.

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The record as a whole, including the interview transcript, reflects that the Board considered the appropriate factors, including: Appellant's instant offense of Murder in the second degree; Appellant's limited criminal record featuring no prior felony convictions; and Appellant's institutional efforts including disciplinary record, [REDACTED] ART, and AVP, participation in the YAP program, receipt of a Bachelor of Science degree in sociology. The Board also had before it and considered, among other things, the case plan, the COMPAS instrument, the sentencing minutes, an official statement from the District Attorney, and Appellant's parole packet including letters of support and elements of his release plan.

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 serious instant offense resulting in victim's brutal death, and Appellant's lack of insight into his actions. See 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 Beodeker v. Stanford, 164 A.D.3d 1555, 82 N.Y.S.3d 669 (3d Dept. 2018); Matter of Partee v. Evans, 117 A.D.3d 1258, 1259, 984 N.Y.S.2d 894 (3d Dept.), lv. denied, 24 N.Y.3d 901, 995 N.Y.S.2d 710 (2014); Matter of Marcus v. Alexander, 54 A.D.3d 476, 476, 862 N.Y.S.2d 414, 415 (3d Dept. 2008); Matter of Wellman v. Dennison, 23 A.D.3d 974, 975, 805 N.Y.S.2d 159, 160 (3d Dept. 2005); Matter of Almeyda v. New York State Div. of Parole, 290 A.D.2d 505, 736 N.Y.S.2d 275 (2d Dept. 2002); 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); Matter of Silmon v. Travis, 95 N.Y.2d 470, 478, 718 N.Y.S.2d 704 (2000); 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). While the Board does not agree that aggravating factors are always required to support emphasis on an inmate's offense, Matter of Hamilton, 119 A.D.3d 1268, 990 N.Y.S.2d 714, the Board's decision here was based on an additional consideration.

Insofar as Appellant questions the Board's consideration of his release plans, a review of the record reveals the Board considered both the case plan – which contains elements of Appellant's release plans – and Appellant's parole packet, which contains letters of support and other documentation regarding Appellant's release plans. We further note Appellant was given the opportunity to raise additional matters during the interview and could have discussed his release plans, which he did not. Appellant's contention that the Board did not consider his interactions with staff is similarly unavailing. The Board was not required to discuss every aspect of his institutional record.

Appellant's claim that the decision should be set aside because the Board was fully aware that Appellant cannot continue his rehabilitative efforts in prison is without merit. There is a presumption of honesty and integrity that attaches to Judges and administrative fact-finders. See

STATE OF NEW YORK – BOARD OF PAROLE

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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).

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.