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February 2022

### Administrative Appeal Decision - Soule, Deborah (2018-05-01)

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Administrative Appeal Decision Notice

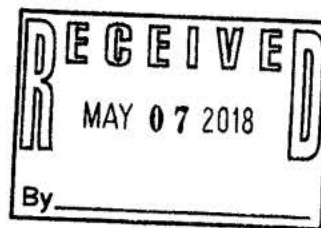
**Inmate Name:** Soule, Deborah

**Facility:** Albion Correctional Facility

**NYSID No.:** [REDACTED]

**Appeal Control #:** 10-146-17-B

**Dept. DIN#:** 96G0391



Appearances:

For the Board, the Appeals Unit

For Appellant:

Joshua Dubs Esq.  
Cathedral Park Tower  
37 Franklin Street  
Suite 1000  
Buffalo, New York 14202

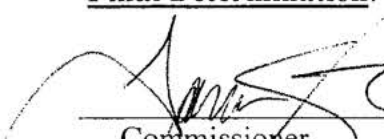
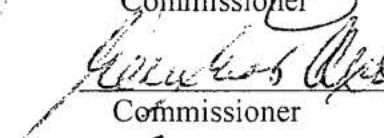

Board Member(s) who participated in appealed from decision: **Coppola, Demosthenes, Sharkey**

Decision appealed from: 9/2017-Denial of discretionary release, with imposition of 24 month hold.

Pleadings considered: Brief on behalf of the appellant received on February 20, 2018.  
Statement of the Appeals Unit's Findings and Recommendation

Documents relied upon: Presentence Investigation Report, Parole Board Report, Interview Transcript,  
Parole Board Release Decision (Form 9026), COMPAS, TAP/Case Plan.

Final Determination: The undersigned have determined that the decision from which this appeal was taken  
be and the same is hereby

	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed for De Novo Interview	<input type="checkbox"/> Modified to _____
Commissioner			
	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed for De Novo Interview	<input type="checkbox"/> Modified to _____
Commissioner			
	<input checked="" type="checkbox"/> Affirmed	<input type="checkbox"/> Reversed 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 5/1/18 TH.

Distribution: Appeals Unit - Inmate - Inmate's Counsel - Inst. Parole File - Central File  
P-2002(B) (5/2011)

## STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Soule, Deborah

Facility: Albion Correctional Facility

NYSID No.: 7902335Z

Appeal Control #: 10-146-17-B

Dept. DIN#: 96G0391

Findings:

Counsel for the appellant has submitted a brief to serve as the perfected appeal. The brief raises only one primary issue. Appellant claims the Board decision is arbitrary and capricious in that the Board failed to consider and/or properly weigh the required statutory factors. Appellant contends she has an excellent institutional record and release plan, including no prior criminal record and a great COMPAS score, but all the Board did was to look only at the instant offense. Appellant alleges the Board decision lacks detail, was predetermined, and illegally resentenced her. Appellant further states the statutes are now future focused.

In response, while not all of the factors to be considered by the Board were actually discussed with the appellant at the interview, it is well settled that the failure to do so does not provide a basis for upsetting the Board's decision. Morel v Travis, 18 A.D.3d 930, 793 N.Y.S.2d 920 (3d Dept. 2005); Matter of Waters v. New York State Division of Parole, 252 A.D.2d 759, 760-61, 676 N.Y.S.2d 279, 280 (3d Dept 1998), lv. denied, 92 N.Y.2d 812, 680 N.Y.S.2d 905 (1998); Matter of Davis v. New York State Div. of Parole, 114 A.D.2d 412, 494 N.Y.S.2d 136 (2d Dept. 1985); Matter of Mackall v. New York State Board of Parole, 91 A.D.2d 1023, 458 N.Y.S.2d 251 (2d Dept. 1983) Mullins v New York State Board of Parole, 136 A.D.3d 1141, 25 N.Y.S.3d 698 (3d Dept. 2016). That the Board did not discuss each factor with the inmate at the interview does not constitute convincing evidence that the Board did not consider the factors. In the Matter of Hawkins v. Travis, 259 A.D.2d 813, 686 N.Y.S. 2d 198 (3d Dept. 1999), app. disp. 93 N.Y.2d 1033, 697 N.Y.S.2d 556 (1999); Dolan v New York State Board of Parole, 122 A.D.3d 1058, 995 N.Y.S.2d 850 (3d Dept. 2014); In re Garcia v. New York State Division of Parole, 239 A.D.2d 235, 657 N.Y.S.2d 415 (1<sup>st</sup> Dept. 1997); Matter of Mackall v. NYS Board of Parole, 91 A.D.2d 1023, 1024, 458 N.Y.S.2d 251 (2d Dept 1983); Charlemagne v New York State Division of Parole, 281 A.D.2d 669, 722 N.Y.S.2d 74, 75 (3d Dept 2001). Nor is the Board required to expressly discuss or articulate every factor in its determination. Marszalek v Stanford, 152 A.D.3d 773, 59 N.Y.S.3d 432 (2d Dept. 2017); Fraser v Evans, 109 A.D.3d 913, 971 N.Y.S.2d 332 (3d Dept. 2013); Faison v Travis, 260 A.D.2d 866, 688 N.Y.S.2d 782 (3d Dept 1999) lv. dismissed 93 N.Y.2d 1013, 697 N.Y.S.2d 567 (1999); Shark v New York State Division of Parole Chair, 110 A.D.3d 1134, 972 N.Y.S.2d 741 (3d Dept. 2013); LeGeros v New York State Board of Parole, 139 A.D.3d 1068, 30 N.Y.S.3d 834 (2d Dept. 2016); Esquilin v New York State Board of Parole, 144 A.D.3d 846, 40 N.Y.S.3d 279 (2<sup>nd</sup> Dept. 2016); Robles v Dennison, 449 F.Appx. 51, 53-54 (2<sup>nd</sup> Cir. 2011); Lewis v Stanford, 153 A.D.3d 1478, 59 N.Y.S.3d 726 (3d Dept. 2017).

## STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION**Inmate Name:** Soule, Deborah**Facility:** Albion Correctional Facility**NYSID No.:** 7902335Z**Appeal Control #:** 10-146-17-B**Dept. DIN#:** 96G0391**Findings:** (continued from page 1)

The Board's emphasis on the serious nature of the crime does not demonstrate a showing of irrationality bordering on impropriety. Philips v Dennison, 41 A.D.3d 17, 834 N.Y.S.2d 121 (1<sup>st</sup> Dept. 2007); Cardenales v Dennison, 26 A.D.3d 614, 810 N.Y.S.2d 233 (1<sup>st</sup> Dept. 2007); Berry v New York State Division of Parole, 64 A.D.3d 1030, 882 N.Y.S.2d 759 (3d Dept. 2008); Smith v New York State Division of Parole, 64 A.D.3d 1030, 882 N.Y.S.2d 759 (3d Dept. 2009); Robles v Dennison, 449 F.Appx. 51, 53-54 (2<sup>nd</sup> Cir. 2011); Hodge v Griffin, 2014 WL 2453333(SDNY 2014); Perea v Stanford, 149 A.D.3d 1392, 53 N.Y.S.3d 231 (3d Dept. 2017).

The Board's emphasis on the violent nature of the crime does not establish irrationality bordering on impropriety. Pulliam v Dennison, 38 A.D.3d 963, 832 N.Y.S.2d 304 (3d Dept. 2007); Sterling v Dennison, 38 A.D.3d 1145, 833 N.Y.S.2d 684 (3d Dept. 2007); Marziale v Alexander, 62 A.D.3d 1227, 879 N.Y.S.2d 636 (3d Dept. 2009). The Board may conclude that the violent nature of the crime is an overriding consideration warranting the denial of parole release. Rodney v Dennison, 24 A.D.3d 1152, 805 N.Y.S.2d 743 (3d Dept. 2005). The Board may emphasize the violent nature of the instant offense. Marnell v Dennison, 35 A.D.3d 995, 824 N.Y.S.2d 812 (3d Dept. 2006), lv.den. 8 N.Y.3d 807, 833 N.Y.S.2d 426 (2007).

The Board may acknowledge the senseless and violent nature of the crime. Sanchez v Dennison, 21 A.D.3d 1249, 801 N.Y.S.2d 423 (3d Dept. 2005); Dorman v New York State Board of Parole, 30 A.D.3d 880, 816 N.Y.S.2d 765 (3d Dept. 2006).

The 2011 amendments still permit the Board to place greater emphasis on the gravity of the crime. Matter of Montane v Evans, 116 A.D.3d 197, 981 N.Y.S.2d 866 (3d Dept.) appeal dismissed 24 N.Y.3d 1052, 999 N.Y.S.2d 360 (2014); Hamilton v New York State Division of Parole, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014); Moore v New York State Board of Parole, 137 A.D.3d 1375, 26 N.Y.S.3d 412 (3d Dept. 2016). The Board can still consider the nature of the inmate's crimes, the criminal history, the prison disciplinary record, the program accomplishments and post release plans. Rivera v New York State Division of Parole, 119 A.D.3d 1107, 990 N.Y.S.2d 295 (3d Dept. 2014). The Board is obligated to consider the serious nature of the crime. Khatib v New York State Board of Parole, 118 A.D.3d 1207, 988 N.Y.S.2d 286 (3d Dept. 2014).

## STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

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Findings: (continued from page 2)

The Board may take note of the inmate's disregard for the life of another human being. Hakim v Travis, 302 A.D.2d 821, 754 N.Y.S.2d 600 (3d Dept 2003); Angel v Travis, 1 A.D.3d 589, 767 N.Y.S.2d 290 (3d Dept 2003).

The Board may consider the vulnerability of the victim. Bockeno v New York State Board of Parole, 227 A.D.2d 751, 642 N.Y.S.2d 97, 98 (3d Dept. 1996); Romer v Dennison, 24 A.D.3d 866, 804 N.Y.S.2d 872 (3d Dept. 2005); Yourdon v New York State Division of Parole, 32 A.D.3d 1065, 820 N.Y.S.2d 366 (3d Dept. 2006).

As for community opposition, the Board may receive and consider written communications from individuals, other than those specifically identified in Executive Law § 259-i(2)(c)(A), opposing an inmate's release to parole supervision. Matter of Grigger v. New York State Div. of Parole, 11 A.D.3d 850, 852-53, 783 N.Y.S.2d 689, 691 (3d Dept. 2004) (recognizing 259-i(2)(c)(A)(v)'s list is not the exclusive information the Board may consider and persons in addition to victims and their families may submit letters), lv. denied 4 N.Y.3d 704, 792 N.Y.S.2d 1 (2005); see also Matter of Costello v. New York State Bd. of Parole, 101 A.D.3d 1512, 957 N.Y.S.2d 486 (3d Dept. 2012) (indicating Board considered Police Commissioner's letter of opposition in original determination to grant open date), rev'd 23 N.Y.3d 1002, 1004, 994 N.Y.S.2d 39 (2014) (rescission of open date inappropriate under particulars of case); Matter of Jordan v. Hammock, 86 A.D.2d 725, 447 N.Y.S.2d 44 (3d Dept. 1982) (letters from private citizens are protected and remain confidential); Matter of Hamilton v. New York State Bd. of Parole, Index # 3699-2013, *Order and Judgment* dated October 25, 2013 (Devine J.S.C.)(Albany Co. Court)(no showing of prejudice by allegedly false information in PBA online petition where Board acknowledged public opposition during interview), aff'd 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014). Cf. Krebs v. N.Y. State Div. of Parole, No. 9:08-CV-255NAMDEP, 2009 WL 2567779, at \*12 (N.D.N.Y. Aug. 17, 2009) (public and political pressure "are permissible factors which parole officials may properly consider as they relate to 'whether 'release is not incompatible with the welfare of society and will not so deprecate the seriousness of the offense as to undermine respect for the law'"); Seltzer v. Thomas, No. 03 CIV.00931 LTS FM, 2003 WL 21744084, at \*4 (S.D.N.Y. July 29, 2003) (same); Morel v. Thomas, No. 02 CV 9622 (HB), 2003 WL 21488017, at \*5 (S.D.N.Y. June 26, 2003) (same). Additionally, 9 NYCRR 8000.5(c)(2) refers to the security of letters either in support of or in opposition to the release of an inmate. The Board is clearly allowed to consider this information. Matter of Rivera v. Evans,

## STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

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Index No. 0603-16, *Decision & Order* dated July 5, 2016 (Sup. Ct. Sullivan Co.)(LaBuda A.J.S.C.) (recognizing “[c]onsideration of community or other opposition was proper under the statute” and the Board is required to keep identity of persons opposing release confidential), aff’d sub nom. Matter of Rivera v. Stanford, 53 N.Y.S.3d 404, 149 A.D.3d 1445 (3d Dept. 2017).

A. claim that the denial of parole release amounted to a resentencing is without merit. Kalwasinski v Patterson, 80 A.D.3d 1065, 915 N.Y.S.2d 715 (3d Dept. 2011) lv.app.den. 16 N.Y.3d 710, 922 N.Y.S.2d 273 (2011); Marnell v Dennison, 35 A.D.3d 995, 824 N.Y.S.2d 812 (3d Dept. 2006) lv.den. 8 N.Y.3d 807, 833 N.Y.S.2d 426; Murray v Evans, 83 A.D.3d 1320, 920 N.Y.S.2d 745 (3d Dept. 2011); Gonzalez v Chair, New York State Board of Parole, 72 A.D.3d 1368, 898 N.Y.S.2d 737 (3d Dept. 2010); Borcsok v New York State Division of Parole, 34 A.D.3d 961, 823 N.Y.S.2d 310 (3d Dept. 2006) lv.den. 8 N.Y.3d 803, 830 N.Y.S.2d 699. The Board was vested with discretion to determine whether release was appropriate, notwithstanding what the minimum period of incarceration which was set by the Court. Cody v Dennison, 33 A.D.3d 1141, 1142 (3d Dept. 2006), lv.den. 8 N.Y.3d 2007; Burress v Dennison, 37 A.D.3d 930, 829 N.Y.S.2d 283 (3d Dept. 2007).

There is a presumption of honesty and integrity that attaches to Judges and administrative fact-finders. People ex.rel. Johnson v New York State Board of Parole, 180 A.D.2d 914, 580 N.Y.S.2d 957, 959 (3d Dept 1992). And, Courts presume the Parole Board follows its statutory commands and internal policies in fulfilling its obligations. Garner v Jones, 529 U.S. 244, 120 S.Ct. 1362, 1371, 146 L.Ed2d 236 (2000). The decision was not predetermined. Dean v New York State Division of Parole, 21 A.D.3d 1207, 801 N.Y.S.2d 92 (3d Dept. 2005) lv. den. 6 N.Y.3d 705 (2006); Hakim-Zaki v New York State Division of Parole, 29 A.D.3d 1190, 814 N.Y.S.2d 414 (3d Dept. 2006). There is no merit to the inmate’s contention that the parole interview was improperly conducted or that he was denied a fair interview. Black v New York State Board of Parole, 54 A.D.3d 1076, 863 N.Y.S.2d 521 (3d Dept. 2008); Rivers v Evans, 119 A.D.3d 1188, 989 N.Y.S.2d 400 (3d Dept. 2014); Mays v Stanford, 150 A.D.3d 1521, 55 N.Y.S.3d 502 (3d Dept. 2017).

## STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

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Findings: (continued from page 4)

The Board set forth in adequate detail the reasons for its denial of the inmate's request for release. Burress v Evans, 107 A.D.3d 1216, 967 N.Y.S.2d 486 (3d Dept. 2013). The written Board decision in this case contains sufficient detail. McLain v New York State Division of Parole, 204 A.D.2d 456, 611 N.Y.S.2d 629 (2d Dept 1994); Walker v Russi, 176 A.D.2d 1185, 576 N.Y.S.2d 51 (3d Dept 1991), appeal dismissed 79 N.Y.2d 897, 581 N.Y.S.2d 660 (1992); Thomas v Superintendent of Arthur Kill Correctional Facility, 124 A.D.2d 848, 508 N.Y.S.2d 564 (2d Dept 1986), appeal dismissed 69 N.Y.2d 611, 517 N.Y.S.2d 1025 (1987); De la Cruz v Annucci, 122 A.D.3d 1413, 997 N.Y.S.2d 872 (4<sup>th</sup> Dept. 2014); Betancourt v Stanford, 148 A.D.3d 1497, 49 N.Y.S.3d 315 (3d Dept. 2017).

A positive COMPAS score does not create any guarantee to release, but rather is only one factor considered by the Board in exercising its discretion when making a parole determination. Rivera v New York State Division of Parole, 119 A.D.3d 1107, 990 N.Y.S.2d 295 (3d Dept. 2014); Dawes v Beale, 122 A.D.3d 1059, 994 N.Y.S.2d 747 (3d Dept. 2014); Byas v Fischer, 120 A.D.3d 1586, 992 N.Y.S.2d 813 (4<sup>th</sup> Dept. 2014); Matter of Montane v Evans, 116 A.D.3d 197, 981 N.Y.S.2d 866 (3d Dept.) appeal dismissed 24 N.Y.3d 1052, 999 N.Y.S.2d 360 (2014); LeGeros v New York State Board of Parole, 139 A.D.3d 1068, 30 N.Y.S.3d 834 (2d Dept. 2016); Wiley v State of New York Department of Corrections and Community Supervision, 139 A.D.3d 1289, 32 N.Y.S.3d 370 (3d Dept. 2016).

Consistent with 9 N.Y.C.R.R. 8002.3(a)(11) and (12), the Board may take into account the COMPAS and TAP, but is not required to give these considerations any greater weight than other relevant factors. Gonzalvo v Stanford, 153 A.D.3d 1021, 56 N.Y.S.3d 896 (3d Dept. 2017); Lewis v Stanford, 153 A.D.3d 1478, 59 N.Y.S.3d 726 (3d Dept. 2017).

Notably, the 2011 amendments to the Executive Law did not change the three substantive standards that the Board is required to apply when deciding whether to grant parole, namely (1) whether "there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law"; (2) whether release "is not incompatible with the welfare of society"; and (3) whether release "will not so deprecate the seriousness of his crime as to undermine respect for law." *See* Executive Law § 259-i(2)(c)(A).

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Findings: (continued from page 5)

Even uniformly low COMPAS scores and other evidence of rehabilitation would not resolve the broader questions of society's welfare, public perceptions of the seriousness of a crime, or whether release would undermine respect for the law. Thus the COMPAS cannot mandate a particular result, and declining to afford the COMPAS controlling weight does not violate the 2011 amendments. *Matter of King v Stanford*, No. 521324, 2016 N.Y. App. Div. LEXIS 1732 (3d Dep't Mar. 10, 2016); *Furman v Annucci*, 138 A.D.3d 1269, 28 N.Y.S.3d 352 (3d Dept. 2016). The COMPAS is an additional consideration that the Board must weigh along with the statutory factors for purposes of deciding whether the three standards are satisfied. See *Matter of Rivera v. N.Y. State Div. of Parole*, 119 A.D.3d 1107, 1108 (3d Dep't 2014); accord *Matter of Dawes v. Annucci*, 122 A.D.3d 1059, 1061 (3d Dep't 2014).

Denial of parole is neither arbitrary nor capricious when the Parole Board relied on the factors defined by the New York statute. *Hodge v Griffin*, 2014 WL 2453333(S.D.N.Y. 2014) citing *Romer v Travis*, 2003 WL 21744079. An arbitrary action is one without sound basis in reason and without regard to the facts. Rationality is what is reviewed under an arbitrary and capricious standard. *Hamilton v New York State Division of Parole*, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014). An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts. *Ward v City of Long Beach*, 20 N.Y.3d 1042 (2013).

Since the Board's decision was sufficiently detailed to inform the inmate of the reasons for the denial of parole, it satisfied the criteria set out in section 259-i of the Executive Law. *Siao-Pao v Dennison*, 11 N.Y.3d 777, 866 N.Y.S.2d 602 (Ct. App. 2008); *Matter of Whitehead v. Russi*, 201 A.D.2d 825, 607 N.Y.S.2d 751 (3d Dept. 1993); *Matter of Green v. New York State Division of Parole*, 199 A.D.2d 677, 605 N.Y.S.2d 148 (3d Dept. 1993). Moreover, the reasons stated by the Parole Board members for holding appellant are sufficient grounds to support their decision. *People ex rel. Yates v. Walters*, 111 A.D.2d 839, 490 N.Y.S.2d 573 (2d Dept. 1985); *Matter of Ganci v Hammock*, 99 A.D.2d 546, 471 N.Y.S.2d 630 (2d Dept. 1984); *Matter of Vuksanaj v. Hammock*, 93 A.D.2d 958, 463 N.Y.S.2d 61 (3d Dept. 1983); *Matter of Pina v. Hammock*, 89 A.D.2d 799, 453 N.Y.S.2d 479 (4<sup>th</sup> Dept. 1982). Since the Board's challenged decision was made in accordance with the pertinent statutory requirements, it exercised proper discretion in denying appellant early release on parole. *In the Matter of Hawkins v. Travis*, 259 A.D.2d 813, 686 N.Y.S.2d 198 (3d Dept. 1999), *app. dismiss.* 93 N.Y.2d 1033, 697 N.Y.S.2d 556 (1999); *Matter of Barrett v. New York State Division of Parole*, 242 A.D.2d 763, 661 N.Y.S.2d 857 (3d Dept. 1997).



STATE OF NEW YORK - BOARD OF PAROLE

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**Dept. DIN#:** 96G0391

**Findings:** (continued from page 6)

**Recommendation:**

Accordingly, it is recommended the decision of the Board be affirmed.