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Administrative Appeal Decision - Soule, Deborah (2016-03-31)

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~~STATE OF NEW YORK DEPARTMENT OF CORRECTIONS~~
NYSCEF DOC. NO. 4

RECEIVED NYSCEF: 04/20/2016

Administrative Appeal Decision Notice

Inmate Name: Soule, Deborah **Facility:** Albion Correctional Facility
NYSID No.: [REDACTED] **Appeal Control #:** 09-228-15-B
Dept. DIN#: 96G0391

Appearances:
For the Board, the Appeals Unit
For Appellant: Joshua Dubs Esq.
 Cathedral Park Tower
 37 Franklin Street
 Suite 1110
 Buffalo, New York 14202


Board Member(s) who participated in appealed from decision: **Coppola, Crangle, Alexander**


Decision appealed from: 9/2015-Denial of discretionary release, with imposition of 24 month hold.

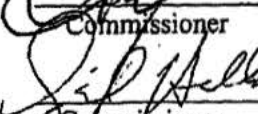
Pleadings considered: Brief on behalf of the appellant received on March 15, 2016.
Statement of the Appeals Unit's Findings and Recommendation

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

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

 Affirmed Reversed for De Novo Interview Modified to _____
Commissioner

 Affirmed Reversed for De Novo Interview Modified to _____
Commissioner

 Affirmed Reversed 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 3/31/16

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 #: 09-228-15-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 it failed to consider and/or properly weigh the required statutory factors. Appellant contends she has an excellent institutional record and release plan, including a good COMPAS score, and that no aggravating factors exist, but all the Board did was to look only at the instant offense. Appellant alleges the Board illegally resentenced her, and issued a predetermined decision that lacked detail.

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 her 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. dism., 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 (1st 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. 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).

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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 (1st Dept. 2007); Cardenas v Dennison, 26 A.D.3d 614, 810 N.Y.S.2d 233 (1st 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).

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 Board may consider the brutality of the offense. Dudley v Travis, 227 A.D.2d 863, 642 N.Y.S.2d 386, 387 (3d Dept 1996), leave to appeal denied 88 N.Y.2d 812, 649 N.Y.S.2d 379; Borcok v New York State Division of Parole, 34 A.D.3d 961, 823 N.Y.S.2d 310 lv. den. 8 N.Y.3d 803, 830 N.Y.S.2d 699 (3d Dept. 2006); Matter of Partee v Evans, 117 A.D.3d 1258, 984 N.Y.S.2d 894 (3d Dept. 2014). Per Executive Law 259-i(2)(c)(A), the Board may place greater weight on the violence and level of brutality of the crime, as opposed to an excellent institutional record and achievement. Garofolo v Dennison, 53 A.D.3d 734, 860 N.Y.S.2d 336 (3d Dept. 2008).

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 victims. 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).

The Board may deny parole release without the existence of any aggravating factors, no matter how exemplary the institutional record is. Hamilton v New York State Division of Parole, 119 A.D.3d 1268, 1272, 990 N.Y.S.2d 714 (3d Dept. 2014).

STATE OF NEW YORK - BOARD OF PAROLE

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Findings: (continued from page 2)

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 (4th 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). The COMPAS can contain negative factors that support the Board's conclusion. Matter of Eddy v New York State Division of Parole, Index # 1432-14 *Decision and Order* dated November 3, 2014 (Sup. Ct. Sullivan Co.)(LaBuda A.J.S.C.); Matter of Gatling v Stanford, Index # 163-14, *Decision and Order* dated May 5, 2014 (Sup. Ct. Albany Co.)(Teresi J.S.C.). The Board is entitled to give whatever weight, if any, it deemed appropriate upon the COMPAS report. Matter of Gonzalez v NYS Board of Parole, Index # 14-0821, *Decision/Order* dated September 15, 2014 (Sup. Ct. Ulster Co.)(Work A.J.S.C.). There is nothing in Executive Law 259-c(4) to suggest the quantified risk assessment determined through utilization of a risk and needs assessment instrument supercedes the independent discretionary authority of the Parole Board to determine, based upon its consideration of the statutory factors, whether an inmate should be released to parole. The statute indicates the risk and needs principles serve to "assist" the Board of Parole in making its decision. The Parole Board is not bound by the quantified results of the COMPAS assessment. Matter of Booth v Stanford, Index # 2014-570, *Decision and Judgment* dated February 10, 2015 (Sup. Ct. Franklin Co.)(Feldstein A.J.S.C.). By considering the COMPAS reentry risk assessment the Board has sufficiently complied with the statute and adequately incorporated the risk assessment in determining whether the inmate should be released. Matter of Navarro v Evans, Index # 2013-0264, *Memorandum Decision and Order* dated September 6, 2013 (Sup. Ct. Cayuga Co.)(Leone J.S.C.); Matter of Lane v New York State Division of Parole, Index # 6057-2014 *Ordered and Adjudged* October 7, 2014 (Sup. Ct. Orange Co.)(Slobod J.S.C.); Khatib v New York State Board of Parole, 118 A.D.3d 1207, 988 N.Y.S.2d 286 (3d Dept. 2014).

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Findings: (continued from page 3)

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); Borcok 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 she 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).

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 (4th Dept. 2014).

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Findings: (continued from page 4)

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 (4th 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. disp. 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).

Recommendation:

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