March 2022

Administrative Appeal Decision - Bottom, Anthony (2020-05-06)

STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Bottom, Anthony **Facility:** Sullivan CF

NYSID: [redacted] **Appeal Control No.:** 11-006-19B

DIN: 77-A-4283

Appearances: Rhidaya Trivedi, Esq.
Law Office of Ronald L. Kuby
119 West 23rd Street – Suite 900
New York, New York 10011

Decision appealed: October 2019 decision, denying discretionary release and imposing a hold of 12 months.

Board Member(s) who participated: **Davis, Corley, Agostini**

Papers considered: Appellant's Brief received January 10, 2020
Appellant's Supplemental Letter-brief received April 13, 2020

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:

Commissioner ✓ **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** _____

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 5/6/2020 LB.

Distribution: Appeals Unit – Appellant - Appellant's Counsel - Inst. Parole File - Central File
P-2002(B) (11/2018)

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Bottom, Anthony **DIN:** 77-A-4283

Facility: Sullivan CF **AC No.:** 11-006-19B

Findings: (Page 1 of 7)

Appellant was sentenced to 25 years to life upon his conviction of two counts of Murder. In the instant appeal, Appellant challenges the October 2019 determination of the Board denying release and imposing a 12-month hold on the following grounds: (1) the decision is irrational, improper, arbitrary and capricious because the Board relied on the instant offense in the absence of any legitimate aggravating circumstances that warrant further incarceration; (2) the decision was pre-determined based on the instant offense; (3) the Board erred by placing greater weight on unauthorized community opposition and aspects of Appellant's criminal history than positive factors such as the sentence, COMPAS scores, release plans, institutional achievements, community support and one victim's recommendation; (4) the Board failed to provide sufficient specific justification for its decision; (5) the Board failed to properly consider the COMPAS and offer individualized reasons for departing from it, instead applying an arbitrary, improper, opaque weighted scheme in evaluating the COMPAS risk of re-offending, remorse and attitude towards the crime, and the standards; (6) the Board failed to properly consider the low COMPAS scores for criminal history and history of violence, instead relying on "cherry-picked facts;" (7) the Board's conclusion that Appellant lacked remorse and expressed righteousness as to his crime is unsupported; (8) the Board improperly considered and relied on community opposition expressing penal philosophy; (9) the decision violates the Equal Protection Clause of the Constitution in light of the Board's release of Appellant's co-defendant; and (10) the COVID-19 pandemic requires that Appellant be granted *de novo* consideration.

Pursuant to Executive Law § 259-i(2)(c)(A), 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 whether: (1) there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law; (2) that his release is not incompatible with the welfare of society; and (3) that his release will not so deprecate the seriousness of his crime as to undermine respect for the law. See Matter of Karimzada v. New York State Bd. of Parole, 176 A.D.3d 1555, 1556, 113 N.Y.S.3d 316, 317 (3rd Dept. 2019). A conclusion that an inmate fails to satisfy any one of these three standards is an independent basis to deny parole. See, e.g., Matter of Silmon v. Travis, 95 N.Y.2d 470, 477, 718 N.Y.S.2d 704, 708 (2000); Matter of Hamilton v. New York State Div. of Parole, 119 A.D.3d 1268, 1273-74, 990 N.Y.S.2d 714, 719 (3d Dept. 2014); Matter of Phillips v. Dennison, 41 A.D.3d 17, 21, 834 N.Y.S.2d 121, 124 (1st Dept. 2007).

In making this determination, Section 259-i requires the Board to consider a variety of factors, including: the inmate's institutional record such as program accomplishments, academic achievements, work assignments and interactions with staff and inmates; release plans; any prior or current victim impact statement; the seriousness of the offense with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court, the district attorney, the attorney for the inmate, the pre-sentence probation report as well as consideration of any mitigating

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Bottom, Anthony **DIN:** 77-A-4283
Facility: Sullivan CF **AC No.:** 11-006-19B

Findings: (Page 2 of 7)

and aggravating factors, and activities following arrest prior to confinement; and prior criminal record. Executive Law § 259-i(2)(c)(A). In addition, the Board must consider the inmate's most current risk and needs assessment (*i.e.*, COMPAS instrument) and offender case plan. Executive Law § 259–c(4); Correction Law § 71-a.

While consideration of the statutory factors is mandatory, "the ultimate decision to parole a prisoner is discretionary." Matter of Silmon, 95 N.Y.2d at 477, 718 N.Y.S.2d at 708. 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 Campbell v. Stanford, 173 A.D.3d 1012, 1015, 105 N.Y.S.3d 461 (2d Dept. 2019); Matter of Betancourt v. Stanford, 148 A.D.3d 1497, 49 N.Y.S.3d 315 (3d Dept. 2017). 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 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). There is a presumption of honesty and integrity that attaches to Judges and administrative fact-finders. See 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).

Here, the record as a whole, including the interview transcript, reflects that the Board considered the appropriate factors. These factors include Appellant's formative years, involvement with the Black Panther Party and Black Liberation Army, and the social and political context; the instant offense stemming from the in-concert shooting deaths of two uniformed police officers who were approached from behind and shot multiple times after which Appellant removed one service weapon and fled with it; the sentence imposed, recommendations of the sentencing court, the district attorney and defense counsel, and time served; Appellant's criminal history in California; his institutional record including program completions, educational accomplishments, teaching, therapeutic endeavors, and improved discipline; his expressions of remorse; his age and health; and release plans to reside with friends, pursue a degree in audiovisual engineering and web design, and establish a computer lab. The Board also had before it and considered, among other things, the pre-sentence investigation report, the sentencing minutes, Appellant's case plan, the COMPAS instrument, opposition to release, and Appellant's parole packet and letters of support from a variety of sources, including the son of one victim.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Bottom, Anthony **DIN:** 77-A-4283
Facility: Sullivan CF **AC No.:** 11-006-19B

Findings: (Page 3 of 7)

After considering all required factors and principles, 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 nature of the instant offense, Appellant's extensive criminal engagements in California that include crime against law enforcement, and that he demonstrated a continuation and escalation of negative behaviors, expressing concern with his course of conduct targeting law enforcement officers across several jurisdictions and other criminal activity. See Matter of Moore v. New York State Bd. of Parole, 137 A.D.3d 1375, 26 N.Y.S.3d 412, 413 (3d Dept. 2016); Matter of Tran v. Evans, 126 A.D.3d 1196, 3 N.Y.S.3d 633 (3d Dept. 2015); 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 Warren v. New York State Div. of Parole, 307 A.D.2d 493, 493, 761 N.Y.S.2d 883 (3d Dept. 2003); Matter of Scott v. Russi, 208 A.D.2d 931, 618 N.Y.S.2d 87 (2d. Dept. 1994). The Board considered Appellant's COMPAS instrument and low risk indicators therein but concluded release would be inappropriate under the second and third statutory standards because Appellant came across as still believing in the righteousness of his crime and his remorse lacked depth. See Matter of Silmon, 95 N.Y.2d at 477, 718 N.Y.S.2d at 708; Matter of Phillips, 41 A.D.3d at 23, 834 N.Y.S.2d at 125.

That the Board afforded greater weight to Appellant's criminal record and limited remorse, as opposed to other positive factors, does not render its decision irrational or improper. See, e.g., Matter of Davis v. Evans, 105 A.D.3d 1305, 963 N.Y.S.2d 485 (3d Dept. 2013); Matter of Cardenales v. Dennison, 37 A.D.3d 371, 830 N.Y.S.2d 152 (1st Dept. 2007); Matter of Garcia, 239 A.D.2d at 239-40, 657 N.Y.S.2d at 418. The Board is not required to give each factor equal weight. See Matter of Marszalek v. Stanford, 152 A.D.3d 773, 59 N.Y.S.3d 432 (2d Dept. 2017); Matter of Symmonds v. Dennison, 21 A.D.3d 1171, 1172, 801 N.Y.S.2d 90, 90 (3d Dept.), lv. denied, 6 N.Y.3d 701, 810 N.Y.S.2d 415 (2005).

The Board's decision satisfied the criteria set out in Executive Law § 259-i(2)(a) and 9 N.Y.C.R.R. § 8002.3(d), as it was sufficiently detailed to inform the inmate of the factors and 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 many of the factors and principles considered in individualized terms and explained those that ultimately weighed most heavily in its deliberations: namely, Appellant's course of conduct targeting law enforcement officers across several jurisdictions, other criminal activity, and attitude towards his crime and limited remorse.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Bottom, Anthony **DIN:** 77-A-4283
Facility: Sullivan CF **AC No.:** 11-006-19B

Findings: (Page 4 of 7)

Even assuming the Board relied solely on the instant offense (and it did not), this alone would not render the determination unlawful. It is well established that "so long as the Board considers the factors enumerated in the statute, it is entitled... to place greater emphasis on the gravity of the crime," Matter of Hamilton, 119 A.D.3d at 1271, 990 N.Y.S.2d at 717 (alteration in original) (citation omitted); see Matter of Campbell, 173 A.D.3d 1012, 105 N.Y.S.3d 461; Matter of Olmosperez v. Evans, 114 A.D.3d 1077, 1078, 980 N.Y.S.2d 845, 846 (3d Dept. 2014), aff'd, 26 N.Y.3d 1014, 21 N.Y.S.3d 686 (2015); Matter of Siao-Pao v. Dennison, 51 A.D.3d 105, 108, 854 N.Y.S.2d 348, 351 (1st Dept. 2008), aff'd, 11 N.Y.3d 777, 866 N.Y.S.2d 602 (2008); Matter of Kirkpatrick v. Travis, 5 A.D.3d 385, 772 N.Y.S.2d 540 (2d Dept. 2004), particularly where there are aggravating factors present. Matter of Guzman v. Dennison, 32 A.D.3d 798, 799, 821 N.Y.S.2d 208, 208 (1st Dept. 2006).

While the Board does not agree that aggravating factors are always necessary to support reliance on an inmate's crime, Matter of Hamilton, 119 A.D.3d 1268, 990 N.Y.S.2d 714, there are multiple aggravating factors present here.[1] Notably, Appellant participated in a targeted assault on two randomly selected, unsuspecting law enforcement officers who were ambushed from behind and repeatedly shot even as one officer pled for his life. After the shooting, Appellant removed a service weapon from one victim's holster before eventually fleeing with it to California where he engaged in additional criminal activity. The offense was not an isolated act and was committed as an act of revolution. It represented an assault on the justice system and rule of law. And although Appellant – after maintaining his innocence for many years – now acknowledges his role, legitimate concerns remain about his attitude towards his crime. These are significant, and not merely "pretextual," matters supporting the Board's conclusion that release would be incompatible with the welfare of society and undermine respect for the law by deprecating the seriousness of the offense.

There is no evidence the Board's decision was predetermined based upon the instant offense.[2] Matter of Gonzalvo v. Stanford, 153 A.D.3d 1021, 56 N.Y.S.3d 896 (3d Dept. 2017); Matter of Hakim-Zaki v. New York State Div. of Parole, 29 A.D.3d 1190, 814 N.Y.S.2d 414 (3d Dept. 2006); Matter of Guerin v. New York State Div. of Parole, 276 A.D.2d 899, 900, 714 N.Y.S.2d 770, 771 (3d Dept. 2000). To the contrary, the record reflects the Board conducted a thorough interview – which Appellant observes lasted more than four hours – and reached its determination following extensive deliberations. Simply because a majority of the panel members

[1] That the Board did not explicitly refer to them as "aggravating factors" does not invalidate them – it is sufficient that the record presents them. See Matter of King, 190 A.D.2d 423, 598 N.Y.S.2d 245 (citing People ex rel. Thomas v. Superintendent of Arthur Kill Corr. Facility, 124 A.D.2d 848, 508 N.Y.S.2d 564 (2d Dept. 1986) (denial due to "'extraordinarily and bizarre nature of the present offense'" was proper)); see also Matter of Guzman, 32 A.D.3d at 799, 821 N.Y.S.2d at 208.

[2] Despite questioning the Board's consideration of parole for individuals serving sentences for the murder of police officers, Appellant also acknowledges, and asserts a claim based upon, the release of his co-defendant.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Bottom, Anthony **DIN:** 77-A-4283
Facility: Sullivan CF **AC No.:** 11-006-19B

Findings: (Page 5 of 7)

ultimately decided to deny parole does not mean the decision was predetermined and Appellant has failed to overcome the presumption that the Board complied with its duty. See Matter of Davis v. New York State Div. of Parole, 114 A.D.2d 412, 494 N.Y.S.2d 136 (2d Dept. 1985).

Appellant's claims concerning the COMPAS instrument are without merit. The 2011 amendments to the Executive Law require procedures incorporating risk and needs principles to "assist" the Board in making parole release decisions. Executive Law § 259–c(4). The Board satisfies this requirement in part by using the COMPAS instrument. Matter of Montane v. Evans, 116 A.D.3d 197, 202, 981 N.Y.S.2d 866, 870 (3d Dept. 2014); see also Matter of Hawthorne v. Stanford, 135 A.D.3d 1036, 1042, 22 N.Y.S.3d 640, 645 (3d Dept. 2016); 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 Robles v. Fischer, 117 A.D.3d 1558, 1559, 985 N.Y.S.2d 386, 387 (4th Dept. 2014). This is encompassed in the Board's regulations. 9 N.Y.C.R.R. § 8002.2(a). However, the COMPAS is not predictive and was never intended to be the sole indicator of risk and needs as the Board gets risk and needs information from a variety of sources, including the statutory factors and the interview. Notably, the 2011 amendments did not eliminate the requirement that the Board conduct a case-by-case review of each inmate by considering the statutory factors. Matter of Montane, 116 A.D.3d at 202, 981 N.Y.S.2d at 870. The amendments also did not change the three substantive standards that the Board is required to apply when deciding whether to grant parole. Executive Law § 259-i(2)(c)(A). Thus, the COMPAS cannot mandate a particular result. Matter of King v. Stanford, 137 A.D.3d 1396, 26 N.Y.S.3d 815 (3d Dept. 2016). Rather, the COMPAS is an additional consideration that the Board must weigh along with the statutory factors for the purposes of deciding whether the three standards are satisfied. See Matter of Dawes v. Annucci, 122 A.D.3d 1059, 994 N.Y.S.2d 747 (3d Dept. 2014); Matter of Rivera v. N.Y. State Div. of Parole, 119 A.D.3d 1107, 1108, 990 N.Y.S.2d 295 (3d Dept. 2014); see also Matter of Gonzalvo, 153 A.D.3d 1021, 56 N.Y.S.3d 896.

That is exactly what occurred here. The Board considered Appellant's COMPAS instrument and issued a decision consistent with amended 9 N.Y.C.R.R. § 8002.2(a). That is, the Board did not find Appellant likely to reoffend but rather concluded, *despite* low risk scores, release would be inappropriate under the other two statutory standards. The Board therefore was not strictly required to address scales from which it was departing. The Board nonetheless explained why it was denying release despite low risk scores. In so doing, the Board permissibly concluded that Appellant's release would not be compatible with the welfare of society and would so deprecate the seriousness of his crime as to undermine respect for the law based on his criminal activity and the fact that he came across as still believing in the righteousness of his crime and his remorse lacked depth. Appellant's COMPAS did not preclude the Board from reaching this conclusion or render the decision irrational.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Bottom, Anthony **DIN:** 77-A-4283

Facility: Sullivan CF **AC No.:** 11-006-19B

Findings: (Page 6 of 7)

There is no merit to Appellant's additional objection with respect to criminal history. The Board considered, and explicitly acknowledged, the COMPAS scores for criminal involvement and history of violence. However, the COMPAS does not preclude the Board from considering an inmate's actual criminal history. See Executive Law § 259-i(2)(c)(A); Matter of Rivera, 119 A.D.3d at 1109, 990 N.Y.S.2d at 297; Matter of Montane, 116 A.D.3d at 202, 981 N.Y.S.2d at 870. The Board reasonably expressed concern with the nature of Appellant's criminal activity that included targeting law enforcement officers across jurisdictions as well as his attitude towards his crime and limited remorse.

Appellant disputes the Board's conclusion that he came across as still believing in the righteousness of his crime and his remorse lacked depth. Although Appellant repeatedly referred to his crime as "horrible" and "terrible" and even expressed admiration for police, it was within the Board's authority to assess Appellant's credibility and the Board found him to be disingenuous. Matter of Siao-Pao, 51 A.D.3d at 108, 854 N.Y.S.2d at 351. The Board's conclusion is in no way inconsistent with or undermined by its acknowledgement that he appeared to have gained insight into factors that contributed to his feelings, thoughts and behaviors that fueled his reaction to his environment and negative behaviors.

Appellant's objections to the Board's consideration of community opposition – which include submissions from community members, civic organizations, professionals, law enforcement and elected officials – are likewise without merit. As Appellant acknowledges, 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. See, e.g., Matter of Jones v. New York State Bd. of Parole, 175 A.D.3d 1652, 1652, 108 N.Y.S.3d 505, 506 (3d Dept. 2019); Matter of Applewhite v. New York State Bd. of Parole, 167 A.D.3d 1380, 91 N.Y.S.3d 308, 311 (3d Dept. 2018); Matter of Clark v. New York Bd. of Parole, 166 A.D.3d 531, 531-31, 89 N.Y.S.3d 134, 135 (1st Dept. 2018); Matter of Rivera v. Evans, Index No. 0603-16, *Decision & Order* dated July 5, 2016 (Sup. Ct. Sullivan Co.)(LaBuda A.J.S.C.), aff'd sub nom. Matter of Rivera v. Stanford, 53 N.Y.S.3d 404, 149 A.D.3d 1445 (3d Dept. 2017); see also Matter of Campbell v. Stanford, 173 A.D.3d at 1016, 105 N.Y.S.3d at 465. The same has long been recognized as true with respect to letters supporting an inmate's potential parole release. Indeed, the Board considered letters in support of Appellant's release – which include submissions from individuals in the community, academia, civic organizations, professionals, advocates and elected officials.

Appellant's allegations concerning penal philosophy do not require reversal. Matter of King affirmed the proposition that the Board cannot substitute its personal views on the proper basis for a parole denial for that of the legislature. Matter of King v. New York State Div. of

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Bottom, Anthony **DIN:** 77-A-4283
Facility: Sullivan CF **AC No.:** 11-006-19B

Findings: (Page 7 of 7)

Parole, 83 N.Y.2d 788, 791, 610 N.Y.S.2d 954, 955 (1994), aff'g 190 A.D.2d 423, 432, 598 N.Y.S.2d 245, 251 (1st Dept. 1993). But Matter of King does not require the annulment of a decision simply because material expressing personal penal philosophy was included in submissions which were properly considered. See Matter of Duffy v. New York State Dep't of Corr. & Cmty. Supervision, 132 A.D.3d 1207, 1209, 19 N.Y.S.3d 610 (3d Dept. 2015). Even assuming some opposition to Appellant's release reflected penal philosophy, the record does not indicate that the Board afforded those statements any particular weight or substituted those views for the criteria of Executive Law § 259-i. At most, it reflects consideration of the fact of their opposition, not deference to the beliefs motivating it.[3]

Appellant alleges a violation of the Equal Protection Clause based on the release of his co-defendant. However, each application for parole release is to be considered on its own individual merits. Baker v. McCall, 543 F. Supp. 498, 501 (S.D.N.Y. 1981), aff'd, 697 F.2d 287 (2d Cir. 1982); Matter of Phillips, 41 A.D.3d at 22, 834 N.Y.S.2d at 124-25. This includes consideration of each individual's interview. The decision here has a rational relationship to the objectives of community safety and respect for the law. Matter of Valderrama v. Travis, 19 A.D.3d 904, 905, 796 N.Y.S.2d 758 (3d Dept. 2005). There is no merit to his equal protection claim. Matter of Williams v. New York State Div. of Parole, 70 A.D.3d 1106, 894 N.Y.S.2d 224 (3d Dept.), lv. denied, 14 N.Y.3d 709, 901 N.Y.S.2d 143 (2010); Matter of Tatta v. Dennison, 26 A.D.3d 663, 809 N.Y.S.2d 296 (3d Dept.), lv. denied, 6 N.Y.3d 714, 816 N.Y.S.2d 750 (2006); Matter of DeFino v. Travis, 18 A.D.3d 1079, 795 N.Y.S.2d 477 (3d Dept. 2005).

Finally, Appellant requests a *de novo* interview due to the outbreak of COVID-19 subsequent to the Board's determination, citing his age and medical conditions. However, this is not grounds for an appeal. See 9 N.Y.C.R.R. § 8006.3. The proper avenue to raise these concerns is an application for medical parole. See Executive Law §§ 259-r, 259-s. We understand such an application recently was submitted on Appellant's behalf.

Recommendation: Affirm.

[3] The interview transcript does not support Appellant's claim that a Commissioner's inquiry reflects consideration of unauthorized penal philosophy. Rather, the Commissioner's inquiry was aimed at Appellant's remorse for his crime. See Matter of Payne v. Stanford, 173 A.D.3d 1577, 1578, 104 N.Y.S.3d 383, 385 (3rd Dept. 2019); Matter of Phillips, 41 A.D.3d at 23, 834 N.Y.S.2d at 125.