

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

Parole Administrative Appeal Decisions

Parole Administrative Appeal Documents

May 2022

Administrative Appeal Decision - Taylor, Merton (2019-05-10)

Follow this and additional works at: <https://ir.lawnet.fordham.edu/aad>

Recommended Citation

"Administrative Appeal Decision - Taylor, Merton (2019-05-10)" (2022). Parole Information Project
<https://ir.lawnet.fordham.edu/aad/730>

This Parole Document is brought to you for free and open access by the Parole Administrative Appeal Documents at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Parole Administrative Appeal Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Taylor, Merton

Facility: Watertown CF

NYSID: [REDACTED]

Appeal Control No.: 03-102-19 B

DIN: 18-R-1689

Appearances: Merton Taylor 18R1689
Watertown Correctional Facility
23147 Swan Road
Watertown, New York 13601

Decision appealed: February 2019 decision, denying discretionary release and imposing a hold of 18 months.

Board Member(s) who participated: Alexander, Crangle

Papers considered: Appellant's Brief received March 15, 2019

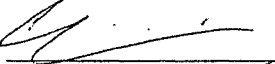
Appeals Unit Review: Statement of the Appeals Unit's Findings and Recommendation

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:

 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 5/10/19 66.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Taylor, Merton

DIN: 18-R-1689

Facility: Watertown CF

AC No.: 03-102-19 B

Findings: (Page 1 of 3)

Appellant challenges the February 2019 determination of the Board, denying release and imposing a 18-month hold. The instant offense consisted of the petitioner driving a car while his license has been suspended due to 31 active license suspensions. Appellant raises the following issues on appeal: 1) the decision is irrational bordering on impropriety in that the Board failed to consider and/or properly weigh the required statutory factors. 2) the Board ignored his EEC. 3) the Board decision cited as reasons “cavalier attitude” and “lack of meaningful responses,” both of which are not statutory factors for Board consideration.

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). Whereas here the inmate has received an EEC, the Board may deny release to parole on a finding that there is a reasonable probability that, if such inmate is released, the inmate will not live and remain at liberty without violating the law and that his release is not compatible with the welfare of society. Correction Law § 805; Matter of Heitman v. New York State Bd. of Parole, 214 A.D.2d 673, 625 N.Y.S.2d 264 (2d Dept. 1995); Matter of Salcedo v. Ross, 183 A.D.2d 771, 771, 583 N.Y.S.2d 502, 503 (1st Dept. 1992); Matter of Walker v. Russi, 176 A.D.2d 1185, 576 N.Y.S.2d 51 (3d Dept. 1991), appeal dismissed, 79 N.Y.2d 89 7, 581 N.Y.S.2d 660 (1992). 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 fact that the Board afforded greater weight to the inmate’s criminal history, as opposed to other positive factors, does not render the denial of parole for that reason irrational or improper. Matter of Davis v. Evans, 105 A.D.3d 1305, 963 N.Y.S.2d 485 (3d Dept. 2013); Matter of Lashway v. Evans, 110 A.D.3d 1417, 1418, 974 N.Y.S.2d 164, 165 (3d Dept. 2013); Matter of McKee v. New York State Bd. of Parole, 157 A.D.2d 944, 550 N.Y.S.2d 204 (3d Dept. 1990).

Although the Board placed particular emphasis on the nature of the crime, the Board considered other factors and was not required to give equal weight to or discuss each factor considered. Matter of Gordon v. Stanford, 148 A.D.3d 1502, 50 N.Y.S.3d 627 (3d Dept. 2017); Matter of Peralta v. New York State Bd. of Parole, 157 A.D.3d 1151, 69 N.Y.S.3d 885 (3d Dept. 2018); Matter of Arena v. New York State Dep’t of Corr. & Cmty. Supervision, 156 A.D.3d 1101, 65 N.Y.S.3d 471 (3d Dept. 2017).

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Taylor, Merton

DIN: 18-R-1689

Facility: Watertown CF

AC No.: 03-102-19 B

Findings: (Page 2 of 3)

The Board may consider an inmate's failure to comply with DOCCS rules in denying parole. See Matter of Almonte v. New York State Bd. of Parole, 145 A.D.3d 1307, 42 N.Y.S.3d 691 (3d Dept. 2016), lv. denied, 29 N.Y.3d 905 (2017); Matter of Karlin v. Cully, 104 A.D.3d 1285, 1286, 960 N.Y.S.2d 827, 828 (4th Dept. 2013); Matter of Stanley v. New York State Div. of Parole, 92 A.D.3d 948, 948-49, 939 N.Y.S.2d 132, 134 (2d Dept.), lv. denied, 19 N.Y.3d 806, 949 N.Y.S.2d 343 (2012).

The Board stressing the nature of the underlying offense, troubling criminal history and prison disciplinary record, does not constitute irrationality bordering on impropriety. Perez v Evans, 76 A.D.3d 1130, 907 N.Y.S.2d 701 (3d Dept. 2010); Mentor v New York State Division of Parole, 87 A.D.3d 1245, 930 N.Y.S.2d 302 (3d Dept. 2011) lv.app.den. 18 N.Y.3d 803, 938 N.Y.S.2d 860 (2012); Stanley v New York State Division of Parole, 92 A.D.3d 948, 939 N.Y.S.2d 132 (2d Dept. 2012); Moore v New York State Board of Parole, 137 A.D.3d 1375, 26 N.Y.S.3d 412 (3d Dept. 2016).

The Board may consider a district attorney's recommendation to deny 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 Porter v. Alexander, 63 A.D.3d 945, 881 N.Y.S.2d 157 (2d Dept. 2009); Matter of Walker v. Travis, 252 A.D.2d 360, 676 N.Y.S.2d 52 (1st Dept. 1998); Matter of Walker v. New York State Bd. of Parole, 218 A.D.2d 891, 630 N.Y.S.2d 417 (3d Dept. 1995); Matter of Williams v. New York State Bd. of Parole, 220 A.D.2d 753, 633 N.Y.S.2d 182 (2d Dept. 1995); Matter of Confoy v. New York State Div. of Parole, 173 A.D.2d 1014, 569 N.Y.S.2d 846, 847 (3d Dept. 1991); Matter of Lynch v. New York State Div. of Parole, 82 A.D.2d 1012, 442 N.Y.S.2d 179 (3d Dept. 1981).

Insight is a permissible factor. Matter of Silmon v. Travis, 95 N.Y.2d 470, 478, 718 N.Y.S.2d 704 (2000); Matter of Crawford v. New York State Bd. of Parole, 144 A.D.3d 1308, 46 N.Y.S.3d 228 (3d Dept. 2016) (lack of insight and failure to accept responsibility), lv. denied, 29 N.Y.3d 901 (2017); Matter of Phillips v. Dennison, 41 A.D.3d 17, 23, 834 N.Y.S.2d 121 (1st Dept. 2007) (limited insight and remorse); Matter of Almeyda v. New York State Div. of Parole, 290 A.D.2d 505, 736 N.Y.S.2d 275 (2d Dept. 2002) (limited insight into why crime committed).

The Board may consider negative aspects of the COMPAS instrument. Matter of Bush v. Annucci, 148 A.D.3d 1392, 50 N.Y.S.3d 180 (3d Dept. 2017) (COMPAS instrument with mixed results including substance abuse relevant given use before crime); Matter of Wade v. Stanford, 148 A.D.3d 1487, 52 N.Y.S.3d 508 (3d Dept. 2017) (low risk felony violence but probable risk for substance abuse alcohol related crimes); Matter of Crawford v. New York State Bd. of Parole, 144 A.D.3d 1308, 46 N.Y.S.3d 228 (3d Dept. 2016) (scores not uniformly low including family support), lv. denied, 29 N.Y.3d 901, 57 N.Y.S.3d 704 (2017).

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Taylor, Merton

DIN: 18-R-1689

Facility: Watertown CF

AC No.: 03-102-19 B

Findings: (Page 3 of 3)

Credibility of an inmates explanation is to be made by the Board. The Board may consider matters involving the inmate's capacity to tell the truth (i.e. cavalier attitudes, lack of meaningful responses), and how this impacts on the statutory factors, such as insight. Siao-Pao v Dennison, 51 A.D.3d 105, 854 N.Y.S.2d 348 (1st Dept. 2008).

Receipt of an EEC does not preclude denial of parole. Matter of Milling v. Barbary, 31 A.D.3d 1202, 1203, 819 N.Y.S.2d 373, 374 (4th Dept.), lv. denied, 7 N.Y.3d 808, 809, 822 N.Y.S.2d 481 (2006); Matter of Romer v. Dennison, 24 A.D.3d 866, 867, 804 N.Y.S.2d 872, 873 (3d Dept. 2005); Matter of Barad v. New York State Bd. of Parole, 275 A.D.2d 856, 713 N.Y.S.2d 775, 776 (3d Dept. 2000), lv. denied, 96 N.Y.2d 702, 722 N.Y.S.2d 793 (2001). An EEC does not automatically entitle an inmate to discretionary release or eliminate consideration of the statutory factors including the instant offense. Matter of Corley v. New York State Div. of Parole, 33 A.D.3d 1142, 1143, 822 N.Y.S.2d 817, 818 (3d Dept. 2006); Matter of Pearl v. New York State Div. of Parole, 25 A.D.3d 1058, 808 N.Y.S.2d 816, 817 (3d Dept. 2006); Matter of White v. Dennison, 29 A.D.3d 1144, 814 N.Y.S.2d 393 (3d Dept. 2006). Moreover, the Board is not required to give each factor equal weight. Matter of Corley, 33 A.D.3d 1142, 1143, 822 N.Y.S.2d 817, 818; Matter of Pearl, 25 A.D.3d 1058, 808 N.Y.S.2d 816, 817. The Board may deny release to parole on a finding that there is a reasonable probability that, if such inmate is released, the inmate will not live and remain at liberty without violating the law and that his release is not compatible with the welfare of society. Correction Law § 805; Matter of Heitman v. New York State Bd. of Parole, 214 A.D.2d 673, 625 N.Y.S.2d 264 (2d Dept. 1995); Matter of Salcedo v. Ross, 183 A.D.2d 771, 771, 583 N.Y.S.2d 502, 503 (2d Dept. 1992); Matter of Walker v. Russi, 176 A.D.2d 1185, 576 N.Y.S.2d 51 (3d Dept. 1991), appeal dismissed, 79 N.Y.2d 89 7, 581 N.Y.S.2d 660 (1992).

The appellant has failed to demonstrate that the Parole Board's determination was affected by a showing of irrationality bordering on impropriety. Matter of Silmon v Travis, 95 N.Y.2d 470, 718 N.Y.S.2d 704 (2001); Matter of Russo v New York State Board of Parole, 50 N.Y.2d 69, 77, 427 N.Y.S.2d 982 (1980).

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.

Recommendation: Affirm.