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Administrative Appeal Decision - Kelly, Stephen (2019-05-10)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Kelly, Stephen

Facility: Hale Creek CF

NYSID: [REDACTED]

Appeal
Control No.: 01-140-19 B

DIN: 18-A-3202

Appearances: Stephen Kelly 18A3202
Bare Hill Correctional Facility
Caller Box 20
181 Brand Road
Malone, New York 12953

Decision appealed: January 2019 decision, denying discretionary release and imposing a hold of 14 months.

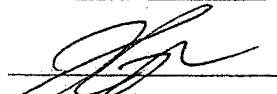
Board Member(s)
who participated: Alexander, Agostini, Drake

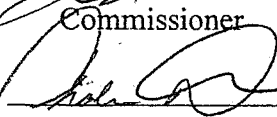
Papers considered: Appellant's Letter-brief received February 4, 2019

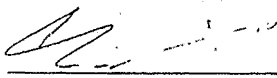
Appeals Unit Review: Statement of the Appeals Unit's Findings and Recommendation

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 ll.

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: Kelly, Stephen

DIN: 18-A-3202

Facility: Hale Creek CF

AC No.: 01-140-19 B

Findings: (Page 1 of 1)

Appellant challenges the January 2019 determination of the Board, denying release and imposing a 14-month hold. Appellant's offense involved breaking into a motel room and stealing property. Appellant raises only one primary claim. Based upon mitigating factors, appellant seeks to have the hold reduced from 14 months to 6-8 months, which would allow him to complete all required programs. Specifically, this is his first felony conviction, most arrests were reduced to violations, and no fault of his own but due to his limited time in prison he hasn't had time to take all programs. Appellant feels the Board misread his history.

In the absence of impropriety, the reconsideration date set by the Board will not be disturbed. Matter of Tatta v. State of N.Y., Div. of Parole, 290 A.D.2d 907, 908, 737 N.Y.S.2d 163 (3d Dept. 2002).

Appellant has 20 prior misdemeanor convictions, and had his probation revoked three times. The Board decision states he minimizes his criminal behavior, which he continues to do in this appeal. 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). 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.