

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 - Mauricio, Joseph (2020-05-10)

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

---

#### Recommended Citation

"Administrative Appeal Decision - Mauricio, Joseph (2020-05-10)" (2022). Parole Information Project  
<https://ir.lawnet.fordham.edu/aad/751>

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](mailto:tmelnick@law.fordham.edu).

STATE OF NEW YORK – BOARD OF PAROLE

**ADMINISTRATIVE APPEAL DECISION NOTICE**

Name: Mauricio, Joseph

Facility: Franklin CF

NYSID: [REDACTED]

Appeal  
Control No.: 03-115-18 B

DIN: 16-B-3485

Appearances: Charles Greenberg, Esq.  
3840 East Robinson Road - #318  
Amherst, New York 14228-2001

Decision appealed: March 2018 decision denying discretionary release and imposing a hold of 24 months.

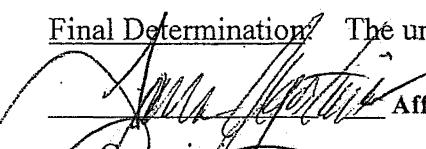
Board Member(s)  
who participated: Berliner, Coppola

Papers considered: Appellant's Brief received February 12, 2019

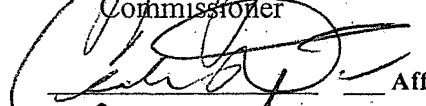
Appeals Unit Review: Statement of the Appeals Unit's Findings and Recommendation

Records relied upon: Pre-Sentence Investigation Report, Parole Board Report, Interview Transcript, Parole Board Release Decision Notice (Form 9026), COMPAS instrument, Offender Case Plan.

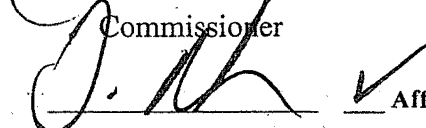
Final Determination: The undersigned determine that the decision appealed is hereby:

 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.

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Mauricio, Joseph

**DIN:** 16-B-3485

**Facility:** Franklin CF

**AC No.:** 03-115-18 B

**Findings:** (Page 1 of 5)

---

Appellant was sentenced to two and a half years followed by ten years of post-release supervision upon his conviction of Rape in the third degree and a concurrent indeterminate term of two to four years upon his conviction of Failure to Register or Verify as Sex Offender. In the instant appeal perfected on February 12, 2019, Appellant challenges the March 2018 determination of the Board denying release and imposing a 24-month hold on the following grounds: (1) the Board failed to consider a Transitional Accountability Plan (“TAP”); (2) the Board’s denial was unlawful, arbitrary and capricious because the Board placed excessive weight on Appellant’s criminal behavior without properly considering other factors as required by Executive Law §§ 259-c and 259-i; (3) the decision violates due process because the Board emphasized Appellant’s criminal history in the absence of aggravating factors, resentenced him and issued a predetermined decision; (4) the decision violates due process because Appellant was denied a fair interview due to attention given to his criminal history and negative aspects of his institutional record; (5) Appellant’s record contrasts favorably with other parole applicants; and (6) the 24-month hold is excessive.

Generally, discretionary release to parole is not to be granted unless the Board determines that an inmate meets three standards: “there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law, **and** that his release is not incompatible with the welfare of society **and** will not so deprecate the seriousness of his crime as to undermine respect for the law.” Executive Law § 259-i(2)(c)(A) (emphasis added); accord Matter of Hamilton v. New York State Div. of Parole, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014). The Board must consider factors relevant to the specific inmate, including, but not limited to, the inmate’s institutional record and criminal behavior. Executive Law § 259-i(2)(c)(A). 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). An EEC does not automatically guarantee 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).

In 2011, the law was amended to further require procedures incorporating risk and needs principles to “assist” the Board in making parole release decisions. Executive Law § 259-c(4).

**APPEALS UNIT FINDINGS & RECOMMENDATION****Name:** Mauricio, Joseph**DIN:** 16-B-3485**Facility:** Franklin CF**AC No.:** 03-115-18 B**Findings:** (Page 2 of 5)

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 Robles v. Fischer, 117 A.D.3d 1558, 1559, 985 N.Y.S.2d 386, 387 (4th Dept. 2014). 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 or change the 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 instrument 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 standards are satisfied. See 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); accord Matter of Dawes v. Annucci, 122 A.D.3d 1059, 994 N.Y.S.2d 747 (3d Dept. 2014); see also Matter of Gonzalvo v. Stanford, 153 A.D.3d 1021, 56 N.Y.S.3d 896 (3d Dept. 2017).

While consideration of the statutory 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 Board need not explicitly refer to each factor in its decision, nor give them equal weight. 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 Fuchino v. Herbert, 255 A.D.2d 914, 914, 680 N.Y.S.2d 389, 390 (4th Dept. 1998); 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. Johnson v. New York State Bd. of Parole, 180 A.D.2d 914, 916, 580 N.Y.S.2d 957, 959 (3d Dept. 1992).

The record as a whole, including the interview transcript, reflects that the Board considered the appropriate factors, including: the instant offenses wherein Appellant failed to register his address with local law enforcement within the period required as a registered sex offender and engaged in sexual intercourse without the victim’s consent; Appellant’s criminal history including prior sex offense, failures to register his address and parole violations; his institutional record including completion of ART, receipt of an EEC, removal from the sex offender program in two different facilities for poor progress, and relatively good discipline with two Tier II violations; [REDACTED] and participate in job training through CEO. The Board also



STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Mauricio, Joseph

**DIN:** 16-B-3485

**Facility:** Franklin CF

**AC No.:** 03-115-18 B

**Findings:** (Page 3 of 5)

---

had before it and considered, among other things, Appellant's case plan (the current name of the TAP), the COMPAS instrument, Appellant's letter to the Board and letters of assurance. Insofar as Appellant disputes his COMPAS instrument's discipline and family support scores, the Board does not determine COMPAS scores and an administrative appeal before the Board is not the proper forum to challenge the COMPAS instrument. In any event, the Board did not rely on those disputed scores as Appellant acknowledges. See Matter of Khatib v. New York State Bd. of Parole, 118 A.D.3d 1207, 988 N.Y.S.2d 286 (3d Dept. 2014); Matter of Restivo v. New York State Bd. of Parole, 70 A.D.3d 1096, 895 N.Y.S.2d 555 (3d Dept. 2010).

After considering all required factors and principles, the Board acted within its discretion in determining release would not satisfy the applicable standards for release. In reaching its conclusion, the Board permissibly relied on the instant offenses representing Appellant's second State incarceration and a continuation of a criminal history that includes two prior failures to register his address and a prior felony sex offense, that he has violated parole in the past, and that he was removed from the sex offender program for poor progress in two facilities. See Matter of Bello v. Bd. of Parole, 149 A.D.3d 1458, 53 N.Y.S.3d 715 (3d Dept. 2017); Matter of Singh v. Evans, 118 A.D.3d 1209, 987 N.Y.S.2d 271 (3d Dept.), lv. denied, 24 N.Y.3d 906, 995 N.Y.S.2d 715 (2014); Matter of Fuchino, 255 A.D.2d at 914, 680 N.Y.S.2d at 390; Matter of Bockeno v. New York State Parole Bd., 227 A.D.2d 751, 642 N.Y.S.2d 97 (3d Dept. 1996). The Board concluded Appellant's commission of another sex offense, continued inability to abide by the terms of his sex offender registration requirement and inability to complete the sex offender program rendered discretionary release inappropriate at this time, despite Appellant's receipt of an EEC. See generally Matter of Neal v. Stanford, 131 A.D.3d 1320, 16 N.Y.S.3d 342 (3d Dept. 2015).

As for Appellant's due process claims, an inmate has no Constitutional right to be conditionally released on parole before expiration of a valid sentence. Greenholtz v. Inmates of Nebraska Penal & Correctional Complex, 442 U.S. 1, 99 S. Ct. 2100, 2104 (1979); Matter of Russo v. Bd. of Parole, 50 N.Y.2d 69, 427 N.Y.S.2d 982 (1980). The New York State parole scheme "holds out no more than a possibility of parole" and thus does not create a protected liberty interest implicating the due process clause. Matter of Russo, 50 N.Y.2d at 75-76, 427 N.Y.S.2d at 985; see also Freeman v. New York State Div. of Parole, 21 A.D.3d 1174, 800 N.Y.S.2d 797 (3d Dept. 2005); Barna v. Travis, 239 F.3d 169, 171 (2d Cir. 2001). Even assuming arguendo the EEC created a protected interest, the record reflects due process was satisfied. See Greenholtz, 442 U.S. at 16, 99 S. Ct. at 2108.

Appellant's specific contentions are similarly without merit. That the Board – after considering the applicable factors – emphasized the inmate's criminal history does not render the denial of parole for that reason irrational or improper. Matter of Davis v. Evans, 105 A.D.3d 1305,

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Mauricio, Joseph

**DIN:** 16-B-3485

**Facility:** Franklin CF

**AC No.:** 03-115-18 B

**Findings:** (Page 4 of 5)

---

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 Shapard v. Zon, 30 A.D.3d 1098, 1099, 815 N.Y.S.2d 852, 853 (4th Dept. 2006). And while the Board disagrees that aggravating factors are required when it places emphasis on an inmate's offense, Matter of Hamilton, 119 A.D.3d 1268, 990 N.Y.S.2d 714, the Board's decision here was based on additional considerations including not only his prior record but the status of his institutional programming.

Appellant's assertion that the denial of parole release amounted to an improper resentencing is without merit inasmuch as the Board fulfilled its obligation to determine the propriety of release per Executive Law § 259-i(2)(c)(A) and after considering the factors set forth therein, including Appellant's criminal history. Executive Law § 259 et seq.; Penal Law § 70.40; Matter of Murray v. Evans, 83 A.D.3d 1320, 920 N.Y.S.2d 745 (3d Dept. 2011); Matter of Crews v. New York State Exec. Dept. Bd. of Parole Appeals Unit, 281 A.D.2d 672, 720 N.Y.S.2d 855 (3d Dept. 2001). The Board was vested with discretion to determine whether release was appropriate notwithstanding the minimum period of incarceration set by the Court. Matter of Burress v. Dennison, 37 A.D.3d 930, 829 N.Y.S.2d 283 (3d Dept. 2007); Matter of Cody v. Dennison, 33 A.D.3d 1141, 1142, 822 N.Y.S.2d 677 (3d Dept. 2006), lv. denied, 8 N.Y.3d 802, 830 N.Y.S.2d 698 (2007). The appellant has not in any manner been resentenced. Matter of Mullins v. New York State Bd. of Parole, 136 A.D.3d 1141, 1142, 25 N.Y.S.3d 698 (3d Dept. 2016).

There also is no evidence the Board's decision was predetermined. 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, 695 N.Y.S.2d 622 (3d Dept. 2000). Furthermore, the transcript as a whole does not support Appellant's contention that the Board was hostile and he was denied a fair interview. Matter of Rivers v. Evans, 119 A.D.3d 1188, 989 N.Y.S.2d 400 (3d Dept. 2014); see also Matter of Mays v. Stanford, 55 N.Y.S.3d 502, 150 A.D.3d 1521 (3d Dept. 2017); Matter of Bonilla v. New York State Bd. of Parole, 32 A.D.3d 1070, 1071, 820 N.Y.S.2d 661, 662 (3d Dept. 2006). That the Board addressed all applicable factors, including his criminal history and negative aspects of his institutional record, was not improper. As for comparisons to other parole applicants, "[t]here is no entitlement to parole based upon comparison with the particulars of other applicants. Rather, each case is sui generis, and the Board has full authority in each instance to give the various factors a unique weighted value." Matter of Phillips v. Dennison, 41 A.D.3d 17, 22, 834 N.Y.S.2d 121, 124-25 (1st Dept. 2007).

Finally, the Board's decision to hold an inmate for the maximum period of 24 months is within the Board's discretion and within its authority pursuant to Executive Law § 259-i(2)(a) and

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Mauricio, Joseph

**DIN:** 16-B-3485

**Facility:** Franklin CF

**AC No.:** 03-115-18 B

**Findings:** (Page 5 of 5)

---

9 N.Y.C.R.R. § 8002.3(b). Matter of Tatta v. State of N.Y., Div. of Parole, 290 A.D.2d 907, 737 N.Y.S.2d 163 (3d Dept. 2002), lv. denied, 98 N.Y.2d 604, 746 N.Y.S.2d 278 (2002); see also Matter of Campbell v. Evans, 106 A.D.3d 1363, 965 N.Y.S.2d 672 (3d Dept. 2013). Appellant has failed to demonstrate that a hold of 24 months for discretionary release was excessive or improper.

**Recommendation:** Affirm.