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Administrative Appeal Decision - McKenzie, Winston (2019-03-29)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: McKenzie, Winston

Facility: Fishkill CF

NYSID: [REDACTED]

Appeal Control No.: 04-005-18 B

DIN: 04-A-3396

Appearances: Lawrence King Esq.
Dutchess County Public Defender
22 Market Street
Poughkeepsie, New York 12601

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


Board Member(s) who participated: Smith, Cruse

Papers considered: Appellant's Letter-brief received January 9, 2019

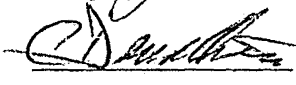
Appeals Unit Review: Statement of the Appeals Unit's Findings and Recommendation

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 3/29/19

LB

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: McKenzie, Winston

DIN: 04-A-3396

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AC No.: 04-005-18 B

Findings: (Page 1 of 1)

Appellant challenges the March 2018 determination of the Board, denying release and imposing a 24-month hold. Appellant raises the following claims. 1) the decision is arbitrary and capricious, and irrational bordering on impropriety, in that the Board failed to consider and/or properly weigh the required statutory factors. Nor did the Board explain how they weighed the factors. 2) the decision lacks details. 3) the decision illegally resentenced him to life without parole. 4) no aggravating factors exist. 5) the Board failed to comply with the 2011 amendments to the Executive Law in that the COMPAS was never reviewed, and the statutes are now present/future based.

A review of the interview transcript and of the Board decision show the COMPAS is never mentioned. The 2011 Executive Law amendments do require the COMPAS to be considered. Since the required COMPAS document is not mentioned anywhere in the official record, a de novo interview is required.

Recommendation: Vacate and remand for de novo interview.