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Administrative Appeal Decision - Zehr, Roy (2019-03-22)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Zehr, Roy

Facility: Elmira CF

NYSID: [REDACTED]

Appeal Control No.: 12-171-18 B

DIN: 14-B-0572

Appearances: Roy Zehr 14B0572
Elmira Correctional Facility
P.O. Box 500
Elmira, New York 14902

Decision appealed: December 2018 decision, denying discretionary release and imposing a hold of hold to ME date .

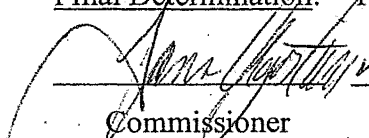
Board Member(s) who participated: Smith, Coppola


Papers considered: Appellant’s Letter-brief received January 8, 2019

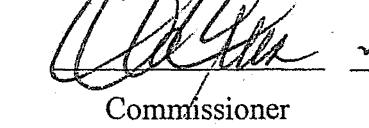
Appeals Unit Review: Statement of the Appeals Unit’s Findings and Recommendation

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 3/22/19 66.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Zehr, Roy

DIN: 14-B-0572

Facility: Elmira CF

AC No.: 12-171-18 B

Findings: (Page 1 of 1)

Appellant challenges the December 2018 determination of the Board, denying release and imposing a hold to ME date. Appellant raises only one issue. Appellant claims that he clearly is an individual with many problems () such that to keep him in till his ME date, without any parole supervision help in the community, is negligence on the part of the Parole Board. Therefore, appellant claims the Parole Board will be subject to future lawsuits when he is arrested in the future for committing new crimes, without any parole supervision.

Classical judicial tasks of the Parole Board (e.g. deciding whether to grant parole release or revoke parole) get absolute immunity in tort actions due to the application of expertise, applicable law and experience of judgment. Tarter v State, 68 N.Y.2d 511, 510 N.Y.S.2d 528 (1986), as well because they are strictly sovereign and quasi-judicial decisions in nature. Semkus v State, 272 A.D.2d 74, 708 N.Y.S.2d 288, 289 (1st Dept 2000), leave denied 95 N.Y.2d 761, 714 N.Y.S.2d 711. Governmental immunity protects the government for the injurious consequences of official action which involves the exercise of discretion or expert judgment in policy matters that are not purely ministerial. Pryor v State of New York, 92 A.D.3d 1047, 937 N.Y.S.2d 734 (3rd Dept. 2012). The Legislature has not vested the Court of Claims with the power to review determinations of administrative agencies, and the State has not waived immunity in this area, such that in a tort suit the Court lacks subject matter jurisdiction. Lublin v State of New York, 135 Misc.2d 419, 515 N.Y.S.2d 385 (Court of Claims 1987), affirmed 135 A.D.2d 1155, 523 N.Y.S.2d 21, leave denied 71 N.Y.2d 802, 527 N.Y.S.2d 768. The Court of Claims lacks subject matter jurisdiction to review the determination of an administrative decision of an agency. Green v State of New York, 90 A.D.3d 1577, 935 N.Y.S.2d 779 (4th Dept. 2011).

There is a presumption of honesty and integrity that attaches to Judges and administrative fact-finders. People ex.rel. Johnson v New York State Board of Parole, 180 A.D.2d 914, 580 N.Y.S.2d 957, 959 (3d Dept 1992); Withrow v Larkin, 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed2d 712 (1975). And, Courts presume the Parole Board follows its statutory commands and internal policies in fulfilling its obligations. Garner v Jones, 529 U.S. 244, 120 S.Ct. 1362, 1371, 146 L.Ed2d 236 (2000). Parole release decisions are discretionary, and will not be disturbed so long as the Board complies with the statutory requirements of the Executive Law. Williams v New York State Division of Parole, 114 A.D.3d 992, 979 N.Y.S.2d 868 (3d Dept. 2014); Wiley v State of New York Department of Corrections and Community Supervision, 139 A.D.3d 1289, 32 N.Y.S.3d 370 (3d Dept. 2016). Per Executive Law §259-i(5), parole release is a discretionary function of the Board. Anthony v New York State Division of Parole, 252 A.D.2d 704, 679 N.Y.S.2d 158 (3d Dept. 1998), lv.den. 92 N.Y.2d 812 (1998), cert. den. 525 U.S. 1183 (1999); Bottom v New York State Board of Parole, 30 A.D.3d 657, 815 N.Y.S.2d 789 (3d Dept. 2006).

Recommendation: Affirm.