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May 2022

### Administrative Appeal Decision - Garabedian, Gregory (2019-03-22)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Garabedian, Gregory Facility: Great Meadow CF  
NYSID: [REDACTED] Appeal Control No.: 08-085-18 B  
DIN: 18-A-0902

Appearances: Alyson S. Clark, Esq.  
Washington Co. Public Defender  
383 Broadway  
Fort Edward, New York 12828

Decision appealed: July 2018 decision, denying discretionary release and imposing a hold of 12 months.

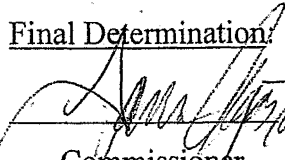
Board Member(s) who participated: Smith, Coppola, Shapiro, Stanford (observing)

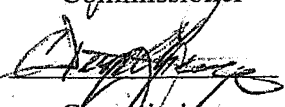
Papers considered: Appellant's Brief received January 30, 2019

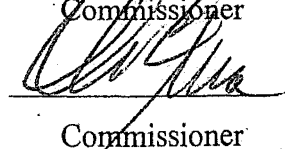
Appeals Unit Review: Statement of the Appeals Unit's Findings and Recommendation

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 GG.

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Garabedian, Gregory

**DIN:** 18-A-0902

**Facility:** Great Meadow CF

**AC No.:** 08-085-18 B

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Appellant challenges the July 2018 determination of the Board, denying release and imposing a 12-month hold.

Appellant raises the following issues in his brief: (1) the Board’s decision was arbitrary, capricious and irrational, made in violation of applicable legal authority, and placed too much emphasis on the crime of conviction and criminal history; (2) the Board did not provide sufficient weight to Appellant’s institutional accomplishments; (3) the Board’s decision was tantamount to a resentencing of Appellant; (4) the Board interview should have been adjourned until the outcome of a challenged disciplinary ticket was determined; (5) the Board should not have conducted the interview by teleconference; (6) the Board’s decision was predetermined; and (7) the 12-month hold was excessive.

As to the first and second issues, discretionary release to parole is not to be granted “merely as a reward for good conduct or efficient performance of duties while confined but after considering if 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). “Although these standards are no longer repeated in the [Board’s] regulation, this in no way modifies the statutory mandate requiring their application.” Notice of Adoption, NY Reg, Sept. 27, 2017 at 2. A conclusion that an inmate fails to satisfy **any one** of the considerations set forth in Executive Law § 259-i(2)(c)(A) is an independent basis to deny parole. See, e.g., Matter of Silmon v. Travis, 95 N.Y.2d 470, 477, 718 N.Y.S.2d 704, 708 (2000); Matter of Robles v. Fischer, 117 A.D.3d 1558, 1559, 985 N.Y.S.2d 386 (4th Dept. 2014); Matter of Hamilton v. New York State Div. of Parole, 119 A.D.3d 1268; Matter of Phillips v. Dennison, 41 A.D.3d 17, 21, 834 N.Y.S.2d 121, 124 (1st Dept. 2007).

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). 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. 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; 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); Matter of LeGeros v. New York State Bd. of Parole, 139

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A.D.3d 1068, 30 N.Y.S.3d 834 (2d Dept. 2016); Matter of Phillips v. Dennison, 41 A.D.3d 17. 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.

As to the third issue, 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. See 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). 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).

As to the fourth issue, Appellant’s disciplinary record was discussed during the interview. If he wanted to postpone the Board interview, he could have made that request, but failed to do so thereby waiving this issue.

As to the fifth issue, even if Appellant had properly preserved the issue, the use of teleconferencing technology to conduct parole release interviews is permissible. It does not prejudice the inmate and is consistent with the requirement that a parole candidate be “personally interviewed.” Matter of Webb v. Travis, 26 A.D.3d 614, 810 N.Y.S.2d 233 (3d Dept. 2006); Matter of Mack v Travis, 283 A.D.2d 700, 723 N.Y.S.2d 905 (3d Dept. 2001); Matter of Vanier v. Travis, 274 A.D.2d 797, 711 N.Y.S.2d 920 (3d Dept. 2000); see also Yourdon v. Johnson, 2006 U.S. Dist. LEXIS 70376, 2006 WL 2811710 (W.D.N.Y. 2006); Boddie v. New York State Div. of Parole, 288 F.Supp.2d 431, 441 (S.D.N.Y. 2003).

As to the sixth issue, 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 (3d Dept. 1992). The Board is presumed to have followed applicable statutory requirements and internal policies when making decisions regarding the suitability of an inmate’s possible release to parole supervision. See Garner v. Jones, 529 U.S. 244 (2000). There is no evidence that the Board’s decision was predetermined. See Matter of Hakim-Zaki v. New York State Div. of Parole, 29 A.D.3d 1190 (3d Dept. 2006); Matter of Guerin v. New York State Div. of Parole, 276 A.D.2d 899 (3d Dept. 2000).

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As to the seventh issue, the Board has discretion to hold an inmate for a period of up to 24 months. Executive Law § 259-i(2)(a) and 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); Matter of Campbell v. Evans, 106 A.D.3d 1363, 965 N.Y.S.2d 672 (3d Dept. 2013). Therefore, the hold of 12 months was not excessive or improper.

**Recommendation:** Affirm.