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Administrative Appeal Decision - Medina, Peter (2019-03-08)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Medina, Peter

Facility: Green Haven CF

NYSID: [REDACTED]

Appeal Control No.: 03-058-18 B

DIN: 87-B-0866

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

Decision appealed: February 2018 decision, denying discretionary release and imposing a hold of 18-months.

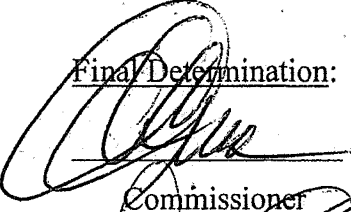
Board Member(s) who participated: Alexander, Demosthenes.

Papers considered: Appellant's Brief received December 18, 2018.

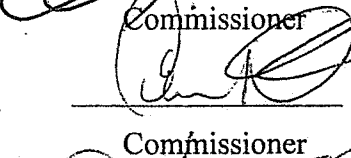
Appeals Unit Review: Statement of the Appeals Unit's Findings and Recommendation

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

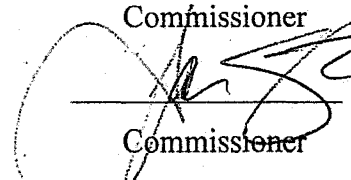
Final Determination: The undersigned determine that the decision appealed is hereby:


Commissioner

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 _____

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 3/8/19 66.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

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Appellant challenges the February 2018 determination of the Board, denying release and imposing a 18-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, with insufficient weight being given to Appellant’s COMPAS scores, family support and rehabilitative efforts; (2) the Case Plan prepared for the Board was “inadequate”; and (3) one particular set of Appellant’s sentencing minutes (his controlling convictions consist of three separate felonies under three separate indictment numbers) may have been incomplete.

As to the first issue, 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 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

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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.

In 2011, the law was amended to require procedures incorporating risk and needs principles to “assist” the Board in making parole release decisions. Executive Law § 259–c(4); 9 N.Y.C.R.R. §8002.2(a). 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 LeGeros v. New York State Bd. of Parole, 139 A.D.3d 1068, 30 N.Y.S.3d 834 (2d 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 including the instant offense. The amendments also did not change the three substantive standards that the Board is required to apply when deciding whether to grant parole. See 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 three 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). Furthermore, declining to afford the COMPAS controlling weight does not violate the 2011 amendments. Matter of King v. Stanford, 137 A.D.3d 1396, 26 N.Y.S.3d 815 (3d Dept. 2016).

As to the second issue, Correction Law 71-a requires DOCCS to prepare a Transitional Accountably Plan (now known as an “Offender Case Plan”) for inmates in the Department’s custody based on their programming and treatment needs. In making a parole release decision, the Board must consider the most current case plan that may have been prepared by DOCCS. 9 N.Y.C.R.R. § 8002.2(b). An Offender Case Plan was prepared for Appellant and made available to the Board at the time of the interview. Appellant raised no issues relating to his Case Plan during the interview and therefore waived any objections relating to the Case Plan. Appellant failed to raise any objections to the ALJ’s decision during the final revocation hearing, resulting in a waiver of any issues which could have been raised at the final revocation hearing. See, e.g., Matter of Morrison v. Evans, 81 A.D.3d 1073 (3d Dept. 2011); Matter of Vanier v. Travis, 274 A.D.2d 797

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(3d Dept. 2000); Matter of Morel v. Travis, 278 A.D.2d 580 (3d Dept. 2000), lv. denied, 96 N.Y.2d 752 (2001).

As to the third issue, the sentencing minutes were discussed during the interview, and again Appellant raised no objections as to their content at the time of the interview therefore waiving any issues relating to that particular record. Matter of Morrison, 81 A.D.3d 1073; Matter of Vanier, 274 A.D.2d 797; Matter of Morel, 278 A.D.2d 580, lv. denied, 96 N.Y.2d 752. In addition, the Appeals Unit has determined that the sentencing minutes in question relating to the second degree Murder conviction are complete and not missing a page. The Board had the complete set of these sentencing minutes before it at the time of the interview.

Recommendation: Affirm.