May 2022

Administrative Appeal Decision - Belzan, Kajetan (2019-02-27)

STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Belzan, Kajetan **Facility:** Otisville CF

NYSID: [redacted] **Appeal Control No.:** 05-212-18 B

DIN: 15-R-3074

Appearances: Cheryl Maxwell, Esq.
59 Court St.
Plattsburgh, NY 12901

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

Board Member(s) who participated: Davis, Smith

Papers considered: Appellant's Brief received November 16, 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:

_____ ___ **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 2/27/19 GG.

Distribution: Appeals Unit – Appellant - Appellant's Counsel - Inst. Parole File - Central File
P-2002(B) (11/2018)

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Belzan, Kajetan **DIN:** 15-R-3074

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Appellant challenges the May 2018 determination of the Board, denying release and imposing a 24-month hold. Appellant contends the Board (1) failed to consider and to properly weigh all relevant factors; and (2) imposed a hold of excessive length.

For individuals who have received an Earned Eligibility Certificate (EEC) pursuant to Correction Law § 805. 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 (2d 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). In making this determination, Executive Law § 259-i(2)(c)(A) requires the Board to consider certain factors 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, 132, 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, 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).

Appellant first contends that the Board failed to properly consider the required factors by mischaracterizing the severity of the offense and failing to properly weigh considerations favoring release, including his COMPAS instrument, institutional programming, disciplinary history and release plans.

Contrary to appellant's assertion, the Board did not mischaracterize appellant's crimes of conviction by not crediting his expressions of remorse. Appellant was convicted of numerous counts of forgery, grand larceny and identity theft for his part in a scheme in which he and his co-defendants impersonated the owners of two properties, listed them for sale and then defrauded the purchasers of the down payments. Appellant characterized his participation as "[t]his six month spree and two or three negative things I did [that] basically erased everything I did my whole life and I have to start over". In response the Board noted that "[y]ou share the blame with others rather than taking full responsibility for what you have done." When the Board further inquired as to how appellant became involved with his co-defendants, he responded by stating "I got

involved with the wrong people". As credibility determinations are to be made by the Board, (Matter of Siao-Pao v. Dennison, 51 A.D.3d 105, 108, 854 N.Y.S.2d 348, 351 [1st Dept.], affd 11 N.Y.3d 777, 866 N.Y.S.2d 602 [2008]), it was well within the panel's discretion to be concerned with appellant's "limited insight into [his] culpability into the instant offense and [his] remorse".

Similarly, appellant's contention that the Board failed to afford the COMPAS sufficient weight is unavailing. The COMPAS is not dispositive. Rather it 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). Thus, the COMPAS cannot mandate a particular result. Matter of King v. Stanford, 137 A.D.3d 1396, 26 N.Y.S.3d 815 (3d Dept. 2016). In the matter at hand, the Board was within its discretion to view appellant's risk assessment in light of his shallow remorse and insight. As "there is a strong rehabilitative component in the statute that may be given effect by considering remorse and insight", the Board's concern that appellant had not sufficiently developed his regard for life was a proper basis for concluding that, despite his good institutional record and programmatic successes, appellant's rehabilitation was not yet complete. See Matter of Silmon, 95 N.Y.2d at 477.

Appellant's related contentions, that the Board failed to properly consider his institutional record, disciplinary history and release plans, are belied by the record. The Board, during the interview, discussed appellant's goals and achievements as described in his case plan, including his beginning of an exercise plan and his progress in attaining a vocational skill. The Board then discussed appellant's release plans, which included a letter of assurance regarding a position at a real estate firm. Given appellant's numerous convictions for the fraudulent sale of real property, the Board expressed reasonable reservations regarding this position. If appellant believed that there were other notable achievements which merited the Board's attention, he did not raise these topics during the interview when given an opportunity to have the last word.

Thus, reading the decision notice together with the interview transcript "demonstrate[s] that the Board considered the required statutory factors" Matter of Siao-Pao v. Dennison, 11 N.Y.3d 777, 778, 866 N.Y.S.2d 602, 602 (2008). As the Board's written decision was sufficiently detailed to inform the inmate of the reasons for the denial of parole, it satisfied the criteria set out in Executive Law § 259-i(2)(a). Matter of Applegate v. New York State Bd. of Parole, 164 A.D.3d 996, 997, 82 N.Y.S.3d 240 (3d Dept. 2018); Matter of Kozlowski v. New York State Bd. of Parole, 108 A.D.3d 435, 968 N.Y.S.2d 87 (1st Dept. 2013).

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Appellant's next contention, that the 24-month hold imposed by the Board was excessive is without merit. 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 9 NYCRR 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.

Thus, appellant's contentions are without merit; the record reflects that appellant's interview was conducted according to law and the Board's determination was rational.

Recommendation: Affirm.