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### Administrative Appeal Decision - Kirkland, Anthony (2019-01-11)

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**Administrative Appeal Decision Notice**

Inmate Name: Kirkland, Anthony

Facility: Mohawk Correctional Facility

NYSID No.: [REDACTED]

Appeal Control #: 03-076-18-B

Dept. DIN#: 15B3752

Appearances:

For the Board, the Appeals Unit

For Appellant:

Anthony Kirkland 15B3752  
Mohawk Correctional Facility  
6415 Route 26  
P.O. Box 8450  
Rome, New York 13442


Board Member(s) who participated in appealed from decision: Coppola, Davis, Smith

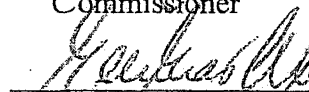
Decision appealed from: 2/2018-Denial of discretionary release, with imposition of 12 month hold.


Pleadings considered: Letter with attachments on behalf of the pro se appellant dated April 23, 2018.  
Statement of the Appeals Unit's Findings and Recommendation

Documents relied upon: Presentence Investigation Report, Parole Board Report, Interview Transcript,  
Parole Board Release Decision (Form 9026), COMPAS, TAP/Case Plan.

Final Determination: The undersigned have determined that the decision from which this appeal was taken  
be and the same is hereby

  
Commissioner ☒ Affirmed ☐ Reversed for De Novo Interview ☐ Modified to \_\_\_\_\_

  
Commissioner ☒ Affirmed ☐ Reversed for De Novo Interview ☐ Modified to \_\_\_\_\_

  
Commissioner ☒ Affirmed ☐ Reversed 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 1/11/19 CC.

Distribution: Appeals Unit – Inmate - Inmate's Counsel - Inst. Parole File - Central File  
P-2002(B) (5/2011)

STATE OF NEW YORK - BOARD OF PAROLE

**STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION**

**Inmate Name:** Kirkland, Anthony

**Facility:** Mohawk Correctional Facility

**Dept. DIN#:** 15B3752

**Appeal Control #:** 03-076-18-B

**Findings:**

The pro se appellant has submitted a letter, with handwritten attachments, to serve as the perfected appeal. Together they raise the following issues: 1) he is now totally rehabilitated, but all the COMPAS and the Board do is to look at his prior criminal history, which is improper given his rehabilitation. 2) the COMPAS erroneously says he has a history of violence, as he has only one violent conviction, way back in 1980. 3) his EEC was not properly considered. 4) the DA breached any plea bargain if the letter he sent to the Parole Board was negative.

In response, pursuant to Executive Law §259-i(2)(c), the Parole Board must consider criteria which is relevant to the specific inmate, including, but not limited to, the inmate's institutional record or criminal behavior, giving whatever emphasis they so choose to each factor. In re Garcia v. New York State Division of Parole, 239 A.D.2d 235, 657 N.Y.S.2d 415 (1<sup>st</sup> Dept. 1997); People ex rel. Herbert v. New York State Board of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881 (1<sup>st</sup> Dept. 1983). The Board is not required to give equal weight to each statutory factor. Arena v New York State Department of Corrections and Community Supervision, 156 A.D.3d 1101, 65 N.Y.S.3d 471 (3d Dept. 2017); Mays v Stanford, 150 A.D.3d 1521, 55 N.Y.S.3d 502 (3d Dept. 2017); Marszalek v Stanford, 152 A.D.3d 773, 59 N.Y.S.3d 432 (2d Dept. 2017); Paniagua v Stanford, 153 A.D.3d 1018, 56 N.Y.S.3d 894 (3d Dept. 2017); Esquilin v New York State Board of Parole, 144 A.D.3d 846, 40 N.Y.S.3d 279 (2<sup>nd</sup> Dept. 2016); Kenefick v Sticht, 139 A.D.3d 1380, 31 N.Y.S.3d 367 (4<sup>th</sup> Dept. 2016); LeGeros v New York State Board of Parole, 139 A.D.3d 1068, 30 N.Y.S.3d 834 (2d Dept. 2016); De la Cruz v Annucci, 122 A.D.3d 1413, 997 N.Y.S.2d 872 (4<sup>th</sup> Dept. 2014); Phillips v Dennison, 41 A.D.3d 17, 834 N.Y.S.2d 121 (1<sup>st</sup> Dept. 2007). That an inmate has numerous achievements within a prison's institutional setting does not automatically entitle him to parole release. Matter of Faison v. Travis, 260 A.D.2d 866, 688 N.Y.S.2d 782 (3d Dept. 1999); Pulliam v Dennison, 38 A.D.3d 963, 832 N.Y.S.2d 304 (3d Dept. 2007). Moreover, per Executive Law §259-i(2)(c), an application for parole release shall not be granted merely as a reward for appellant's good conduct or achievements while incarcerated. Larrier v New York State Board of Parole Appeals Unit, 283 A.D.2d 700, 723 N.Y.S.2d 902, 903 (3d Dept 2001); Vasquez v State of New York Executive Department, Division of Parole, 20 A.D.3d 668, 797 N.Y.S.2d 655 (3d Dept. 2005); Wellman v Dennison, 23 A.D.3d 974, 805 N.Y.S.2d 159 (3d Dept. 2005).

STATE OF NEW YORK - BOARD OF PAROLE

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**Findings:** (continued from page 1)

The Board is obligated to consider the inmate's prior criminal record. Matter of Partee v Evans, 117 A.D.3d 1258, 984 N.Y.S.2d 894 (3d Dept. 2014). The Board may put more weight on the inmate's criminal history. Bello v Board of Parole, 149 A.D.3d 1458, 53 N.Y.S.3d 715 (3d Dept. 2017); Hall v New York State Division of Parole, 66 A.D.3d 1322, 886 N.Y.S.2d 835 (3d Dept. 2009); Davis v Evans, 105 A.D.3d 1305, 963 N.Y.S.2d 485 (3d Dept. 2013); Jones v New York State Parole Board, 127 A.D.3d 1327, 6 N.Y.S.3d 774 (3d Dept. 2015); Wade v Stanford, 148 A.D.3d 1487, 52 N.Y.S.3d 508 (3d Dept. 2017). The fact that the Board afforded greater weight to the inmate's criminal history, and not to an alleged positive institutional adjustment, does not render the denial of parole for that reason irrational or improper. Matter of Ortiz v. Hammock, 96 A.D.2d 735, 465 N.Y.S.2d 341 (4<sup>th</sup> Dept 1983); Peo. ex rel. Yates v. Walters, 111 A.D.2d 839, 490 N.Y.S.2d 573 (2d Dept. 1985); Matter of Ristau v. Hammock, 103 A.D.2d 944, 479 N.Y.S.2d 760 (3d Dept. 1984) lv. to appeal den. 63 N.Y.2d 608, 483 N.Y.S.2d 1023 (1984); Torres v New York State Division of Parole, 300 A.D.2d 128, 750 N.Y.S.2d 759 (1<sup>st</sup> Dept 2002); Lashway v Evans, 110 A.D.3d 1420, 973 N.Y.S.2d 496 (3d Dept. 2013).

The denial of parole release based upon nature of conviction and criminal history is appropriate. In the Matter of Hawkins v. Travis, 259 A.D.2d 813, 686 N.Y.S.2d 198 (3d Dept. 1999); Farid v. Russi, 217 A.D.2d 832, 629 N.Y.S.2d 821 (3d Dept. 1995); Charlemagne v New York State Division of Parole, 281 A.D.2d 669, 722 N.Y.S.2d 74, 75 (3d Dept 2001); Burress v Evans, 107 A.D.3d 1216, 967 N.Y.S.2d 486 (3d Dept. 2013); Boccadisi v Stanford, 133 A.D.3d 1169, 20 N.Y.S.3d 477 (3d Dept. 2015); Bush v Annucci, 148 A.D.3d 1392, 50 N.Y.S.3d 180 (3d Dept. 2017); Holmes v Annucci, 151 A.D.3d 1954, 57 N.Y.S.3d 857 (4<sup>th</sup> Dept. 2017).

Per Executive Law 259-i(2)(c)(A), the Board is obligated to consider the inmate's prior criminal record and the nature of the instant offenses, and the fact that such consideration resulted in a parole denial does not reflect irrationality bordering on impropriety. Singh v Evans, 118 A.D.3d 1209, 987 N.Y.S.2d 271 (3d Dept. 2014).

The Board may consider the inmate had displayed an escalation of unlawful activities. Stanley v New York State Division of Parole, 92 A.D.3d 948, 939 N.Y.S.2d 132 (2d Dept. 2012).

Appellant's re-entry plan lacks structure, and is deficient as to work, family and the community. Executive Law 259-i(c)(1) clearly confers discretion upon the parole board as to whether and, if release is granted, when to release an inmate. Hodge v Griffin, 2014 WL 2453333(S.D.N.Y. 2014).

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**Findings:** (continued from page 2)

The Board may place particular emphasis upon the nature of the offense. Mullins v New York State Board of Parole, 136 A.D.3d 1141, 25 N.Y.S.3d 698 (3d Dept. 2016). The Board in its discretion properly placed greater emphasis on the present offenses, as it is not required to give equal weight to all requisite factors. 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); Peralta v New York State Board of Parole, 157 A.D.3d 1151, 69 N.Y.S.3d 885 (3d Dept. 2018).

The Board did consider the COMPAS, which was mixed, in that he was a high risk on criminal involvement, and history of violence, which is relevant to his risk of re-offense. Bush v Annucci, 148 A.D.3d 1392, 50 N.Y.S.3d 180 (3d Dept. 2017). The COMPAS can contain negative factors that support the Board's conclusion. Wade v Stanford, 148 A.D.3d 1487, 52 N.Y.S.3d 508 (3d Dept. 2017).

The COMPAS instrument brings the Board into compliance with the 2011 amendments to Executive Law 259-c(4). Robles v Fischer, 117 A.D.3d 1558, 985 N.Y.S.2d 386 (4<sup>th</sup> Dept. 2014); Hawthorne v Stanford, 135 A.D.3d 1036, 22 N.Y.S.3d 640 (3d Dept. 2016). Contrary to appellant's contention, he has numerous arrests for violent crimes, as he has been arrested for assault, rape, burglary and robbery.

That the DA agreed to a plea bargain doesn't mean he has consented that only the minimum amount of time needs to be served before parole release.

As for the receipt of an EEC, appellant is not entitled to release, provided the Board considers the statutory factors and articulates its reasons for denying discretionary release. White v Dennison, 29 A.D.3d 1144, 814 N.Y.S.2d 393 (3d Dept. 2006); Larmon v Travis, 14 A.D.3d 960, 787 N.Y.S.2d 918 (3d Dept. 2005). Receipt of an EEC does not preclude consideration of instant offense or criminal history. Richards v Travis, 288 A.D.2d 604, 732 N.Y.S.2d 465 (3d Dept 2001), or the serious and violent nature of the crime. Fuller v New York State Board of Parole, 284 A.D.2d 853, 726 N.Y.S.2d 600 (3d Dept. 2001).

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**Findings:** (continued from page 3)

The Board still possesses the discretion to determine whether the parole candidate has met the statutory criteria and deserves release. Barad v New York State Board of Parole, 275 A.D.2d 856, 713 N.Y.S.2d 775, 776 (3d Dept. 2000), leave to appeal denied 96 N.Y.2d 702, 722 N.Y.S.2d 793 (2001); Matter of Rhoden v. New York State Div. of Parole, 270 A.D.2d 550, 704 N.Y.S. 521 (3d Dept. 2000); Heitman v. New York State Board 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, 583 N.Y.S.2d 502 (2d Dept. 1992). The Parole Board may deny release to parole on a finding that "there is a reasonable probability that, if ... 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". 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 897, 581 N.Y.S.2d 660 (1992); Morrero v Dennison, 19 A.D.3d 960, 797 N.Y.S.2d 638 (3d Dept. 2005); Matter of Ramahlo v Travis, 290 A.D.2d 911, 737 N.Y.S.2d 160, 161 (3d Dept. 2002); Marcelin v Travis, 262 A.D.2d 836, 693 N.Y.S.2d 639 (3d Dept. 1999); Nieves v New York State Division of Parole, 251 A.D.2d 836, 675 N.Y.S.2d 158 (3d Dept. 1998). The facts listed in the decision do rebut the presumption and permit a denial of early release.

Since the Board's decision was sufficiently detailed to inform the inmate of the reasons for the denial of parole, it satisfied the criteria set out in section 259-i of the Executive Law. Siao-Pao v Dennison, 11 N.Y.3d 777, 866 N.Y.S.2d 602 (Ct. App. 2008); Matter of Whitehead v. Russi, 201 A.D.2d 825, 607 N.Y.S.2d 751 (3d Dept. 1993); Matter of Green v. New York State Division of Parole, 199 A.D.2d 677, 605 N.Y.S.2d 148 (3d Dept. 1993). Moreover, the reasons stated by the Parole Board members for holding appellant are sufficient grounds to support their decision. People ex rel. Yates v. Walters, 111 A.D.2d 839, 490 N.Y.S.2d 573 (2d Dept. 1985); Matter of Ganci v Hammock, 99 A.D.2d 546, 471 N.Y.S.2d 630 (2d Dept. 1984); Matter of Vuksanaj v. Hammock, 93 A.D.2d 958, 463 N.Y.S.2d 61 (3d Dept. 1983); Matter of Pina v. Hammock, 89 A.D.2d 799, 453 N.Y.S.2d 479 (4<sup>th</sup> Dept. 1982). Since the Board's challenged decision was made in accordance with the pertinent statutory requirements, it exercised proper discretion in denying appellant early release on parole. In the Matter of Hawkins v. Travis, 259 A.D.2d 813, 686 N.Y.S.2d 198 (3d Dept. 1999), app. dism. 93 N.Y.2d 1033, 697 N.Y.S.2d 556 (1999); Matter of Barrett v. New York State Division of Parole, 242 A.D.2d 763, 661 N.Y.S.2d 857 (3d Dept. 1997).

**Recommendation:**

Accordingly, it is recommended the decision of the Board be affirmed.