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May 2022

### Administrative Appeal Decision - Morales, Carmelo (2019-01-30)

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**Administrative Appeal Decision Notice**

**Inmate Name:** Morales, Carmelo

**Facility:** Eastern Correctional Facility

**NYSID No.:** [REDACTED]

**Appeal Control #:** 05-172-18-B

**Dept. DIN#:** 78A2488

Appearances:

For the Board, the Appeals Unit

For Appellant:

Sarah Garvey-Potvin Esq.  
Debevoise and Plimpton  
919 Third Avenue  
New York, New York 10022

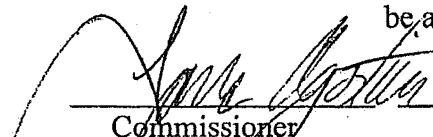
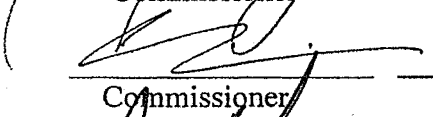

Board Member(s) who participated in appealed from decision: **Davis, Shapiro, Smith**

Decision appealed from: 5/2018-Denial of discretionary release, with imposition of 12 month hold.

Pleadings considered: Brief on behalf of the appellant received on October 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	<input checked="" type="checkbox"/> Reversed for De Novo Interview	Modified to _____
 _____ Commissioner	Affirmed	<input checked="" type="checkbox"/> Reversed for De Novo Interview	Modified to _____
 _____ Commissioner	Affirmed	<input checked="" type="checkbox"/> 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 1/30/2019.  
LB

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:** Morales, Carmelo

**Facility:** Eastern Correctional Facility

**Dept. DIN#:** 78A2488

**Appeal Control #:** 05-172-18-B

**Findings:**

Counsel for the appellant has submitted a brief to serve as the perfected appeal. The brief raises the following issues: 1) the decision is arbitrary and capricious. The Board failed to consider and/or properly weigh, or explain how they weighed, the statutory factors. Appellant contends he has an excellent institutional record and release plan, but all the Board did was as in prior interviews to look only at the instant offense/criminal history. Appellant alleges the Board ignored his advanced age, failed to make required findings of fact, and failed to provide detail. This is all in violation of the due process clause. 2) the Board failed to comply with the 2011 amendments to the Executive Law in that the COMPAS was ignored, and the statutes are now future focused. 3) the Board failed to consider the revisions to the Rockefeller drug laws would have on his current sentence, as is required by statute. For the reason explained below, the Appeals Unit will only respond to the last issue raised.

Both the interview transcript, and the Board decision, failed to mention the required matter of Rockefeller drug law revisions at all. And a de novo was previously given to this inmate for this very reason. As such, since a required matter was not considered on the record, a de novo is warranted.

**Recommendation:**

Accordingly, it is recommended the decision of the Board be vacated, and that a de novo interview in front of a different panel of Commissioners be held.