May 2022

Administrative Appeal Decision - Bucknor, Cornelius (2019-01-31)

STATE OF NEW YORK– BOARD OF PAROLE

Administrative Appeal Decision Notice

Inmate Name: Bucknor, Cornelius **Facility:** Eastern Correctional Facility

NYSID No.: [redacted] **Appeal Control #:** 04-174-18-B

Dept. DIN#: 81B1301

Appearances:
For the Board, the Appeals Unit
For Appellant: Glenn Bruno Esq.
11 Market Street
Suite 221
Poughkeepsie, New York 12601

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

Decision appealed from: 4/2018-Denial of discretionary release, with imposition of 24 month hold.

Pleadings considered: Brief on behalf of the appellant received on October 16, 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 1/31/19 GG.

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

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Findings:

Counsel for the appellant has submitted a brief to serve as the perfected appeal. The brief raises the following claims: 1) the decision is arbitrary and capricious in that the Board failed to consider and/or properly weigh the required statutory factors. Appellant contends he has an excellent institutional record and release plan, and that no aggravating factors exist, but all the Board did was as in prior interviews to look only at the instant offense. 2) the Board failed to make required findings of fact or provide evidentiary detail. 3) the Board illegally resentenced him. 4) the Board ignored his deportation order/CPDO status. 5) [redacted] 6) appellant's rights under the Hawkins decision were violated. 7) as for records, the Parole Board Report is deficient when compared to the prior use of Inmate Status Reports. And, the DA letter was not turned over to him. This is in violation of the confrontation clause of the 6th amendment, as well as the due process clause, of the constitution. 8) the decision was due to a policy of the Governor to deny parole release to all violent felons. 9) the Board failed to comply with the 2011 amendments to the Executive Law, and with the 2014 regulations, in that the COMPAS and TAP are not mere factors, and no written procedures exist. Letters from two State Assemblymen prove this. And the statutes are now present/future based. 10) the 24 month hold is excessive.

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 (1st Dept. 1997); People ex rel. Herbert v. New York State Board of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881 (1st 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 (2nd Dept. 2016); Kenefick v Sticht, 139 A.D.3d 1380, 31 N.Y.S.3d 367 (4th 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 (4th Dept. 2014); Phillips v Dennison, 41 A.D.3d 17, 834 N.Y.S.2d 121 (1st 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).

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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).

The Board may place particular emphasis upon the nature of the offenses. 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's emphasis on the violent nature of the crime does not establish irrationality bordering on impropriety. Pulliam v Dennison, 38 A.D.3d 963, 832 N.Y.S.2d 304 (3d Dept. 2007); Sterling v Dennison, 38 A.D.3d 1145, 833 N.Y.S.2d 684 (3d Dept. 2007); Marziale v Alexander, 62 A.D.3d 1227, 879 N.Y.S.2d 636 (3d Dept. 2009). The Board may conclude that the violent nature of the crime is an overriding consideration warranting the denial of parole release. Rodney v Dennison, 24 A.D.3d 1152, 805 N.Y.S.2d 743 (3d Dept. 2005). The Board may emphasize the violent nature of the instant offense. Marnell v Dennison, 35 A.D.3d 995, 824 N.Y.S.2d 812 (3d Dept. 2006), lv.den. 8 N.Y.3d 807, 833 N.Y.S.2d 426 (2007).

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).

The fact that the appellant committed the instant offense while under probation supervision is also a basis for denying parole release. Geames v Travis, 284 A.D.2d 843, 726 N.Y.S.2d 506, 507 (3d Dept 2001); Herouard v Travis, 250 A.D.2d 911, 673 N.Y.S.2d 229, 230 (3d Dept 1998); De La Cruz v Travis, 10 A.D.3d 789, 781 N.Y.S.2d 798, 800 (3d Dept. 2004); Hunter v New York State Division of Parole, 21 A.D.3d 1178, 800 N.Y.S.2d 799 (3d Dept 2005); Bush v Annucci, 148 A.D.3d 1392, 50 N.Y.S.3d 180 (3d Dept. 2017); Wade v Stanford, 148 A.D.3d 1487, 52 N.Y.S.3d 508 (3d Dept. 2017); Cobb v Stanford, 153 A.D.3d 1500, 59 N.Y.S.3d 915 (3d Dept. 2017).

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An inmate's blaming his criminal conduct on peer pressure constitutes a failure to acknowledge responsibility, which is a basis for denying parole release. Herouard v Travis, 250 A.D.2d 911, 673 N.Y.S.2d 229, 230 (3d Dept 1998).

The Board may deny parole release without the existence of any aggravating factors, no matter how exemplary the institutional record is. Hamilton v New York State Division of Parole, 119 A.D.3d 1268, 1272, 990 N.Y.S.2d 714 (3d Dept. 2014).

As for the required three part statutory standard, contrary to appellant's claim, the Board is not required to repeat the language of the statute verbatim. Rather, it need merely insure that sufficient facts are in the decision which comply with the standard-which it has clearly done in this case. The factors cited, which were appellant's instant offenses, committed while on probation, violent escalation of his criminal history, and blaming the instant offense on peer pressure, show the required statutory findings were in fact made in this case. Language used in the decision which is only semantically different from the statutory language (e.g. continued incarceration serves the community standards) is permissible. James v Chairman of the New York State Division of Parole, 19 A.D.3d 857, 796 N.Y.S.2d 735 (3d Dept. 2005); Miller v New York State Division of Parole, 72 A.D.3d 690, 897 N.Y.S.2d 726 (2d Dept. 2010). Although the Board's determination could have been stated more artfully, this is insufficient to annul the decision. Ek v Travis, 20 A.D.3d 667, 798 N.Y.S.2d 199 (3d Dept 2005). The Board's failure to recite the precise statutory language of the first sentence in support of its conclusion to deny parole release does not undermine it's determination. Silvero v Dennison, 28 A.D.3d 859, 811 N.Y.S.2d 822 (3d Dept. 2006); Reed v Evans, 94 A.D.3d 1323, 942 N.Y.S.2d 387 (3d Dept. 2012); Mullins v New York State Board of Parole, 136 A.D.3d 1141, 25 N.Y.S.3d 698 (3d Dept. 2016).

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[redacted]

A claim that the denial of parole release amounted to a resentencing is without merit. Kalwasinski v Patterson, 80 A.D.3d 1065, 915 N.Y.S.2d 715 (3d Dept. 2011) lv.app.den. 16 N.Y.3d 710, 922 N.Y.S.2d 273 (2011); Marnell v Dennison, 35 A.D.3d 995, 824 N.Y.S.2d 812 (3d Dept. 2006) lv.den. 8 N.Y.3d 807, 833 N.Y.S.2d 426; Murray v Evans, 83 A.D.3d 1320, 920 N.Y.S.2d 745 (3d Dept. 2011); Gonzalez v Chair, New York State Board of Parole, 72 A.D.3d 1368, 898 N.Y.S.2d 737 (3d Dept. 2010); Borcsok v New York State Division of Parole, 34 A.D.3d 961, 823 N.Y.S.2d 310 (3d Dept. 2006) lv.den. 8 N.Y.3d 803, 830 N.Y.S.2d 699. The Board was vested with discretion to determine whether release was appropriate, notwithstanding what the minimum period of incarceration which was set by the Court. Cody v Dennison, 33 A.D.3d 1141, 1142 (3d Dept. 2006), lv.den. 8 N.Y.3d 2007; Burress v Dennison, 37 A.D.3d 930, 829 N.Y.S.2d 283 (3d Dept. 2007).

There are no substantial evidence issues in a Parole Board Release Interview. Valderrama v Travis, 19 A.D.3d 904, 905, 796 N.Y.S.2d 758 (3d Dept. 2005); Tatta v Dennison, 26 A.D.3d 663, 809 N.Y.S.2d 296 (3d Dept. 2006) lv.den. 6 N.Y.3d 714, 816 N.Y.S.2d 750; Harris v New York State Division of Parole, 211 A.D.2d 205, 628 N.Y.S.2d 416 (3d Dept. 1995). A substantial evidence issue arises only where a quasi-judicial hearing has been held and evidence has been taken pursuant to law. If no hearing was held, the issue does not arise. Horace v Annucci, 133 A.D.3d 1263, 20 N.Y.S.3d 492 (4th Dept. 2015). A proceeding to determine whether an inmate should be released on parole is not a quasi-judicial hearing. Banks v Stanford, 159 A.D.3d 134, 71 N.Y.S.3d 515 (2d Dept. 2018).

The Board set forth in adequate detail the reasons for its denial of the inmate's request for release. Burress v Evans, 107 A.D.3d 1216, 967 N.Y.S.2d 486 (3d Dept. 2013). The written Board decision in this case contains sufficient detail. McLain v New York State Division of Parole, 204 A.D.2d 456, 611 N.Y.S.2d 629 (2d Dept 1994); 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); Thomas v Superintendent of Arthur Kill Correctional Facility, 124 A.D.2d 848, 508 N.Y.S.2d 564 (2d Dept 1986), appeal dismissed 69 N.Y.2d 611, 517 N.Y.S.2d 1025 (1987); De la Cruz v Annucci, 122 A.D.3d 1413, 997 N.Y.S.2d 872 (4th Dept. 2014); Betancourt v Stanford, 148 A.D.3d 1497, 49 N.Y.S.3d 315 (3d Dept. 2017); Robinson v New York State Board of Parole, 162 A.D.3d 1450, 81

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N.Y.S.3d 235 (3d Dept. 2018); Applegate v New York State Board of Parole, 164 A.D.3d 996, 82 N.Y.S.3d 240 (3d Dept. 2018).

As for an alleged similarity to prior Board decisions, since the Board is required to consider the same statutory factors each time an inmate appears before it, then it follows that the same aspects of the individual's record may again constitute the primary grounds for the denial of parole. Hakim v Travis, 302 A.D.2d 821, 754 N.Y.S.2d 600 (3d Dept 2003); Nelson v New York State Parole Board, 274 A.D.2d 719, 711 N.Y.S.2d 792 (3d Dept 2000); Bridget v Travis, 300 A.D.2d 776, 750 N.Y.S.2d 795 (3d Dept 2002). Per Executive Law §259-i(2)(c)(A), the Board is required to consider the same factors each time he appears in front of them. Williams v New York State Division of Parole, 70 A.D.3d 1106, 894 N.Y.S.2d 224 (3d Dept. 2010) lv.den. 14 N.Y.3d 709, 901 N.Y.S.2d 143.

As for a lack of future guidance, there is no due process right to an inmate obtaining a statement as to what he should do to improve his chances for parole in the future. Boothe v Hammock, 605 F.2d 661 (2d Cir. 1979); Watkins v Caldwell, 54 A.D.2d 42, 387 N.Y.S.2d 177 (4th Dept 1976); Freeman v New York State Division of Parole, 21 A.D.3d 1174, 800 N.Y.S.2d 797 (3d Dept 2005); Francis v New York State Division of Parole, 89 A.D.3d 1312, 934 N.Y.S.2d 514 (3d Dept. 2011). There is no legal requirement that a second Parole Board panel must follow the recommendation of a prior Parole Board panel, nor that the same members should constitute both panels. Flores v New York State Board of Parole, 210 A.D.2d 555, 620 N.Y.S.2d 141, 142 (3d Dept 1994).

A deportation order is not determinative and is only one factor to consider in determining parole release and the existence of such order does not require an inmate's release. Kelly v Hagler, 94 A.D.3d 1301, 942 N.Y.S.2d 290 (3d Dept. 2012); de los Santos v Division of Parole, 96 A.D.3d 1321, 947 N.Y.S.2d 674 (3d Dept. 2012); Molinar v New York State Division of Parole, 119 A.D.3d 1214, 991 N.Y.S.2d 487 (3d Dept. 2014); Borrell v New York State Division of Parole, 123 A.D.3d 1206, 998 N.Y.S.2d 513 (3d Dept. 2014) mot. recon. den. 2015 WL 233946.; Del Rosario v Stanford, 140 A.D.3d 1515, 34 N.Y.S.3d 696 (3d Dept. 2016); Perea v Stanford, 149 A.D.3d 1392, 53 N.Y.S.3d 231 (3d Dept. 2017); Peralta v New York State Board of Parole, 157 A.D.3d 1151, 69 N.Y.S.3d 885 (3d Dept. 2018).

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There is no requirement under Executive Law 259-i(2)(d) that the Parole Board must grant CPDO merely because the inmate has completed his minimum term and is subject to a final order of deportation. Samuel v Alexander, 69 A.D.3d 861, 892 N.Y.S.2d 557 (2d Dept. 2010).

Although appellant met the statutory criteria for CPDO eligibility, such eligibility, as noted is only one factor to be considered in granting parole under Executive Law §259-i(2)(d). Eligibility does not equate to entitlement for parole release or preclude consideration of the usual factors in the Executive Law relevant to making that decision per Executive Law §259-i(2)(c). The Parole Board still has its discretion. Ortiz v. State Board of Parole, 239 A.D.2d 52, 668 N.Y.S.2d 823 (4th Dept. 1998); leave denied 92 N.Y.2d 811, 680 N.Y.S.2d 457; Oyekoya v New York State Department of Parole, 276 A.D.2d 960, 714 N.Y.S.2d 798 (3d Dept 2000); Hunter v New York State Division of Parole, 21 A.D.3d 1178, 800 N.Y.S.2d 799 (3d Dept 2005); Borrell v New York State Board of Parole, 85 A.D.3d 1515, 925 N.Y.S.2d 922(3d Dept. 2011) lv.app.den. 17 N.Y.3d 718, 936 N.Y.S.2d 75 (2011).

The Board may consider an Order of Deportation. Silvero v Dennison, 28 A.D.3d 859, 811 N.Y.S.2d 822 (3d Dept. 2006), but the release decision is still discretionary. Borrell v New York State Division of Parole, 123 A.D.3d 1206, 998 N.Y.S.2d 513 (3d Dept. 2014) mot. recon. den. 2015 WL 233946.

Denial of parole is neither arbitrary nor capricious when the Parole Board relied on the factors defined by the New York statute. Hodge v Griffin, 2014 WL 2453333(S.D.N.Y. 2014) citing Romer v Travis, 2003 WL 21744079. An arbitrary action is one without sound basis in reason and without regard to the facts. Rationality is what is reviewed under an arbitrary and capricious standard. Hamilton v New York State Division of Parole, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014). An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts. Ward v City of Long Beach, 20 N.Y.3d 1042 (2013).

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).

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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 (4th 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).

As appellant was over the age of 18 years when the committed the instant offenses, the Hawkins decision does not apply.

Per 9 N.Y.C.R.R. 8006.3, the Appeals Unit lacks subject matter jurisdiction over the type of report prepared for the Board. Although it can be noted that the Parole Board Report does comply with Executive Law 259-e. An inmate has no right to the letter from the District Attorney to the Parole Board. Grigger v New York State Division of Parole, 11 A.D.3d 850, 783 N.Y.S.2d 689 (3d Dept. 2004); Matter of Ramahlo v Bruno, 273 A.D.2d 521, 708 N.Y.S.2d 206 (3d Dept. 2000) lv. den. 95 N.Y.2d 767 (2000); Mingo v New York State Division of Parole, 244 A.D.2d 781, 666 N.Y.S.2d 245 (3d Dept. 1997). Per Executive Law 259-i(2)(c)(B), items submitted to the Parole Board are deemed to be confidential. Per Executive Law 259-k(2) and 9 N.Y.C.R.R. 8000.5(c)(2)(i)(a)(b), the Parole Board is entitled to designate certain parole records as confidential. Wade v Stanford, 148 A.D.3d 1487, 52 N.Y.S.3d 508 (3d Dept. 2017). An inmate has no constitutional right to the information in his parole file. Billiteri v U.S. Board of Parole, 541 F.2d 938, 944-945 (2d Cir. 1976). An inmate does not have automatic access to confidential material. Matter of Perez v New York State Division of Parole, 294 A.D.2d 726, 741 N.Y.S.2d 753 (3d Dept 2002); Macklin v Travis, 274 A.D.2d 821, 711 N.Y.S.2d 915, 916 (3d Dept. 2000).

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There is no 6th amendment violation, as this is not an evidentiary proceeding. A parole release interview is not a full advesarial type proceeding. The nature and extent of the interview and attendant release considerations is solely within the discretion of the Parole Board. Matter of Briguglio v New York State Board of Parole, 24 N.Y.2d 21, 298 N.Y.S.2d 704, 710 (1969). The Parole Board is not the appellant's advesary. It has an identity of interest with him to encourage rehabilitation and readjustment to society. It is not an advesarial proceeding, and there are no charges or disputed issues of fact. Menechino v Oswald, 430 F.2d 403, 407 (2d Cir. 1970); cert. den. 400 U.S. 1023, 91 S.Ct. 588, 27 L.Ed2d 635 (1971).

As for due process/constitutional liberty interest in a legitimate expectation of early release, at the Federal level, there is no inherent constitutional right to parole. Greenholtz v Inmates of Nebraska Penal and Correctional Complex, 442 U.S. 1, 99 S.Ct. 2100, 2104, 60 L.Ed2d 668 (1979) or to be released before the expiration of a valid sentence. Swarthout v Cooke,562 U.S. 216, 131 S.Ct. 859, 178 L.Ed2d 732 (2011). Nor, under the New York State Constitution, is there a due process right to parole. Russo v New York State Board of Parole, 50 N.Y.2d 69, 427 N.Y.S.2d 982, 984 (1980); Boothe v. Hammock, 605 F.2d 661 (2d Cir. 1979). The New York State parole scheme is not one that creates in any prisoner a legitimate expectancy of release. No entitlement to release is created by the parole provisions. Accordingly, appellant has no liberty interest in parole. Duemmel v Fischer, 368 Fed.Appx. 180, 182 (2d Cir. 2010); Davis v Dennison, 219 Fed Appx 68 (2d Cir. 2007), cert. den. 552 U.S. 863, 128 S.Ct. 151, 169 Led2d 103 (2007); Rodriguez v Alexander, 71 A.D.3d 1354, 896 N.Y.S.2d 693 (3d Dept. 2010), lv. den. 15 N.Y.3d 703, 906 N.Y.S.2d 817. Thus, the protections of the due process clause are inapplicable. Barna v Travis, 239 F.3d 169, 171 (2d Cir. 2001); Freeman v New York State Division of Parole, 21 A.D.3d 1174, 800 N.Y.S.2d 797 (3d Dept 2005); Watson v New York State Board of Parole, 78 A.D.3d 1367, 910 N.Y.S.2d 311 (3d Dept. 2010).

Completion of the minimum term of the sentence still does not create any protected liberty interest. Motti v Alexander, 54 A.D.3d 1114, 1115 (3d Dept. 2008).

Nothing in the due process clause requires the Parole Board to specify the particular evidence on which rests the discretionary determination an inmate is not ready for conditional release. Duemmel v Fischer, 368 Fed.Appx. 180, 182 (2d Cir. 2010). There is no due process requirement that the Parole Board disclose its release criteria. Haymes v Regan, 525 F.2d 540 (2d Cir. 1975).

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The due process clause is not violated by the Board's balancing of the statutory criteria, and which is not to be second guessed by the courts. Mathie v Dennison, 2007 WL 2351072 (S.D.N.Y. 2007); MacKenzie v Cunningham, 2014 WL 5089395 (S.D.N.Y. 2014).

Parole is not constitutionally based, but is a creature of statute which may be imposed subject to conditions imposed by the state legislature. Banks v Stanford, 159 A.D.3d 134, 71 N.Y.S.3d 515 (2d Dept. 2018).

There is a presumption of honesty and integrity that attaches to Judges and administrative fact-finders. People ex.rel. Johnson v New York State Board of Parole, 180 A.D.2d 914, 580 N.Y.S.2d 957, 959 (3d Dept 1992); Withrow v Larkin, 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed2d 712 (1975). And, Courts presume the Parole Board follows its statutory commands and internal policies in fulfilling its obligations. Garner v Jones, 529 U.S. 244, 120 S.Ct. 1362, 1371, 146 L.Ed2d 236 (2000). There is no merit to the inmate's contention that the parole interview was improperly conducted or that he was denied a fair interview. Black v New York State Board of Parole, 54 A.D.3d 1076, 863 N.Y.S.2d 521 (3d Dept. 2008); Rivers v Evans, 119 A.D.3d 1188, 989 N.Y.S.2d 400 (3d Dept. 2014); Mays v Stanford, 150 A.D.3d 1521, 55 N.Y.S.3d 502 (3d Dept. 2017).

Allegations that the New York State Parole Board has systematically denied parole to prisoners convicted of violent crimes have been dismissed by the Courts. The Parole Board does not have a predetermination for an informal policy against violent felony offenders. Barna v Travis, 239 F.3^{d} 169 (2d Cir. 2001); Graziano v Pataki, 689 F.3d 110 (2d Cir. 2012); McAllister v New York State Division of Parole, 432 F.App'x 32 (2d Cir. 2011); Mathie v Dennison, 381 F.App'x 26 (2d Cir. 2010); Connelly v New York State Division of Parole, 286 A.D.2d 792, 729 N.Y.S.2d 808, 809 (3d Dept 2001), appeal dismissed 97 N.Y.2d 677, 738 N.Y.S.2d 291 (2001); Lue-Shing v Pataki, 301 A.D.2d 827, 828, 754 N.Y.S.2d 96, 97 (3d Dept. 2003) leave denied 99 N.Y.2d 511, 760 N.Y.S.2d 102 (2003); Cardenales v Dennison, 37 A.D.3d 371, 830 N.Y.S.2d 152 (1st Dept. 2007); Bottom v Travis, 8 A.D.3rd 1132, 773 N.Y.S.2d 717 (4th Dept. 2004); Little v Travis, 15 A.D.3d 698, 788 N.Y.S.2d 628 (3d Dept. 2005), app. dism. 4 N.Y.3d 878, 798 N.Y.S.2d 721 (2005); Karlin v Alexander, 57 A.D.3d 1156, 870 N.Y.S.2d 130 (3d Dept. 2008) lv.den. 12 N.Y.3d 704, 876 N.Y.S.2d 904; Cartagena v Alexander, 64 A.D.3d 841, 882 N.Y.S.2d 735 (3d Dept. 2009).

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Bucknor, Cornelius **Facility:** Eastern Correctional Facility

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The Courts will reject as pure speculation that a parole denial is due to political and media pressure. Huber v Travis, 264 A.D.2d 887, 695 N.Y.S.2d 622, 623 (3d Dept 1999); McGovern v Travis, 268 A.D.2d 924, 700 N.Y.S.2d 872, 873 (3d Dept 2000). Nor has the inmate proven any improper political interference directed at his individual parole application. Even if the Parole Board had a blanket policy to deny parole release to all violent felons, it would not violate the federal due process clause of the constitution. Bottom v Pataki et.al. 610 Fed.Appx 38 (2d Cir. 2015).

Appellant's claim that the Board failed to comply with the 2011 amendments to the Executive Law is rejected. Dolan v New York State Board of Parole, 122 A.D.3d 1058, 995 N.Y.S.2d 850 (3d Dept. 2014); Tran v Evans, 126 A.D.3d 1196, 3 N.Y.S.3d 633 (3d Dept. 2015); Boccadisi v Stanford, 133 A.D.3d 1169, 20 N.Y.S.3d 477 (3d Dept. 2015). Furthermore, the 2011 Executive Law amendments have been incorporated into the regulations adopted by the Board in 2017.

The 2011 amendments to the Executive Law, as well as the state regulations governing parole, do not create a legitimate expectancy of release that would give rise to a due process interest in parole. Fuller v Evans, 586 Fed.Appx. 825 (2d Cir. 2014) cert.den. 135 S.Ct. 2807, 192 L.Ed2d 851. Parole is not constitutionally based, but is a creature of statute which may be imposed subject to conditions imposed by the state legislature. Banks v Stanford, 159 A.D.3d 134, 71 N.Y.S.3d 515 (2d Dept. 2018). The 2017 amended regulations don't create any substantive right to release, but rather, merely increase transparency in the final decision. Courts must defer to the Parole Board's interpretation of its own regulations so long as it is rational and not arbitrary nor capricious. Brown v Stanford, 163 A.D.3d 1337, 82 N.Y.S.3d 622 (3d Dept. 2018).

The 2014 regulations have been repealed.

Letters from several leading Assemblymen, to the extent they depart from rulings of the Appellate Division, are not entitled to any weight by the courts. Matter of Tarbell v Stanford, Index # 1052-14, *Judgment* dated June 27, 2014 (Sup. Ct. Albany Co.)(Weinstein J.S.C.).

Corrections Law 71-a and 112(4) have no guarantee of release upon an inmate's successful completion of programs. Hodge v Griffin, 2014 WL 2453333(SDNY 2014).

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The 2011 amendments still permit the Board to place greater emphasis on the gravity of the crime. Matter of Montane v Evans, 116 A.D.3d 197, 981 N.Y.S.2d 866 (3d Dept.) appeal dismissed 24 N.Y.3d 1052, 999 N.Y.S.2d 360 (2014); Hamilton v New York State Division of Parole, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014); Moore v New York State Board of Parole, 137 A.D.3d 1375, 26 N.Y.S.3d 412 (3d Dept. 2016). The Board can still consider the nature of the inmate's crimes, the criminal history, the prison disciplinary record, the program accomplishments and post release plans. Rivera v New York State Division of Parole, 119 A.D.3d 1107, 990 N.Y.S.2d 295 (3d Dept. 2014). The Board is obligated to consider the serious nature of the crime. Khatib v New York State Board of Parole, 118 A.D.3d 1207, 988 N.Y.S.2d 286 (3d Dept. 2014).

A positive COMPAS score does not create any guarantee to release, but rather is only one factor considered by the Board in exercising its discretion when making a parole determination. Rivera v New York State Division of Parole, 119 A.D.3d 1107, 990 N.Y.S.2d 295 (3d Dept. 2014); Dawes v Beale, 122 A.D.3d 1059, 994 N.Y.S.2d 747 (3d Dept. 2014); Byas v Fischer, 120 A.D.3d 1586, 992 N.Y.S.2d 813 (4th Dept. 2014); Matter of Montane v Evans, 116 A.D.3d 197, 981 N.Y.S.2d 866 (3d Dept.) appeal dismissed 24 N.Y.3d 1052, 999 N.Y.S.2d 360 (2014); LeGeros v New York State Board of Parole, 139 A.D.3d 1068, 30 N.Y.S.3d 834 (2d Dept. 2016); 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). Notably, the 2011 amendments to the Executive Law did not change the three substantive standards that the Board is required to apply when deciding whether to grant parole, namely (1) whether "there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law"; (2) whether release "is not incompatible with the welfare of society"; and (3) whether release "will not so deprecate the seriousness of his crime as to undermine respect for law." *See* Executive Law § 259-i(2)(c)(A). Even uniformly low COMPAS scores and other evidence of rehabilitation would not resolve the broader questions of society's welfare, public perceptions of the seriousness of a crime, or whether release would undermine respect for the law. Thus the COMPAS cannot mandate a particular result, and declining to afford the COMPAS controlling weight does not violate the 2011 amendments. King v Stanford, 137 A.D.3d 1396, 26 N.Y.S.3d 815 (3d Dept 2016); Furman v Annucci, 138 A.D.3d 1269, 28 N.Y.S.3d 352 (3d Dept. 2016).

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The COMPAS is an additional consideration that the Board must weigh along with the statutory factors for purposes of deciding whether the three standards are satisfied. Rivera v New York State Division of Parole, 119 A.D.3d 1107, 1108, 990 N.Y.S.2d 295 (3d Dept. 2014); Dawes v Annucci, 122 A.D.3d 1059, 1061, 994 N.Y.S.2d 747 (3d Dept. 2014).

Appellant's final claim is that the 24 month hold is excessive.

In response, the Board's decision to hold the 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 (d). Abascal v New York State Board of Parole, 23 A.D.3d 740, 802 N.Y.S. 2d 803 (3d Dept. 2005); Matter of Sinopoli v. New York State Board of Parole, 189 A.D.2d 960, 592 N.Y.S.2d 831 (3d Dept. 1993); Matter of Ganci v. Hammock, 99 A.D.2d 546, 471 N.Y.S.2d 630 (2d Dept. 1984). As such, appellant failed to demonstrate that the hold of 24 months was excessive. Hill v New York State Board of Parole, 130 A.D.3d 1130, 14 N.Y.S.3d 515 (3d Dept. 2015); Kalwasinski v Patterson, 80 A.D.3d 1065, 915 N.Y.S.2d 715 (3d Dept. 2011) lv.app.den. 16 N.Y.3d 710, 922 N.Y.S.2d 273 (2011); Matter of Madlock v. Russi, 195 A.D.2d 646, 600 N.Y.S.2d 283 (3d Dept. 1993); Confoy v New York State Division of Parole, 173 A.D.2d 1014, 569 N.Y.S.2d 846,848 (3d Dept 1991); Smith v New York State Division of Parole, 64 A.D.3d 1030, 882 N.Y.S.2d 759 (3d Dept. 2009); Smith v New York State Division of Parole, 81 A.D.3d 1026, 916 N.Y.S.2d 285 (3d Dept. 2011); Shark v New York State Division of Parole Chair, 110 A.D.3d 1134, 972 N.Y.S.2d 741 (3d Dept. 2013).

Recommendation:

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