

Fordham Law School

## FLASH: The Fordham Law Archive of Scholarship and History

---

Parole Administrative Appeal Decisions

Parole Administrative Appeal Documents

---

May 2022

### Administrative Appeal Decision - Stanley, Jules (2018-12-28)

Follow this and additional works at: <https://ir.lawnet.fordham.edu/aad>

---

#### Recommended Citation

"Administrative Appeal Decision - Stanley, Jules (2018-12-28)" (2022). Parole Information Project  
<https://ir.lawnet.fordham.edu/aad/787>

This Parole Document is brought to you for free and open access by the Parole Administrative Appeal Documents at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Parole Administrative Appeal Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

Administrative Appeal Decision Notice

Inmate Name: Stanley, Jules

Facility: Wyoming Correctional Facility

NYSID No.: [REDACTED]

Appeal Control No.: 04-183-18 B

DIN: 13-A-1801

Appearances:

For the Board, the Appeals Unit

For Appellant: Norman P. Effman, Esq.  
Wyoming County-Attica Legal Aid Bureau  
18 Linwood Ave  
Warsaw, NY 14569

Board Member(s) who participated in appealed from decision: Cruse, Smith, Jr., Coppola.

Decision appealed from: 4/2018 denial of discretionary release with 18-month hold.

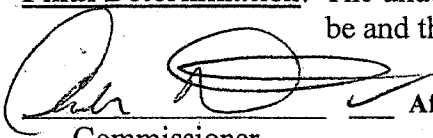
Pleadings considered:

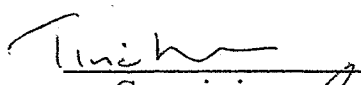
Brief on behalf of the Appellant submitted on: August 28, 2018.  
Statement of the Appeals Unit's Findings and Recommendation.

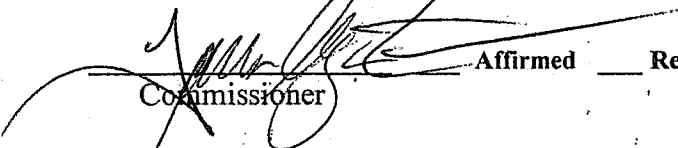
Documents relied upon:

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 have determined that the decision from which this appeal was taken be and the same is hereby

 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 \_\_\_\_\_  
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 12/28/18 CG.

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:** Stanley, Jules

**Facility:** Wyoming Correctional Facility

**DIN:** 13-A-1801

**Appeal Control No.:** 04-183-18 B

**Findings:** (Page 1 of 2)

Appellant, currently serving a determinate sentence of seven years' incarceration for attempted robbery in the first degree and a life maximum for a prior offense, challenges the April 2018 Board of Parole decision, denying release and imposing an 18-month hold. Appellant contends the Board failed to properly consider his receipt of an earned eligibility certificate ("EEC"), improperly considered his non-payment of restitution and improperly based its denial on the severity of his instant offense.

Decisions regarding discretionary release on parole are made pursuant to Section 259-c(1) of the Executive Law, which grants the Board "the power and duty of determining which inmates serving an indeterminate or determinate sentence of imprisonment may be released on parole . . . ." In making this determination, Executive Law § 259-i(2)(c)(A) and 9 NYCRR 8002.2 require the Board to consider certain factors and principles.

While the 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 within the Board's discretion. See, e.g., Matter of King v. Stanford, 137 A.D.3d 1396, 26 N.Y.S.3d 815 (3d Dept. 2016); Matter of Delacruz v. Annucci, 122 A.D.3d 1413, 997 N.Y.S.2d 872 (4th Dept. 2014); People ex rel. Herbert, 97 A.D.2d 128, 468 N.Y.S.2d 881. 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 Marszalek v. Stanford, 152 A.D.3d 773, 59 N.Y.S.3d 432 (2d Dept. 2017); Matter of Phillips v. Dennison, 41 A.D.3d 17, 21, 834 N.Y.S.2d 121, 124 (1st Dept. 2007). In the absence of a convincing demonstration that the Board did not consider the statutory factors, it 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).

Turning to appellant's contention that the Board failed to properly consider his receipt of an EEC, it should be noted that while Correction Law § 805 provides that an inmate who has received an EEC will be released "unless the board of parole determines that there is a reasonable probability that, if such inmate is released, he will not live and remain at liberty without violating the law and that his release is not compatible with the welfare of society," the EEC does not automatically guarantee release or eliminate consideration of the other statutory factors. Matter of Milling v. Berbarly, 31 A.D.3d 1202, 1203, 819 N.Y.S.2d 373, 374 (4th

STATE OF NEW YORK - BOARD OF PAROLE

**STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION**

**Inmate Name:** Stanley, Jules

**Facility:** Wyoming Correctional Facility

**DIN:** 13-A-1801

**Appeal Control No.:** 04-183-18 B

**Findings:** (Page 2 of 2)

Dept.), lv. denied 7 N.Y.3d 808, 809, 822 N.Y.S.2d 481 (2006); Matter of White v. Dennison, 29 A.D.3d 1144, 814 N.Y.S.2d 393 (3d Dept. 2006).

In the matter at hand, the record reflects the Board properly considered the applicable factors and principles. During the interview the Board properly considered the instant offense, in which appellant stole the victim's personal property by threatening the use of a weapon. Notably the Board considered the instant offense in the context of considering appellant's criminal history and his performance under prior periods of probation and parole supervision, noting that the instant offense was committed while under parole supervision for a prior murder in the second degree, [REDACTED]. In addition, the Board considered: appellant's disciplinary history, which included a recent Tier III violation; his COMPAS risk and needs assessment, which included a high score on the reentry substance abuse scale; his case plan and programming; his release plans; and his receipt of the EEC.

Although appellant argues the Board improperly treated his nonpayment of restitution as demonstrating insufficient remorse for and insight into his commission of the instant offense, it should be noted that this inquiry occurred after appellant described his offense as collecting a debt the victim owed him, stating "[m]y problem is that I tried to use intimidation and fear to get him to repay me back". In any event, the record reflects that the Board, after an initial misunderstanding about the restitution order, referred to the sentencing minutes and confirmed order did not require payment prior to release. Moreover, even assuming *arguendo* that the Board's inquiry into restitution was error, the written decision does not reflect any reliance on its nonpayment in its determination and, therefore, any error would be harmless. Matter of Khatib v. New York State Bd. of Parole, 118 A.D.3d 1207, 1208, 988 N.Y.S.2d 286 (3d Dept. 2014).

Thus, the Board acted within its discretion in determining these considerations rebutted any presumption created by the EEC and rendered discretionary release inappropriate at this time. See generally Matter of Bello v. Bd. of Parole, 149 A.D.3d 1458, 53 N.Y.S.3d 715 (3d Dept. 2017); Matter of Wade v. Stanford, 148 A.D.3d 1487, 52 N.Y.S.3d 508 (3d Dept. 2017); Matter of Furman v. Annucci, 138 A.D.3d 1269, 28 N.Y.S.3d 352 (3d Dept. 2016).

**Recommendation:** That the decision of the Board of Parole denying appellant parole and imposing an 18-month hold be affirmed in all respects.