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Administrative Appeal Decision - Puente, Orlando (2018-12-28)

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STATE OF NEW YORK BOARD OF PAROLE

Administrative Appeal Decision Notice

Inmate Name: Puente, Orlando

Facility: Fishkill Correctional Facility

NYSID No.: [REDACTED]

Appeal Control #: 05-206-18-B

Dept. DIN#: 82A5175

Appearances:

For the Board, the Appeals Unit

For Appellant: Mary Raleigh Esq.
27 Crystal Farm Road
Warwick, New York 10990

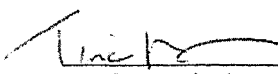
Board Member(s) who participated in appealed from decision: Crangle, Cruse, Davis


Decision appealed from: 5/2018-Denial of discretionary release, with imposition of 24 month hold.

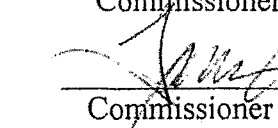
Pleadings considered: Brief on behalf of the appellant received on October 2, 2018.
Statement of the Appeals Unit's Findings and Recommendation

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

 _____ 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.

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: Puente, Orlando

Facility: Fishkill Correctional Facility

Dept. DIN#: 82A5175

Appeal Control #: 05-206-18-B

Findings:

Counsel for the appellant has submitted a brief to serve as the perfected appeal. The brief raises two primary issues: 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, but all the Board did was as in prior interviews to look only at the instant offense. Appellant alleges the Board decision failed to make required findings of fact or to provide detail, ignored the Deportation Order, and illegally resentenced him. All of this is in violation of the due process clause of the constitution. 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 based.

For the reason explained below, only one issue raised will be addressed.

One of appellant's claims is the decision lacks detail, and the interview failed to ask about many relevant statutory subject areas as well.

In response, there was clearly an insufficient amount of detailed questions asked during the Board interview concerning different subject areas. And, the decision lacks any detail as to why the instant offense, standing alone, justifies the denial. As such, a de novo interview is required.

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.