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STATE OF NEW YORK - BOARD OF PAROLE
Administrative Appeal Decision Notice

Inmate Name: JONES, WILLIAM

Facility: Green Haven Correctional Facility

NYSID No. [REDACTED]

Appeal Control #: 05-054-18 B

Dept. DIN#: 99A4575

Appearances:

For the Board, the Appeals Unit

For Appellant:

William Jones (99A4575)
Green Haven Correctional Facility
594 Rt. 216
Stormville, New York 12582

Board Member(s) who participated in appealed from decision: Coppola, Drake, Demosthenes.

Decision appealed from: 4/2018 Denial of Discretionary Release; 18-month hold.

Pleadings considered:


Brief on behalf of the Appellant submitted on: October 9, 2018.

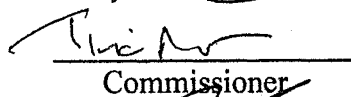
Statement of the Appeals Unit's Findings and Recommendation.


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.
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

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Appellant raises various issues in the brief he submitted in support of the administrative appeal he initiated following the Board of Parole's decision to deny his immediate release to community supervision following an interview held on or about April 25, 2018. The Appeals Unit has reviewed each of the issues raised by Appellant and finds that the issues have no merit.

The issues raised by Appellant are as follows: (1) the COMPAS instrument considered by the Board at the time of the interview contained erroneous information, and failed to account for Appellant's [REDACTED] (2) the Board's decision to deny Appellant's release to community supervision was arbitrary and capricious; (3) Appellant's "parole objectives" and prior success while on probation were not afforded sufficient weight by the Board when assessing the suitability of his possible release to community supervision; (4) certain statements made by the trial court judge at Appellant's sentencing (contained in the sentencing minutes), and certain other issues, were not discussed during the Board interview; (5) Appellant wanted more time to prepare for the Board interview; (6) the Board's statement in its decision that Appellant's criminal history includes alcohol intoxication is not accurate, and Appellant states on page 6 of his brief that "alcohol intoxication is not on my record"; and (7) Appellant's disciplinary incidents involving an assault on an inmate, and an assault on prison staff, which resulted in his receipt of disciplinary tickets, were the result of what Appellant claims on page 4 of his brief was a "misunderstanding", and the panel therefore did not properly consider these facts when making its determination to deny his immediate release back into the community.

As to the first, fourth and fifth issues, which complain that certain issues were not discussed during the interview, that there may have been errors contained in records before the Board at the time of the interview, and that the interview should have been postponed, these issues have all been waived and will not be addressed herein. Appellant was provided the opportunity to discuss the aforementioned issues with the Board during the interview, and cannot now be heard to complain that these were not discussed, or the extent to which certain issues were discussed, as he failed to raise these issues at that time. See Matter of Morrison v. Evans, 81 A.D.3d 1073 (3d Dept. 2011); Matter of Jones v. New York State Div. of Parole, 24 A.D.3d 827 (3d Dept. 2005); Matter of Serna v. New York State Division of Parole, 279 A.D.2d 684 (3d Dept. 2001); Matter of Garcia v. New York State Div. of Parole, 239 A.D.2d 235 (1st Dept. 1997).

As to the second issue, the legal standard governing the decision-making process of the Board when assessing the suitability of an inmate's possible release to community supervision is: (1) whether or not there is a reasonable probability that the inmate, if released, will live and remain at liberty without violating the law; (2) whether or not the inmate's release is incompatible with the welfare of society; and (3) whether or not the inmate's release will so deprecate the seriousness of the crime as to undermine respect for law. See Executive Law §§259-c(4), 259-i(2)(c)(A);

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Robles v. Dennison, 745 F. Supp. 2d 244 (W.D.N.Y. 2010); Matter of Hamilton v. New York State Div. of Parole, 119 A.D.3d 1268 (3d Dept. 2014). In the instant case, the Board considered each of these three factors and specifically relied upon factors (1) and (2) in making its determination to deny Appellant's release to community supervision and further found that it was not convinced that Appellant would live and remain at liberty without violating the law.

“Clearly, the Board of Parole has been vested with an extraordinary degree of responsibility in determining who will go free and who will remain in prison, and a [inmate] who seeks to obtain judicial review on the grounds that the Board did not properly consider all of the relevant factors, or that an improper factor was considered, **bears a heavy burden.**” Garcia v. New York State Div. of Parole, 239 A.D.2d 235, 239 (1st Dep't 1997) (emphasis added). See also Matter of Phillips v. Dennison, 41 A.D.3d 17 (1st Dept. 2007).

Appellant has the burden of showing that the Board's determination was irrational, bordering on impropriety, and therefore arbitrary and capricious, before administrative or judicial intervention is warranted. Matter of Silmon v. Travis, 95 N.Y.2d 470 (2000); Singh v. Dennison, 107 A.D. 3d 1274 (3d Dept. 2013). It is not the function of the Appeals Unit to assess whether the Board gave proper weight to the relevant factors, but only whether the Board followed applicable legal authority when rendering its decision, and that is supported, and not contradicted, by the facts in the record. Matter of Comfort v. New York State Division of Parole, 68 A.D.3d 1295 (3d Dept. 2009); see Matter of Hamilton v. New York State Division of Parole, 119 A.D.3d 1268. The weight to be accorded each of the requisite factors remains solely a matter of the Parole Board's discretion. See Matter of Dolan v. New York State Board of Parole, 122 A.D.3d 1058 (3d Dept. 2014); Matter of Singh v. Evans, 118 A.D.3d 1209 (3d Dept. 2014); Matter of Khatib v. New York State Board of Parole, 118 A.D.3d 1207 (3d Dept. 2014); Matter of Montane v. Evans, 116 A.D.3d 197 (3d Dept.), leave to appeal granted, 23 N.Y.3d 903, appeal dismissed, 24 N.Y.3d 1052 (2014). Appellant has not demonstrated any abuse on the part of the Board in its decision-making process that would warrant a *de novo* release interview.

Unless Appellant is able to demonstrate convincing evidence to the contrary, the Board is presumed to have acted properly in accordance with statutory requirements, and judicial intervention is warranted only when there is a showing of irrationality to the extent that it borders on impropriety. Matter of Jackson v. Evans, 118 A.D.3d 701 (2d Dept. 2014); Matter of Williams v. New York State Div. of Parole, 114 A.D.3d 992 (3rd Dept. 2014); Matter of Thomches v. Evans, 108 A.D.3d 724 (2d Dept. 2013).

So long as the decision denying release to community supervision is made in accordance with statutory requirements, it is not to be set aside when subject to administrative or judicial review,

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particularly given the narrow scope of judicial review of discretionary parole denial determinations. Matter of Hamilton v. New York State Division of Parole, 119 A.D.3d 1268 (3d Dept. 2014); Matter of Williams v. New York State Division of Parole, 114 A.D.3d 992 (3d Dept. 2014); Matter of Martinez v. Evans, 108 A.D.3d 815 (3d Dept. 2013); Matter of Burress v. Evans, 107 A.D.3d 1216 (3d Dept. 2013).

As to the third issue concerning Appellant's past achievements on probation, and his "parole objectives", an inmate is not automatically entitled to release to community supervision merely because of achievements within a prison's institutional setting, no matter how numerous. Pearl v. New York State Div. of Parole, 25 A.D.3d 1058 (3d Dept. 2006); Corley v. New York State Div. of Parole, 33 A.D.3d 1142 (3d Dept. 2006); Rivera v. Travis, 289 A.D.2d 829 (3d Dept. 2001). In addition, per Executive Law §259-i(2)(c)(A), an application for release to community supervision shall not be granted merely as a reward for Appellant's good conduct or achievements while incarcerated. Matter of Larrier v. New York State Board of Parole Appeals Unit, 283 A.D.2d 700 (3d Dept. 2001). Therefore, a determination that the inmate's exemplary achievements are outweighed by the severity of the crimes is within the Board's discretion. Matter of Anthony v. New York State Division of Parole, 17 A.D.3d 301 (1st Dept. 2005); Matter of Kirkpatrick v. Travis, 5 A.D.3d 385 (2d Dept. 2004).

As to the sixth issue, that the Board's statement in its decision that Appellant's criminal history includes alcohol intoxication is not accurate, and that alcohol intoxication is not part of Appellant's record, we note that on page 7, lines 19-22, of the transcript of the Board interview conducted on April 25, 2018, Commissioner Drake states: "I'm looking at your disciplinary and you've struggled as recently as a year ago with the alcohol intox." Appellant responded, "Yes." Additionally, Appellant's criminal history record includes a conviction for Driving While Intoxicated. Appellant's prison disciplinary record, and his criminal record, both include alcohol intoxication struggles. The Board's remarks in its decision that Appellant's record includes "alcohol intox" is, therefore, accurate.

As to the seventh issue, relating to Appellant's disciplinary record while incarcerated, we initially note that his record is substantial and includes his receipt of over thirty (30) disciplinary tickets for both Tier II and Tier III infractions. The activities Appellant received disciplinary tickets for cover a wide range of behaviors conducted in violation of prison rules, including: movement violation, alcohol/intoxication, creating disturbance, providing false information, loss/damage to property, disobeying a direct order, smuggling, flammable material, harassment, contraband, unauthorized medication, assault on inmate, assault on staff, drug possession, and drug use. As discussed above, to the extent that Appellant wanted to proffer any explanation for the multitude of disciplinary tickets he received, the time to have done so was during the interview.

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We note further that there is an appeal process for incidents resulting in the issuance of a disciplinary ticket, and Appellant utilized the appeal process many times. Finally, Appellant did state during the interview that there was a “misunderstanding” with respect to an incident involving an assault of staff. This comment, and any others made by Appellant during the interview, were considered by the Board when assessing his suitability for possible release to community supervision. While Appellant complains that the assault ticket he received against a prison staff member resulted from a “misunderstanding”, he did appeal that ticket, and his appeal was denied and resulted in his spending time in keep lock.

Finally, we note that there is a presumption of honesty and integrity that attaches to judges and administrative fact-finders. See People ex. rel. Johnson v. New York State Bd. of Parole, 180 A.D.2d 914 (3d Dept. 1992). The Board is presumed to have followed applicable statutory requirements and internal policies when making decisions regarding the suitability of an inmate’s possible release to parole supervision. See Garner v. Jones, 529 U.S. 244 (2000). There is no evidence that the Board’s decision was predetermined. See Matter of Hakim-Zaki v. New York State Div. of Parole, 29 A.D.3d 1190 (3d Dept. 2006); Matter of Guerin v. New York State Div. of Parole, 276 A.D.2d 899 (3d Dept. 2000).

Recommendation:

It is the recommendation of the Appeals Unit that the Board’s decision be affirmed.