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May 2022

### Administrative Appeal Decision - Berrios, Basilio (2021-10-21)

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STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Berrios, Basilio

**DIN:** 00-A-6815

**Facility:** Wyoming CF

**AC No.:** 04-004-21 B

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

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Appellant challenges the March 2021 determination of the Board, denying release and imposing a 24-month hold. Appellant's instant offenses are for having repeated sexual relations with his five year old step-granddaughter and 13 year old step-grandson. Appellant raises many issues. One of the issues raised is the Board departed from the COMPAS but never specified any individualized scale they were departing from.

The Board did depart from the COMPAS by putting in the decision there is a reasonable probability appellant would not live and remain at liberty without violating the law, which contradicted appellant's COMPAS scores. But the Board decision failed to say it was departing from the COMPAS. As such, since the regulation was not complied with, a de novo is required.

**Recommendation:** Vacate and remand for de novo interview.

STATE OF NEW YORK – BOARD OF PAROLE

**ADMINISTRATIVE APPEAL DECISION NOTICE**

Name: Berrios, Basilio Facility: Wyoming CF  
NYSID: [REDACTED] Appeal Control No.: 04-004-21 B  
DIN: 00-A-6815

Appearances: Norman Effman Esq.  
Wyoming County Legal Aid  
18 Linwood Avenue  
Warsaw, New York 14569

Decision appealed: March 2021 decision, denying discretionary release and imposing a hold of 24 months.

Board Member(s) who participated: Lee, Drake

Papers considered: Appellant’s Brief received July 27, 2021

Appeals Unit Review: Statement of the Appeals Unit’s Findings and Recommendation

Records 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 determine that the decision appealed is hereby:

[Signature] Affirmed  Vacated, remanded for de novo interview \_\_\_ Modified to \_\_\_  
Commissioner  
[Signature] Affirmed  Vacated, remanded for de novo interview \_\_\_ Modified to \_\_\_  
Commissioner  
[Signature] Affirmed  Vacated, remanded 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 Appellant and the Appellant’s Counsel, if any, on

10/21/2021  
LB