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May 2022

### Administrative Appeal Decision - Lucas, Sahim (2021-12-23)

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STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Lucas, Sahim

**DIN:** 12-A-3198

**Facility:** Mid-State CF

**AC No.:** 04-048-21 B

**Findings:** (Page 1 of 3)

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Appellant is serving a sentence of 20 to 40 years upon his conviction by verdict to Sex Trafficking: Fear of Injury and Promoting Prostitution in the Second Degree. The instant offense involved the Appellant inducing the victim, a thirteen-year-old girl, into prostitution, taking photographs of her and placing them on craigslist, and threatening the victim with physical injury if she ran away from him. Appellant challenges the March 2021 determination of the Board, denying release and imposing a 24-month hold on the following grounds: (1) the Appellant is innocent of the underlying charges; (2) the COMPAS results were inaccurate and relied on erroneous information; and (3) the Board misconstrued the Appellant’s behavior reports as violent incidents. These are arguments are without merit.

As an initial matter, discretionary release to parole is not to be granted “merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such incarcerated individual is released, he will live and remain at liberty without violating the law, **and** that his release is not incompatible with the welfare of society **and** will not so deprecate the seriousness of his crime as to undermine respect for the law.” Executive Law § 259-i(2)(c)(A) (emphasis added); accord Matter of Hamilton v. New York State Div. of Parole, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014). Executive Law § 259-i(2)(c)(A) requires the Board to consider factors relevant to the specific incarcerated individual, including, but not limited to, the individual’s institutional record and criminal behavior. People ex rel. Herbert v. New York State Bd. of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881 (1st Dept. 1983).

While 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 solely within the Board’s discretion. See, e.g., Matter of Delacruz v. Annucci, 122 A.D.3d 1413, 997 N.Y.S.2d 872 (4th Dept. 2014); Matter of Hamilton, 119 A.D.3d at 1271, 990 N.Y.S.2d at 717; Matter of Garcia v. New York State Div. of Parole, 239 A.D.2d 235, 239, 657 N.Y.S.2d 415, 418 (1st Dept. 1997). The Board need not explicitly refer to each factor in its decision, nor give them equal weight. Matter of Schendel v. Stanford, 185 A.D.3d 1365, 1366, 126 N.Y.S.3d 428, 429 (3rd Dept. 2020); Matter of Campbell v. Stanford, 173 A.D.3d 1012, 1015, 105 N.Y.S.3d 461 (2d Dept. 2019). 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 McLain v. New York State Div. of Parole, 204 A.D.2d 456, 611 N.Y.S.2d 629 (2d Dept. 1994); Matter of McKee v. New York State Bd. of Parole, 157 A.D.2d 944, 945, 550 N.Y.S.2d 204, 205 (3d Dept. 1990).

After considering all required factors, the Board acted within its discretion in determining release would not satisfy the standards provided for by Executive Law § 259-i(2)(c)(A). See Matter of Stanley v. New York State Div. of Parole, 92 A.D.3d 948, 948-49, 939 N.Y.S.2d 132, 134 (2d

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Dept.), lv. denied, 19 N.Y.3d 806, 949 N.Y.S.2d 343 (2012); Matter of Symmonds v. Dennison, 21 A.D.3d 1171, 1172, 801 N.Y.S.2d 90, 90 (3d Dept.), lv. denied, 6 N.Y.3d 701, 810 N.Y.S.2d 415 (2005); Matter of Warren v. New York State Div. of Parole, 307 A.D.2d 493, 493, 761 N.Y.S.2d 883 (3d Dept. 2003); Matter of Garcia v. New York State Div. of Parole, 239 A.D.2d 235, 239-40, 657 N.Y.S.2d 415, 418 (1st Dept. 1997); Matter of Silmon v. Travis, 95 N.Y.2d 470, 478, 718 N.Y.S.2d 704 (2000); Matter of Applegate v. New York State Bd. of Parole, 164 A.D.3d 996, 997, 82 N.Y.S.3d 240 (3d Dept. 2018). The record as a whole, including the interview transcript, reflects that the Board considered the appropriate factors, including the instant offense that involved sex-trafficking a thirteen-year-old girl; appellant's criminal history; appellant's institutional efforts and his disciplinary record which included numerous tickets involving violent conduct, drug use and alcohol intoxication; release plans and programming information. The Board also had before it and considered, among other things, a letter from the District Attorney's Office; the PSI and Appellant's parole packet.

Inasmuch as Appellant contends the Board failed to consider requisite factors, there is a presumption of honesty and integrity that attaches to Judges and administrative fact-finders. See People ex rel. Carlo v. Bednosky, 294 A.D.2d 382, 383, 741 N.Y.S.2d 703 (2d Dept. 2002); People ex. rel. Johnson v. New York State Bd. of Parole, 180 A.D.2d 914, 916, 580 N.Y.S.2d 957, 959 (3d Dept. 1992). The Board is presumed to follow its statutory commands and internal policies in fulfilling its obligations. See Garner v. Jones, 529 U.S. 244, 256, 120 S. Ct. 1362, 1371 (2000).

The appellant claims that he is innocent of the offenses for which he was convicted. However, a parole interview is not an adversarial proceeding and there are no 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 (1971); Matter of Briguglio v. New York State Bd. of Parole, 24 N.Y.2d 21, 28, 298 N.Y.S.2d 704, 710 (1969). The Board is obligated to rely upon appellant's conviction and assume his guilt in making its determination. Executive Law § 259-i; 9 N.Y.C.R.R. §§ 8001.3 and 8002.1, et seq.; Matter of Silmon v. Travis, 95 N.Y.2d 470, 476-77, 718 N.Y.S.2d 704, 707-708 (2000); Matter of Vigliotti v. State Executive Div. of Parole, 98 A.D.3d 789, 950 N.Y.S.2d 619 (3d Dept. 2012). It is not the Board's role to reevaluate a claim of innocence. Matter of Copeland v. New York State Bd. of Parole, 154 A.D.3d 1157, 63 N.Y.S.3d 548 (3d Dept. 2017).

As to the COMPAS procedures, Directive 8500 sets forth the operating procedures for the application of COMPAS Risk and Need Assessment. The Board does not prepare the COMPAS instrument, but merely considers the COMPAS and scores given to each risk or need. Cf Matter of Wall v. Stanford, Index # 2016-00112, *Mem. Decision & Order* dated Oct. 21, 2016 (Sup. Ct. Erie Co.) (Burns J.S.C.) The Board does not determine COMPAS scores and an administrative

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appeal to the Board is not the proper forum to challenge the COMPAS instrument. See Matter of Staropoli v. Botsford, 183 A.D.3d 1064, 124 N.Y.S.3d 107 (3rd Dept. 2020)

The Board may consider an incarcerated individual's failure to comply with DOCCS rules in denying parole. See Matter of Almonte v. New York State Bd. of Parole, 145 A.D.3d 1307, 42 N.Y.S.3d 691 (3d Dept. 2016), lv. denied, 29 N.Y.3d 905 (2017); Matter of Karlin v. Cully, 104 A.D.3d 1285, 1286, 960 N.Y.S.2d 827, 828 (4th Dept. 2013); Matter of Stanley v. New York State Div. of Parole, 92 A.D.3d 948, 948-49, 939 N.Y.S.2d 132, 134 (2d Dept.), lv. denied, 19 N.Y.3d 806, 949 N.Y.S.2d 343 (2012).

The Appellant contends that the Board mischaracterized his misbehavior reports as violent. However, despite having a discussion with the Board specifically related to his misbehavior reports described as "violent conduct", the appellant failed to raise an objection to the complained of fact at the parole interview. Thus, this claim has not been preserved. Matter of Morrison v. Evans, 81 A.D.3d 1073, 916 N.Y.S.2d 655 (3d Dept. 2011); Matter of Vanier v. Travis, 274 A.D.2d 797, 711 N.Y.S.2d 920 (3d Dept. 2000).

Denial of parole is neither arbitrary nor capricious when the 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). Denial is neither arbitrary nor capricious when the Board relies on factors defined by New York statute. Siao-Paul v. Connolly, 564 F. Supp. 2d 232, 242 (S.D.N.Y. 2008); Hanna v. New York State Board of Parole, 169 A.D.3d 503, 92 N.Y.S.3d 621 (1<sup>st</sup> Dept 2019).

The appellant has failed to demonstrate that the Parole Board's determination was affected by a showing of irrationality bordering on impropriety. Matter of Silmon v. Travis, 95 N.Y.2d 470, 718 N.Y.S.2d 704 (2001); Matter of Russo v. New York State Board of Parole, 50 N.Y.2d 69, 77, 427 N.Y.S.2d 982 (1980).

**Recommendation:** Affirm.

STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Lucas, Sahim

Facility: Mid-State CF

NYSID: [REDACTED]

Appeal Control No.: 04-048-21 B

DIN: 12-A-3198

Appearances: Sahim Lucas (12-A-3198)  
Mid-State Correctional Facility  
PO Box 2500  
Marcy, NY 13403

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

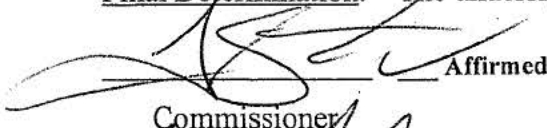
Board Member(s) who participated: Segarra, Berliner

Papers considered: Appellant's Letter-brief received September 17, 2021

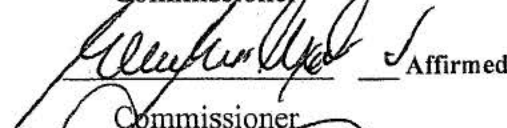
Appeals Unit Review: Statement of the Appeals Unit's Findings and Recommendation

Records relied upon: Pre-Sentence Investigation Report, Parole Board Report, Interview Transcript, Parole Board Release Decision Notice (Form 9026), COMPAS instrument, Offender Case Plan.

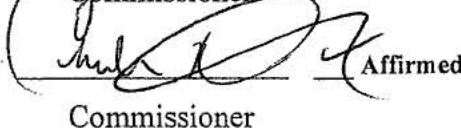
Final Determination: The undersigned determine that the decision appealed is hereby:

 Affirmed  Vacated, remanded for de novo interview  Modified to \_\_\_\_\_

Commissioner

 Affirmed  Vacated, remanded for de novo interview  Modified to \_\_\_\_\_

Commissioner

 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 12/23/2021 66.