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May 2022

### Administrative Appeal Decision - Frederick, Michael (2021-11-19)

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STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Frederick, Michael

**DIN:** 97-A-7056

**Facility:** Clinton CF

**AC No.:** 04-089-21 B

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

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Appellant, through counsel, challenges the April 2021 determination of the Board, denying release and imposing a 12-month hold. The Appellant is serving 6 to 12 years as a result of his conviction of Robbery in the Second Degree, as well as 8 to 16 years as a result of his conviction by verdict of Sodomy in the First Degree and Rape in the First Degree. He is serving these convictions consecutively. The instant offenses involved the Appellant attacking his victim, physically assaulting him and stealing his money. That same day, the Appellant, together with his co-defendants, attacked and raped another victim.

Appellant raises the following issues: (1) the Board failed to consider other factors including appellant's institutional record and remorse; (2) the Board relied on erroneous information contained within the COMPAS; and (3) the decision was conclusory and lacked detail. These 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 inmate 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 criteria which is relevant to the specific inmate, including, but not limited to, the inmate'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 (4<sup>th</sup> 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 (1<sup>st</sup> Dept. 1997). 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 LeGeros v. New York State Bd. Of Parole, 139 A.D.3d 1068, 30 N.Y.S.3d 834 (2d Dept. 2016); Matter of Phillips v. Dennison, 41 A.D.3d 17, 21, 834 N.Y.S.2d 121, 124 (1<sup>st</sup> 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 (4<sup>th</sup> 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); Matter of McKee v. New York State Bd. Of Parole,

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157 A.D.2d 944, 945, 550 N.Y.S.2d 204, 205 (3d Dept. 1990); People ex rel. Herbert, 97 A.D.2d 128, 468 N.Y.S.2d 881.

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). In reaching its conclusion, the Board permissibly relied on the instant offenses which represented a severe escalation in the Appellant's criminal behavior, the Appellant's elevated COMPAS scores and official opposition for release. 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 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); Matter of Beodeker v. Stanford, 164 A.D.3d 1555, 82 N.Y.S.3d 669 (3d Dept. 2018); Matter of Crawford v. New York State Bd. of Parole, 144 A.D.3d 1308, 46 N.Y.S.3d 228 (3d Dept. 2016), lv. denied, 29 N.Y.3d 901 (2017).

The record as a whole, including the interview transcript, reflects the Board considered the appropriate factors, including: Appellant's instant offenses of Robbery in the Second Degree, Sodomy in the First Degree and Rape in the First Degree; Appellant's criminal history; Appellant's institutional efforts including his disciplinary record, and the need for required programming; and release plans. The Board also had before it and considered, among other things, the case plan, the COMPAS instrument, the sentencing minutes, an official statement from the District Attorney, and Appellant's parole packet including letters of support and assurance.

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 Board may consider an incarcerated individual's need to complete rehabilitative programming even where a delay in commencement is through no fault of the individual. See Matter of Barrett v. New York State Div. of Parole, 242 A.D.2d 763, 661 N.Y.S.2d 857 (3d Dept. 1997).

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With regard to Appellant's argument that the COMPAS instrument's conclusions were incorrect, the Board does not determine COMPAS scores and an administrative 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 (3d Dept. 2020). In view of the incarcerated individual's failure to raise purported errors in the COMPAS instrument when given the opportunity to discuss the matter at the interview, and in the absence of any evidence the Board's determination was meaningfully affected by an error of fact, the Board's decision will not be disturbed. Matter of Paniagua v. Stanford, Index # 0913-16, *Decision & Order* dated Oct. 20, 2016 (Sup. Ct. Sullivan Co.)(Schick J.S.C.), aff'd, 153 A.D.3d 1018, 56 N.Y.S.3d 894 (3d Dept. 2017); Matter of Mercer v. New York State Dep't of Corr. & Cmty. Supervision, Index # 5872-13, *Decision/Order/Judgment* dated April 7, 2014 (Sup. Ct. Albany Co.)(Ceresia J.S.C.).

The Board's decision satisfied the criteria set out in Executive Law § 259-i(2)(a), as it was sufficiently detailed to inform the inmate of the reasons for the denial of parole. 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); Matter of Kozlowski v. New York State Bd. of Parole, 108 A.D.3d 435, 968 N.Y.S.2d 87 (1st Dept. 2013); Matter of Little v. Travis, 15 A.D.3d 698, 788 N.Y.S.2d 628 (3d Dept. 2005); Matter of Davis v. Travis, 292 A.D.2d 742, 739 N.Y.S.2d 300 (3d Dept. 2002); 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).

**Recommendation:** Affirm.

**ADMINISTRATIVE APPEAL DECISION NOTICE**

**Name:** Frederick, Michael      **Facility:** Clinton CF  
**NYSID:** [REDACTED]      **Appeal Control No.:** 04-089-21 B  
**DIN:** 96-A-7056

**Appearances:** Noreen McCarthy  
The McCarthy Law Firm  
PO Box 756  
Keene Valley, New York 12943

**Decision appealed:** April 2021 decision, denying discretionary release and imposing a hold of 12 months.


**Board Member(s) who participated:** Corley, Davis

**Papers considered:** Appellant's Brief received September 14, 2021

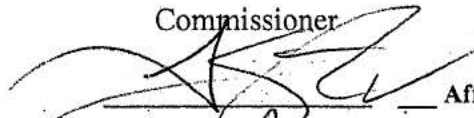
**Appeals Unit Review:** Statement of the Appeals Unit's Findings and Recommendation

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

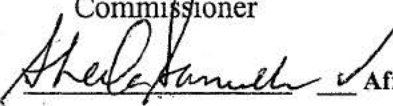
**Final Determination:** The undersigned determine that the decision appealed is hereby:

 ☒ 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

11/19/2021 GL

**Distribution:** Appeals Unit – Appellant – Appellant's Counsel – Inst. Parole File – Central File  
P-2002(B) (11/2018)