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May 2022

### Administrative Appeal Decision - Stetson-Shanahan, Render (2021-12-23)

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STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Stetson-Shanahan, Render

**DIN:** 20-A-1087

**Facility:** Mid-State CF

**AC No.:** 06-024-21 B

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

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Appellant is serving a sentence of 5 to 15 years upon his conviction by verdict to one count of Manslaughter in the Second Degree. In the instant offense, the appellant brutally stabbed his roommate while under the influence of marijuana and alcohol, causing her death. Appellant challenges the June 2021 determination of the Board, denying release and imposing a 24-month hold on the following grounds: (1) the Board failed to consider other factors such as the appellant's institutional accomplishments, programming and lack of disciplinary history; (2) the Board denied release based solely on the seriousness of the offense; (3) the Board improperly resentenced the appellant; and (4) the Board decision is conclusory.

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 criteria which is 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 (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, 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.

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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 involved the brutal murder his 26-year-old roommate. 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).

The record as a whole reflects that the Board considered the appropriate factors, including appellant's instant offense; appellant's institutional efforts including his disciplinary record, which his accomplishments; and his release plans. The Board also had before it and considered among other things, the appellant's parole packet which included letters of support. The Board also considered the sentencing minutes.

The Board permissibly denied parole release as incompatible with the welfare of society based upon the violent nature of the instant offense and escalation of prior criminal conduct. 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). The Board "was free to place particular emphasis, as it did, on the extremely violent nature of the crime and petitioner's uncontrollable anger during the commission thereof." Matter of Schendel v. Stanford, 185 A.D.3d 1365, 1366, 126 N.Y.S.3d 428, 429 (3rd Dept. 2020).

Even when an incarcerated individual's institutional record is exemplary, the Board may place particular emphasis on the violent nature of or gravity of the crime, so long as the relevant statutory factors are considered. The record establishes the Board acknowledged individual's programming along with additional statutory factors but placed greater emphasis on the seriousness of his crimes in determining release would be incompatible with the welfare of society and so deprecate the seriousness of the offenses as to undermine respect for the law, as it is entitled to do. Matter of Hamilton v. New York State Div. of Parole, 119 A.D.3d 1268, 1272, 1273-74, 990 N.Y.S.2d 714, 718, 719 (3d Dept. 2014).

Appellant's assertion that the denial of parole release amounted to an improper resentencing is without merit inasmuch as the Board fulfilled its obligation to determine the propriety of release per Executive Law § 259-i(2)(c)(A) and after considering the factors set forth therein. Executive Law § 259 et seq.; Penal Law § 70.40; Matter of Murray v. Evans, 83 A.D.3d

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1320, 920 N.Y.S.2d 745 (3d Dept. 2011); Matter of Crews v. New York State Exec. Dept. Bd. of Parole Appeals Unit, 281 A.D.2d 672, 720 N.Y.S.2d 855 (3d Dept. 2001). The Board was vested with discretion to determine whether release was appropriate notwithstanding the minimum period of incarceration set by the Court. Matter of Burress v. Dennison, 37 A.D.3d 930, 829 N.Y.S.2d 283 (3d Dept. 2007); Matter of Cody v. Dennison, 33 A.D.3d 1141, 1142, 822 N.Y.S.2d 677 (3d Dept. 2006), lv. denied, 8 N.Y.3d 802, 830 N.Y.S.2d 698 (2007). The appellant has not in any manner been resentenced. Matter of Mullins v. New York State Bd. of Parole, 136 A.D.3d 1141, 1142, 25 N.Y.S.3d 698 (3d Dept. 2016).

The Board's decision satisfied the criteria set out in Executive Law § 259-i(2)(a) and 9 N.Y.C.R.R. § 8002.3(b), as it was sufficiently detailed to inform the incarcerated individual 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). The Board addressed many of the factors and principles considered in individualized terms and explained those that ultimately weighed most heavily in its deliberations: the seriousness of the instant offense, as well as the appellant's choice to consume marijuana on the night of the crime, despite having a severe psychiatric reaction to it years prior.

Contrary to Appellant's claim, the Board need not explicitly mention each factor considered. Matter of Betancourt v. Stanford, 148 A.D.3d 1497, 49 N.Y.S.3d 315 (3d Dept. 2017); Matter of Mullins v. New York State Bd. of Parole, 136 A.D.3d 1141, 25 N.Y.S.3d 698 (3d Dept. 2016). While the Board's amended regulation reinforces that detailed reasons must be given for a denial of release, it did not alter this well-established principle. 9 N.Y.C.R.R. § 8002.3(b).

**Recommendation:** Affirm.

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Stetson-Shanahan, Render Facility: Mid-State CF  
NYSID: [REDACTED] Appeal Control No.: 06-024-21 B  
DIN: 20-A-1087

Appearances: Mr. Render Stetson-Shanahan (20-A-1087)  
Mid-State Correctional Facility  
PO Box 2500  
Marcy, New York 13403

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

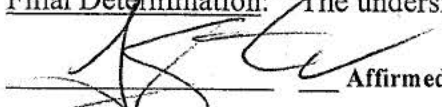
Board Member(s) who participated: Corley, Drake

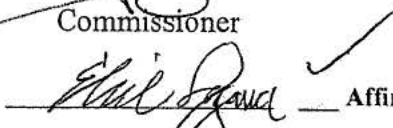
Papers considered: Appellant’s Letter-brief received October 6, 2021

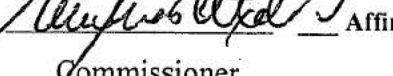
Appeals Unit Review: Statement of the Appeals Unit’s Findings and Recommendation

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 GG.