

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

Parole Administrative Appeal Decisions

Parole Information Project – CURRENT

May 2022

Administrative Appeal Decision - Clay, Daniel (2022-01-25)

Follow this and additional works at: <https://ir.lawnet.fordham.edu/aad>

Recommended Citation

"Administrative Appeal Decision - Clay, Daniel (2022-01-25)" (2022). Parole Information Project
<https://ir.lawnet.fordham.edu/aad/877>

This Parole Document is brought to you for free and open access by the Parole Information Project – CURRENT at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Parole Administrative Appeal Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Clay, Daniel

DIN: 99-A-0386

Facility: Fishkill CF

AC No.: 06-059-21 B

Findings: (Page 1 of 4)

Appellant challenges the May 2021 determination of the Board, denying release and imposing a 24-month hold. The instant offense involved Appellant putting gasoline and a sock into a bottle, lighting it on fire, and throwing it at his aunt during an argument. Appellant's aunt was set on fire and subsequently died from her injuries. Appellant raises the following issues: 1) the Board failed to explain in factually individualized and non-conclusory terms how it considered each applicable factor; 2) the Board placed disproportionate significance on old misbehavior reports from one facility and ignored factors that are evidence of Appellant's recent positive conduct; 3) the Board mischaracterized and placed disproportionate weight on Appellant's [REDACTED] [REDACTED] subsequent community supervision violations; 4) the Board relied on inaccurate information in the presentence investigation report; and 5) the Board should have permitted Appellant a second opportunity to complete his COMPAS and sign his case plan. 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 [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 (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 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 (1st 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 (4th 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).

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Clay, Daniel

DIN: 99-A-0386

Facility: Fishkill CF

AC No.: 06-059-21 B

Findings: (Page 2 of 4)

The record as a whole, including the interview transcript, reflects that the Board considered the appropriate factors, including: the instant offense of Murder in the second degree, Arson in the first degree, Criminal Possession of a Weapon in the third degree, Reckless Endangerment in the first degree, and Arson in the fourth degree; Appellant's [REDACTED]; Appellant's criminal history and poor history on community supervision; Appellant's institutional efforts featuring completion of academics, vocational and Transitional Services Phase I, participation in the Bard Prison Initiative program, work assignment as a paralegal assistant in the law library, refusal to complete the self-efficacy portion of the COMPAS assessment, and a poor disciplinary record replete with Tier II and Tier III misbehavior reports for infractions such as violent conduct, direct order, and fighting; and release plans to seek assistance from reentry organizations. The Board also had before it and considered, among other things, Appellant's unsigned case plan, the sentencing minutes, a letter from the District Attorney, and Appellant's parole packet featuring a personal statement, certificates of achievement, commendable behavior reports from DOCCS staff, and letters of support and reasonable assurance.

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 violent instant offense – committed while on probation and representing a continuation of Appellant's criminal conduct – together with Appellant's disciplinary history while incarcerated and Appellant's failure to sign his case plan or complete the self-efficacy portion of the COMPAS, demonstrating his poor judgment and inability or unwillingness to follow the rules. See Matter of Campbell v. Stanford, 173 A.D.3d 1012, 1016, 105 N.Y.S.3d 461, 465 (2d Dept. 2019); Matter of Kirkpatrick v. Travis, 5 A.D.3d 385, 772 N.Y.S.2d 540 (2d Dept. 2004); Matter of Scott v. Russi, 208 A.D.2d 931, 618 N.Y.S.2d 87 (2d. Dept. 1994); 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 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.

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Clay, Daniel

DIN: 99-A-0386

Facility: Fishkill CF

AC No.: 06-059-21 B

Findings: (Page 3 of 4)

There is no merit to Appellant's claim that the Board placed disproportionate significance on old misbehavior reports from one facility. 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). The Board may place greater weight on an incarcerated individual's disciplinary record even though infractions were incurred earlier in the individual's incarceration. Matter of Karlin v. Cully, 104 A.D.3d 1285, 1286, 960 N.Y.S.2d 827, 828 (4th Dept. 2013). We further note that Appellant incurred multiple misbehavior reports at various facilities during his incarceration.

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). A review of the transcript reveals the Board discussed the commendable behavior reports from DOCCS staff during the interview. (Tr. at 20.)

Appellant's claim that the Board mischaracterized and placed disproportionate weight on his [REDACTED] and subsequent community supervision violations is without merit. The Board may cite an incarcerated individual's juvenile record in denying parole release. Matter of Waters v. New York State Div. of Parole, 271 A.D.2d 779, 706 N.Y.S.2d 213 (3d Dept. 2000); cf. U.S. v. Daniels, 929 F.2d 128 (4th Cir. 1991). There is no requirement that the Board consider youth at the time of prior offenses as a mitigating factor. Matter of McCarthy v. New York State Dep't of Corr. & Cmty. Supervision, Index No. 3664/18, *Decision/Order/Judgment* dated Oct. 18, 2018, at 3 (Sup. Ct. Albany Co.) (Ceresia, S.C.J.).

To the extent Appellant contends the Board relied on erroneous information in the pre-sentence report, this is not the proper forum to raise the issue. Any challenge to the pre-sentence report must be made to the original sentencing court. Matter of Delrosario v. Stanford, 140 A.D.3d 1515, 34 N.Y.S.3d 696 (3d Dept. 2016); Matter of Wisniewski v. Michalski, 114 A.D.3d 1188, 979 N.Y.S.2d 745 (4th Dept. 2014); Matter of Vigliotti v. State, 98 A.D.3d 789, 950 N.Y.S.2d 619 (3d Dept. 2012). The Board is mandated to consider the report and is entitled to rely on the information contained in the report. Executive Law § 259-i(2)(c)(A); 9 N.Y.C.R.R. § 8002.2(d)(7); Matter of Carter v. Evans, 81 A.D.3d 1031, 1031, 916 N.Y.S.2d 291, 293 (3d Dept.), *lv. denied*, 16 N.Y.3d 712, 923 N.Y.S.2d 416 (2011).

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Clay, Daniel

DIN: 99-A-0386

Facility: Fishkill CF

AC No.: 06-059-21 B

Findings: (Page 4 of 4)

Finally, there is no merit to Appellant’s claim that the Board should have permitted him a second opportunity to complete his COMPAS and sign his case plan. A review of the record reveals Appellant had already been given multiple opportunities to do so prior to the interview but refused to cooperate. Appellant’s suggestion that he wanted to “assure the accuracy” of the COMPAS does not provide a basis to disturb the decision. Appellant could have postponed his interview to resolve any concerns he may have had – an option he chose not to pursue. See Matter of Kalwasinski v Stanford, Index No. 1083-14, *Decision and Order/Judgment* dated October 17, 2014 (Sup. Ct. Albany Co.) (O’Connor A.J.S.C.).

Recommendation: Affirm.

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Clay, Daniel

Facility: Fishkill CF

NYSID: [REDACTED]

Appeal Control No.: 06-059-21 B

DIN: 99-A-0386

Appearances: Jonathan H. Oberman, Esq.
Benjamin N. Cardozo School of Law
Criminal Defense Clinic
55 5th Avenue, Room 1114
New York, NY 10003

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

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

Papers considered: Appellant’s Brief received November 19, 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), Offender Case Plan.

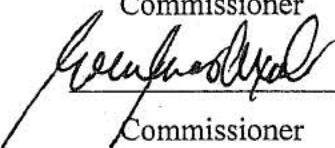
Final Determination: The undersigned determine that the decision appealed is hereby:


Commissioner

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 _____

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

01/25/2022 66