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Administrative Appeal Decision - Beer, Joseph (2021-11-19)

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STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Beer, Joseph

DIN: 14-A-3944

Facility: Wallkill CF

AC No.: 08-026-21 B

Findings: (Page 1 of 1)

Appellant was sentenced to 5 to 15 years upon his conviction of Aggravated Vehicular Homicide and Manslaughter in the Second Degree. Appellant challenges the July 2021 determination of the Board, denying release and imposing a 18-month hold. The Appellant contends that the Board failed to make the requisite finding of “reasonable probability that, if such inmate is released, the inmate will not live and remain at liberty without violating the law.”

Whereas here the incarcerated individual has received an EEC, the Board may deny release to parole on a finding that there is a reasonable probability that, if such individual is released, the individual will not live and remain at liberty without violating the law and that his release is not compatible with the welfare of society. Correction Law §805; Matter of Heitman v. New York State Bd. of Parole, 214 A.D.2d 673, 625 N.Y.S.2d 264 (2d Dept. 1995); Matter of Salcedo v. Ross, 183 A.D.2d 771, 771, 583 N.Y.S.2d 502, 503 (1st Dept. 1992); Matter of Walker v. Russi, 176 A.D.2d 1185, 576 N.Y.S.2d 51 (3d Dept. 1991), appeal dismissed, 79 N.Y.2d 89 7, 581 N.Y.S.2d 660 (1992).

A review by the Appeals Unit reveals that the decision addresses a number of the applicable factors in individualized terms, but nonetheless contains confusing language and, as a result, does not clearly establish that the Board determined there was a reasonable probability that, if the Appellant was released, the Appellant would not live and remain at liberty without violating the law pursuant to Correction Law §805.

Recommendation: Vacate and remand for de novo interview.

STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Beer, Joseph Facility: Walkkill CF
NYSID: [REDACTED] Appeal Control No.: 08-026-21 B
DIN: 14-A-3944

Appearances: Joseph Beer 14-A-3944
Walkkill Correctional Facility
Route 208, Box G
Walkkill, New York 12589-0286

Decision appealed: July 2021 decision, denying discretionary release and imposing a hold of 18 months.

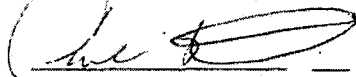
Board Member(s) who participated: Agostini, Lee, Samuels


Papers considered: Appellant’s Brief received August 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

11/19/2021
LB

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