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Administrative Appeal Decision - Rafikian, Mohammad (2022-02-02)

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STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Rafikian, Mohammad

DIN: 07-A-6262

Facility: Otisville CF

AC No.: 08-041-21 B

Findings: (Page 1 of 1)

Appellant challenges the July 2021 determination of the Board, denying release and imposing a 24-month hold. Appellant was convicted of numerous counts involving posing as an attorney and financial investor, and swindling eight different people out of over \$5 million dollars. Appellant was originally convicted after a trial. Upon appeal, the decision was vacated, and a new trial ordered. Appellant was again convicted at the re-trial as to seven of the original victims (the eighth victim had died in-between trials). Appellant raises the following issues: 1) the Board did not have the sentencing minutes from the re-trial. 2) the Board should expunge all documents from the first conviction, as it was vacated upon appeal by the Appellate Division.

As for the lack of sentencing minutes from the second trial, appellant is correct that the Board did not have them at the time of the interview. And while the Board did not possess the sentencing minutes despite a diligent effort to obtain them, the Appeals Unit has been able to obtain them since his appearance before the Board. A review of those minutes reveals the court made no recommendation with respect to parole. Accordingly, any error in failing to consider them is harmless and does not provide a basis for setting aside the appealed from decision. 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 Davis v. Lemons, 73 A.D.3d 1354, 899 N.Y.S.2d 919 (3d Dept. 2010); Matter of Valerio v. New York State Div. of Parole, 59 A.D.3d 802, 872 N.Y.S.2d 606 (3d Dept. 2009).

[REDACTED] In fact, the sentencing minutes from the second trial make specific references to the first trial. And the second trial involved the same transactions. If the original criminal sentence has been vacated, but the appellant is later convicted again and resentenced, this has no effect on the Board's authority to deny parole and hold him for another 24 months. Desulma v Dennison, 22 A.D.3d 997, 802 N.Y.S.2d 795 (3d Dept. 2005). At most, use of the records from the first trial are a de minimus harmless error. Matter of Tatta v. State, 290 A.D.2d 907, 908, 737 N.Y.S.2d 163, 164 (3d Dept.), lv. denied, 98 N.Y.2d 604, 746 N.Y.S.2d 278 (2002); see also Matter of Amen v. New York State Div. of Parole, 100 A.D.3d 1230, 1230, 954 N.Y.S.2d 276, 277 (3d Dept. 2012); Matter of Rossney v. New York State Div. of Parole, 267 A.D.2d 648, 649, 699 N.Y.S.2d 319 (3d Dept. 1999), lv. denied, 94 N.Y.2d 759, 705 N.Y.S.2d 6 (2000).

Recommendation: Affirm.

STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Rafikian, Mohammad **Facility:** Otisville CF
NYSID: [REDACTED] **Appeal Control No.:** 08-041-21 B
DIN: 07-A-6262

Appearances: Ronald Kuby Esq.
119 West 23rd Street
Suite 900
New York, New York 10011

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

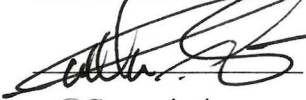
Board Member(s) who participated: Drake, Demosthenes, Segarra


Papers considered: Appellant’s Letter-brief received December 2, 2021

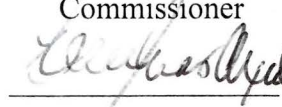
Appeals Unit Review: Statement of the Appeals Unit’s Findings and Recommendation

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

02/02/2022 66