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Administrative Appeal Decision - Richardson, Nathan (2021-11-19)

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STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Richardson, Nathan

DIN: 18-A-3061

Facility: Greene CF

AC No.: 08-105-21 RESC

Findings: (Page 1 of 1)

Appellant challenges the July 2021 determination of the Board, rescinding release and imposing a 18-month hold. Appellant’s underlying instant offense is for forcibly stealing property from a residence. The instant proceeding arose when, after being given an open release date by the Parole Board, appellant was found guilty of a tier 3 disciplinary ticket, which resulted in SHU time. This disciplinary matter consisted of the petitioner sending a letter to a female staff member, which showed far more than just a romantic interest in the staff member and as such was deemed to be threatening. After the rescission hearing, the Board decision held that since appellant admitted to the conduct in question, the evidentiary burden of proof had been satisfied. Appellant appears to raise only one issue on appeal. Appellant claims the letter he wrote has been misinterpreted, such that the charges on not facially sufficient.

Appellant was found guilty by DOCCS of the disciplinary charges, and sanctions were imposed. Thus, rescission is proper. The Board is empowered to rescind a decision granting an open parole release date when there is substantial evidence that an [incarcerated individual] has committed ‘significant misbehavior’ including the violation of a prison disciplinary rule.” Matter of Bishop v. Smith, 299 A.D.2d 777, 778, 751 N.Y.S.2d 82 (3d Dept. 2002) (substantial evidence presented that incarcerated individual committed significant misbehavior including the violation of a prison disciplinary rule). Pursuant to Executive Law sections 259-i(2)(c)(A) and 259-k(1), the Board is required to obtain official reports and may rely on the information contained therein. See, e.g., Matter of Silmon v. Travis, 95 N.Y.2d 470, 474, 477, 718 N.Y.S.2d 704, 706, 708 (2000) (discussing former status report); Matter of Carter v. Evans, 81 A.D.3d 1031, 916 N.Y.S.2d 291 (3d Dept.) (presentence investigation report), lv. denied, 16 N.Y.3d 712, 923 N.Y.S.2d 416 (2011); see also Billiteri v. United States Bd. of Parole, 541 F.2d 938, 944-945 (2d Cir. 1976). Thus, not only was the evidence sufficient, but the charges are facially sufficient as well.

Recommendation: Affirm.

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Richardson, Nathan

Facility: Greene CF

NYSID: [REDACTED]

Appeal Control No.: 08-105-21 RESC

DIN: 18-A-3061

Appearances: Nathan Richardson 18A3061
Greene Correctional Facility
P.O. Box 975
Coxsackie, New York 12051

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

Board Member(s) who participated: Berliner, Cruse, Agostini

Papers considered: Appellant’s Letter-brief received August 18, 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 bb