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Administrative Appeal Decision - Holloman, Elizabeth (2021-12-03)

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APPEALS UNIT FINDINGS & RECOMMENDATION**Name:** Holloman, Elizabeth**DIN:** 10-G-0289**Facility:** Albion CF**AC No.:** 09-047-21 B**Findings:** (Page 1 of 2)

Appellant challenges the August 2021 determination of the Board, denying release and imposing a 12-month hold. Appellant is incarcerated for two separate crimes. In the first, she repeatedly punched the victim in the head, forced her to withdraw money from an ATM, and took her money and personal property. In the second, she repeatedly punched the victim in the head and face, causing bruising and swelling and pain, and stole money. Appellant raises only one issue. Appellant claims she has in fact completed all required programming, and any information to the contrary is incorrect and is due solely to bureaucratic infighting within DOCCS.

The Board may consider an incarcerated individual's need to complete rehabilitative programming in denying parole. See Matter of Jones v. N.Y. State Bd. of Parole, 175 A.D.3d 1652, 1652, 108 N.Y.S.3d 505, 506 (3rd Dept. 2019); Matter of Allen v. Stanford, 161 A.D.3d 1503, 1506, 78 N.Y.S.3d 445 (3d Dept.), *lv. denied*, 32 N.Y.3d 903 (2018); Matter of Barrett v. New York State Div. of Parole, 242 A.D.2d 763, 661 N.Y.S.2d 857 (3d Dept. 1997); see also Matter of Connelly v. New York State Div. of Parole, 286 A.D.2d 792, 729 N.Y.S.2d 808, 809 (3d Dept.), *appeal dismissed* 97 N.Y.2d 677, 738 N.Y.S.2d 291 (2001). The Board may consider an incarcerated individual's need to complete rehabilitative programming even where a delay in commencement is through no fault of the individual. See Matter of Barrett v. New York State Div. of Parole, 242 A.D.2d 763, 661 N.Y.S.2d 857 (3d Dept. 1997). 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).

The Board may emphasize the nature of the instant offenses. 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).

The fact that the Board afforded greater weight to the incarcerated individual's criminal history, as opposed to other positive factors, does not render the denial of parole for that reason irrational or improper. Matter of Davis v. Evans, 105 A.D.3d 1305, 963 N.Y.S.2d 485 (3d Dept. 2013); Matter of Lashway v. Evans, 110 A.D.3d 1417, 1418, 974 N.Y.S.2d 164, 165 (3d Dept. 2013); Matter of McKee v. New York State Bd. of Parole, 157 A.D.2d 944, 550 N.Y.S.2d 204 (3d Dept. 1990).

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Holloman, Elizabeth

DIN: 10-G-0289

Facility: Albion CF

AC No.: 09-047-21 B

Findings: (Page 2 of 2)

After considering the relevant factors, the Board was allowed to place greater emphasis on the incarcerated individual's criminal record including prior failures while under community supervision. See, e.g., Matter of Bello v. Bd. of Parole, 149 A.D.3d 1458, 53 N.Y.S.3d 715 (3d Dept. 2017); Matter of Davis v. Evans, 105 A.D.3d 1305, 963 N.Y.S.2d 485 (3d Dept. 2013); People ex rel. Herbert v. New York State Bd. of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881, 884 (1st Dept. 1983).

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); 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 may consider negative aspects of the COMPAS instrument. Matter of Espinal v. New York Bd. of Parole, 172 A.D.3d 1816, 100 N.Y.S.3d 777 (3d Dept. 2019) (COMPAS instrument yielded mixed results); Matter of Bush v. Annucci, 148 A.D.3d 1392, 50 N.Y.S.3d 180 (3d Dept. 2017) (COMPAS instrument with mixed results including substance abuse relevant given use before crime); Matter of Wade v. Stanford, 148 A.D.3d 1487, 52 N.Y.S.3d 508 (3d Dept. 2017) (low risk felony violence but probable risk for substance abuse alcohol related crimes); Matter of Crawford v. New York State Bd. of Parole, 144 A.D.3d 1308, 46 N.Y.S.3d 228 (3d Dept. 2016) (scores not uniformly low including family support), lv. denied, 29 N.Y.3d 901, 57 N.Y.S.3d 704 (2017).

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); 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.

Recommendation: Affirm.

STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Holloman, Elizabeth **Facility:** Albion CF
NYSID: [REDACTED] **Appeal Control No.:** 09-047-21 B
DIN: 10-G-0289

Appearances: Elizabeth Holloman 10G0289
Albion Correctional Facility
3595 State School Road
Albion, New York 14411

Decision appealed: August 2021 decision, denying discretionary release and imposing a hold of 12 months.


Board Member(s) who participated: Alexander, Lee, Drake


Papers considered: Appellant’s Letter-brief received September 29, 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

12/03/2021 66