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May 2022

### Administrative Appeal Decision - Shattuck, Frank G Iv (2022-01-25)

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STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Shattuck, Frank

**DIN:** 14-A-3883

**Facility:** Auburn CF

**AC No.:** 09-057-21 B

**Findings:** (Page 1 of 2)

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Appellant challenges the August 2021 determination of the Board, denying release and imposing a hold to ME date. Appellant's instant offenses are for repeatedly violating an Order of Protection by first leaving a letter for the victim in her mailbox, later making phone calls and sending text messages to her, and finally breaking into her house and beating the woman up/strangling her while she was holding his child in her arms. Appellant raises the following issues: 1) the COMPAS has errors on it. 2) much of his discipline is due to Corrections Officers setting him up. 3) his seven letters of support outweigh the DA letter in opposition. 4) the PSI exaggerates the details of the instant offense.

Appellant never raised any issue of alleged COMPAS errors during the interview, thereby waiving the issue. Matter of Morrison v. Evans, 81 A.D.3d 1073, 916 N.Y.S.2d 655 (3d Dept. 2011); Matter of Vanier v. Travis, 274 A.D.2d 797, 711 N.Y.S.2d 920 (3d Dept. 2000).

Inmate's claiming prison disciplinary violations were invented by corrections officers illustrates appellant's continuing failure to acknowledge responsibility, raising plausible concerns about their rehabilitation. Molinar v New York State Division of Parole, 119 A.D.3d 1214, 991 N.Y.S.2d 487 (3d Dept. 2014).

The Board may consider a district attorney's recommendation to deny 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 Porter v. Alexander, 63 A.D.3d 945, 881 N.Y.S.2d 157 (2d Dept. 2009); Matter of Walker v. Travis, 252 A.D.2d 360, 676 N.Y.S.2d 52 (1st Dept. 1998); Matter of Walker v. New York State Bd. of Parole, 218 A.D.2d 891, 630 N.Y.S.2d 417 (3d Dept. 1995); Matter of Williams v. New York State Bd. of Parole, 220 A.D.2d 753, 633 N.Y.S.2d 182 (2d Dept. 1995); Matter of Confoy v. New York State Div. of Parole, 173 A.D.2d 1014, 569 N.Y.S.2d 846, 847 (3d Dept. 1991); Matter of Lynch v. New York State Div. of Parole, 82 A.D.2d 1012, 442 N.Y.S.2d 179 (3d Dept. 1981). The district attorney's recommendation is but one factor for the Board to consider. Executive Law § 259-i(2)(c)(A)(vii); Matter of Neives v. Stanford, 2015 NY Slip Op 30264(U), 2015 N.Y. Misc. Lexis 558 (Sup. Ct. Franklin Co. Feb. 5, 2015) (Feldstein, A.S.C.J.).

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). 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.

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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).

In addition to the violent nature of the crimes committed by petitioner, the Board considered petitioner's criminal history, prior probation violations, prison disciplinary record, program accomplishments and postrelease plans in denying him release. The Board was not required to give each factor equal weight and its decision did not exhibit irrationality bordering on impropriety. Matter of Rodriguez v. Evans, 102 A.D.3d 1049, 958 N.Y.S.2d 529 (3d Dept. 2013).

The Board can give greater weight to statements made in the sentencing minutes. Williams v New York State Division of Parole, 114 A.D.3d 992, 979 N.Y.S.2d 868 (3d Dept. 2014). The Board is entitled to rely on the sentencing minutes. Platten v New York State Board of Parole, 153 A.D.3d 1509, 59 N.Y.S.3d 921 (3d Dept. 2017). That includes statements made by the victim's mother at sentencing. Brown v Board of Parole, 197 A.D.3d 1424, 153 N.Y.S.3d 684 (3d Dept. 2021).

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).

The Board may take into account an incarcerated individual's [REDACTED] when denying parole release. See Matter of Dudley v. Travis, 227 A.D.2d 863, 642 N.Y.S.2d 386 (3d Dept.), lv. denied, 88 N.Y.2d 812, 649 N.Y.S.2d 379 (1996); Matter of Baker v. Russi, 188 A.D.2d 771, 591 N.Y.S.2d 540 (3d Dept. 1992); see also Pender v. Travis, 243 A.D.2d 889, 662 N.Y.S.2d 642 (3d Dept. 1997), lv. denied, 91 N.Y.2d 810, 670 N.Y.S.2d 404 (1998); People ex rel. Brown v. New York State Dept. of Correctional Services, Parole Bd. Div., 67 A.D.2d 1108, 415 N.Y.S.2d 137 (4th Dept. 1979), appeal denied, 47 N.Y.2d 707, 418 N.Y.S.2d 1025 (1979); Rodriguez v. Henderson, 56 A.D.2d 729, 730, 392 N.Y.S.2d 757, 758 (4th Dept.), lv. denied, 42 N.Y.2d 801, 397 N.Y.S.2d 1025 (1977).

**Recommendation:** Affirm.

STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Shattuck, Frank

Facility: Auburn CF

NYSID: [REDACTED]

Appeal Control No.: 09-057-21 B

DIN: 14-A-3883

Appearances: Frank Shattuck 14A3883  
Auburn Correctional Facility  
P.O. Box 618  
Auburn, New York 13024

Decision appealed: August 2021 decision, denying discretionary release and imposing a hold to ME date.


Board Member(s) who participated: Segarra, Berliner, Davis

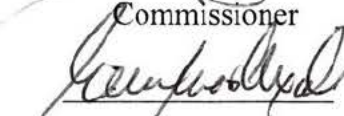
Papers considered: Appellant’s Letter-brief received October 26, 2021

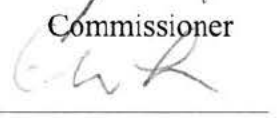
Appeals Unit Review: Statement of the Appeals Unit’s Findings and Recommendation

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

01/25/2022 GG.