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May 2022

### Administrative Appeal Decision - Rajyaguru, Prakash (2022-03-02)

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STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Rajyaguru, Prakash

**DIN:** 20-B-0071

**Facility:** Wyoming CF

**AC No.:** 12-038-21 B

**Findings:** (Page 1 of 3)

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Appellant challenges the November 2021 determination of the Board, denying release and imposing a 12-month hold. The instant offense involved two separate incidents wherein Appellant used a recording device to capture video of two underaged girls as they showered in bathrooms. The female victims were 11 years old and 13 years old at the time. Appellant raises only one issue: that he completed sex offender programming shortly after the November 2021 interview.

As an initial matter, discretionary release to parole is not to be granted “merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such [incarcerated individual] is released, he will live and remain at liberty without violating the law, **and** that his release is not incompatible with the welfare of society **and** will not so deprecate the seriousness of his crime as to undermine respect for the law.” Executive Law § 259-i(2)(c)(A) (emphasis added); accord Matter of Hamilton v. New York State Div. of Parole, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014). Executive Law § 259-i(2)(c)(A) requires the Board to consider criteria which is relevant to the specific incarcerated individual, including, but not limited to, the individual’s institutional record and criminal behavior. People ex rel. Herbert v. New York State Bd. of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881 (1st Dept. 1983). In this case, Appellant received an Earned Eligibility Certificate (“EEC”), therefore the deprecation standard does not apply here.

While consideration of these factors is mandatory, “the ultimate decision to parole a prisoner is discretionary.” Matter of Silmon v. Travis, 95 N.Y.2d 470, 477, 718 N.Y.S.2d 704, 708 (2000). Thus, it is well settled that the weight to be accorded the requisite factors is solely within the Board’s discretion. See, e.g., Matter of Delacruz v. Annucci, 122 A.D.3d 1413, 997 N.Y.S.2d 872 (4<sup>th</sup> Dept. 2014); Matter of Hamilton, 119 A.D.3d at 1271, 990 N.Y.S.2d at 717; Matter of Garcia v. New York State Div. of Parole, 239 A.D.2d 235, 239, 657 N.Y.S.2d 415, 418 (1<sup>st</sup> Dept. 1997). The Board need not explicitly refer to each factor in its decision, nor give them equal weight. Matter of Betancourt v. Stanford, 148 A.D.3d 1497, 49 N.Y.S.3d 315 (3d Dept. 2017); Matter of LeGeros v. New York State Bd. Of Parole, 139 A.D.3d 1068, 30 N.Y.S.3d 834 (2d Dept. 2016); Matter of Phillips v. Dennison, 41 A.D.3d 17, 21, 834 N.Y.S.2d 121, 124 (1<sup>st</sup> Dept. 2007). 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 (4<sup>th</sup> 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.

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An EEC does not automatically entitle an incarcerated individual to discretionary release or eliminate consideration of the statutory factors including the instant offense. Matter of Corley v. New York State Div. of Parole, 33 A.D.3d 1142, 1143, 822 N.Y.S.2d 817, 818 (3d Dept. 2006); Matter of Pearl v. New York State Div. of Parole, 25 A.D.3d 1058, 808 N.Y.S.2d 816, 817 (3d Dept. 2006); Matter of White v. Dennison, 29 A.D.3d 1144, 814 N.Y.S.2d 393 (3d Dept. 2006). Moreover, the Board is not required to give each factor equal weight. Matter of Corley, 33 A.D.3d 1142, 1143, 822 N.Y.S.2d 817, 818; Matter of Pearl, 25 A.D.3d 1058, 808 N.Y.S.2d 816, 817. The Board may deny release to parole on a finding that there is a reasonable probability that, if such incarcerated 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 (2d 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).

The record as a whole, including the interview transcript, reflects that the Board considered the appropriate factors, including: the instant offense of two counts of Unlawful Surveillance in the second degree; that Appellant was originally sentenced to probation for the instant offense but then violated and was resentenced when he was arrested for stalking a 16-year-old girl at her workplace; Appellant's institutional efforts including the fact that he had not yet completed sex offender programming at the time of the interview, receipt of an EEC, and completion of ART and Phases I and II of Transitional Services; and Appellant's [REDACTED] and release plans. The Board also had before it and considered, among other things, the case plan, the COMPAS instrument, the sentencing minutes, a personal statement, and letters of support and assurance.

After considering all required factors, the Board acted within its discretion in determining release would not satisfy the standards provided for by Executive Law § 259-i(2)(c)(A). In reaching its conclusion, the Board permissibly relied on the instant offenses, the fact that Appellant violated probation and was resentenced to this term of incarceration, Appellant's need to complete sex offender programming, and Appellant's lack of insight into his behavior and preoccupation with underaged girls. See Matter of Jones v. New York State Dep't of Corr. & Cmty. Supervision, 151 A.D.3d 1622, 57 N.Y.S.3d 265 (4th Dept. 2017); Matter of Kenefick v. Sticht, 139 A.D.3d 1380, 31 N.Y.S.3d 367 (4th Dept. 2016); Matter of Velasquez v. Travis, 278 A.D.2d 651, 652, 717 N.Y.S.2d 702, 702 (3d Dept. 2000), lv. denied, 96 N.Y.2d 708, 725 N.Y.S.2d 638 (2001); Matter of Wakefield v. Fischer, 108 A.D.3d 805, 807, 968 N.Y.S.2d 255, 256 (3d Dept. 2013); Matter of Silmon v. Travis, 95 N.Y.2d 470, 478, 718 N.Y.S.2d 704 (2000).

STATE OF NEW YORK – BOARD OF PAROLE

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The Board acted within its discretion in determining the considerations above rebutted any presumption created by the EEC and rendered discretionary release inappropriate at this time. See generally Matter of Neal v. Stanford, 131 A.D.3d 1320, 16 N.Y.S.3d 342 (3d Dept. 2015).

That Appellant completed sex offender programming shortly after the interview does not provide a basis to disturb the decision. The Board properly considered Appellant's current record at the time of the interview. The Board may consider an incarcerated individual's need to complete rehabilitative programming even where a delay in fulfilling the requirement 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).

**Recommendation:** Affirm.

STATE OF NEW YORK – BOARD OF PAROLE

**ADMINISTRATIVE APPEAL DECISION NOTICE**

**Name:** Rajyaguru, Prakash      **Facility:** Wyoming CF  
**NYSID:** [REDACTED]      **Appeal Control No.:** 12-038-21 B  
**DIN:** 20-B-0071

Appearances: Prakash Rajyaguru, 20-B-0071  
Wyoming Correctional Facility  
P.O. Box 501  
Dunbar Road  
Attica, NY 14011

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

Board Member(s) who participated: **Davis, Cruse**

Papers considered: Appellant's Letter-brief received December 7, 2021

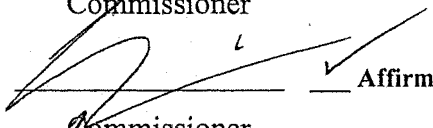
Appeals Unit Review: Statement of the Appeals Unit's Findings and Recommendation

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:

  
\_\_\_\_\_  
Commissioner

☒ 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 \_\_\_\_\_

**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

03/02/2022 *bb*

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