

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

Parole Administrative Appeal Decisions

Parole Administrative Appeal Documents

Administrative Appeal Decision - DiLeonardo, Paul (2017-10-10)

Follow this and additional works at: <https://ir.lawnet.fordham.edu/aad>

Administrative Appeal Decision Notice

Inmate Name: Dileonardo, Paul

Facility: Otisville Correctional Facility

NYSID No.: [REDACTED]

Appeal Control #: 06-010-17-B


Dept. DIN#: 04A3109

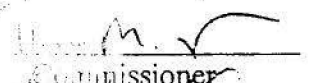
Appearances:

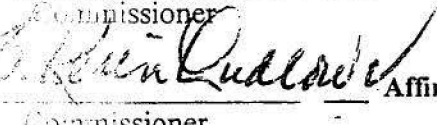
For the Board, the Appeals Unit


For Appellant:

Paul Dileonardo 04A3109
Otisville Correctional Facility
P.O. Box 8
Otisville, New York 10963**Board Member(s) who participated in appealed from decision:** Cruse, Thompson, J. Smith**Decision appealed from:** 5/2017-Denial of discretionary release, with imposition of 24 month hold.**Pleadings considered:** Brief on behalf of the pro se appellant received on September 11, 2017.
Statement of the Appeals Unit's Findings and Recommendation**Documents relied upon:** Presentence Investigation Report, Parole Board Report, Interview Transcript,
Parole Board Release Decision (Form 9026), COMPAS, TAP/Case Plan.**Final Determination:** The undersigned have determined that the decision from which this appeal was taken
be and the same is hereby

 ☒ Affirmed ☐ Reversed for De Novo Interview ☐ Modified to _____
Commissioner

 ☒ Affirmed ☐ Reversed for De Novo Interview ☐ Modified to _____
Commissioner

 ☒ Affirmed ☐ Reversed 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 Inmate and the Inmate's Counsel, if any, on 10/10/17 .Distribution: Appeals Unit - Inmate - Inmate's Counsel - Inst. Parole File - Central File
P-2002(3) (5/2011)

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Dileonardo, Paul

Facility: Otisville Correctional Facility

NYSID No.: [REDACTED]

Appeal Control #: 06-010-17-B

Dept. DIN# 04A3109

Findings:

The pro se appellant has submitted a brief to serve as the perfected appeal. The brief raises four primary issues.

Appellant's first claim is the decision is arbitrary and capricious, and irrational bordering on impropriety, in that the Board failed to consider and/or properly weigh the required statutory factors. Appellant contends he has an excellent institutional record and release plan, including a good COMPAS score, and is statistically not likely to reoffend, but all the Board did was to look only at the instant offense. Appellant alleges the Board failed to make required findings of fact or offer future guidance or provide detail, asked improper questions, and ignored the minimum sentence of the court and illegally resentenced him. Appellant further states the Board ignored that his mental health is now satisfactory-all in violation of the due process clause of the constitution.

In response, while not all of the factors to be considered by the Board were actually discussed with the appellant at the interview, it is well settled that the failure to do so does not provide a basis for upsetting the Board's decision. Morel v Travis, 18 A.D.3d 930, 793 N.Y.S.2d 920 (3d Dept. 2005); Matter of Waters v. New York State Division of Parole, 252 A.D.2d 759, 760-61, 676 N.Y.S.2d 279, 280 (3d Dept 1998), lv. denied, 92 N.Y.2d 812, 680 N.Y.S.2d 905 (1998); Matter of Davis v. New York State Div. of Parole, 114 A.D.2d 412, 494 N.Y.S.2d 136 (2d Dept. 1985); Matter of Mackall v. New York State Board of Parole, 91 A.D.2d 1023, 458 N.Y.S.2d 251 (2d Dept. 1983) Mullins v New York State Board of Parole, 136 A.D.3d 1141, 25 N.Y.S.3d 698 (3d Dept. 2016). That the Board did not discuss each factor with the inmate at the interview does not constitute convincing evidence that the Board did not consider the factors. In the Matter of Hawkins v. Travis, 259 A.D.2d 813, 686 N.Y.S. 2d 198 (3d Dept. 1999), app. dism. 93 N.Y.2d 1033, 697 N.Y.S.2d 556 (1999); Dolan v New York State Board of Parole, 122 A.D.3d 1058, 995 N.Y.S.2d 850 (3d Dept. 2014); In re Garcia v. New York State Division of Parole, 239 A.D.2d 235, 657 N.Y.S.2d 415 (1st Dept. 1997); Matter of Mackall v. NYS Board of Parole, 91 A.D.2d 1023, 1024, 458 N.Y.S.2d 251 (2d Dept 1983); Charlemagne v New York State Division of Parole, 281 A.D.2d 669, 722 N.Y.S.2d 74, 75 (3d Dept 2001).

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Dileonardo, Paul

Facility: Otisville Correctional Facility

NYSID No.: [REDACTED]

Appeal Control #: 06-010-17-B

Dept. DIN# 04A3109

Findings: (continued from page 1)

Nor is the Board required to expressly discuss or articulate every factor in its determination. Marszalek v Stanford, 152 A.D.3d 773, 59 N.Y.S.3d 432 (2d Dept. 2017); Fraser v Evans, 109 A.D.3d 913, 971 N.Y.S.2d 332 (3d Dept. 2013); Faison v Travis, 260 A.D.2d 866, 688 N.Y.S.2d 782 (3d Dept 1999) lv. dismissed 93 N.Y.2d 1013, 697 N.Y.S.2d 567 (1999); Shark v New York State Division of Parole Chair, 110 A.D.3d 1134, 972 N.Y.S.2d 741 (3d Dept. 2013); LeGeros v New York State Board of Parole, 139 A.D.3d 1068, 30 N.Y.S.3d 834 (2d Dept. 2016); Esquilin v New York State Board of Parole, 144 A.D.3d 846, 40 N.Y.S.3d 279 (2nd Dept. 2016); Robles v Dennison, 449 F.Appx. 51, 53-54 (2nd Cir. 2011).

The Board may take into account the extremely serious and heinous nature of the inmate's crime. Anthony v New York State Division of Parole, 252 A.D.2d 704, 679 N.Y.S.2d 158 (3d Dept 1998), leave to appeal denied 92 N.Y.2d 812, 680 N.Y.S.2d 905 (1998), cert.den. 525 U.S. 1183, 119 S.Ct. 1125, 143 L.Ed.2d 119 (1999); Carrion v New York State Board of Parole, 210 A.D.2d 403, 620 N.Y.S.2d 420 (2d Dept 1994); Phillips v Travis, 21 A.D.3rd 335, 800 N.Y.S.2d 397 (1st Dept. 2005); LaSalle v New York State Division of Parole, 69 A.D.3d 1252, 893 N.Y.S.2d 706 (3d Dept. 2010), lv.den. 14 N.Y.2d 709, 901 N.Y.S.2d 142; Betancourt v Stanford, 148 A.D.3d 1497, 49 N.Y.S.3d 315 (3d Dept. 2017); Mays v Stanford, 150 A.D.3d 1521, 55 N.Y.S.3d 502 (3d Dept. 2017). The Board placing particular emphasis on the heinous nature of the offense does not demonstrate irrationality bordering on impropriety. Olmosperez v Evans, 114 A.D.3d 1077, 980 N.Y.S.2d 845 (3d Dept. 2014).

The Board may consider the potential danger an inmate would pose to the community if the inmate were to be released Bridget v Travis, 300 A.D.2d 776, 750 N.Y.S.2d 795 (3d Dept 2002) or that the inmate would place the public at risk. Valerio v Dennison, 35 A.D.3d 938, 825 N.Y.S.2d 574 (3d Dept. 2006).

The Board could consider the negative recommendation of the District Attorney in denying release to parole supervision. Williams v. New York State Board of Parole, 220 A.D.2d 753, 633 N.Y.S.2d 182 (2d Dept 1995); Confoy v New York State Division of Parole, 173 A.D.2d 1014, 569 N.Y.S.2d 846, 847 (3d Dept 1991); Walker v New York State Board of Parole, 218 A.D.2d 891, 630 N.Y.S.2d 417 (3d Dept 1995); Porter v Alexander, 63 A.D.3d 945, 881 N.Y.S.2d 157 (2d Dept. 2009).

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Dileonardo, Paul

Facility: Otisville Correctional Facility

NYSID No.: [REDACTED]

Appeal Control #: 06-010-17-B

Dept. DIN# 04A3109

Findings: (continued from page 2)

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).

Appellant's prior history of mental illness is a factor entirely appropriate in a determination denying parole release. Dudley v Travis, 227 A.D.2d 863, 642 N.Y.S.2d 386, 387 (3d Dept 1996), leave to appeal denied 88 N.Y.2d 812, 649 N.Y.S.2d 379; People ex rel. Brown v New York State Department of Corrections, Parole Board Division, 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). Appellant's need for psychological counseling is a ground for denial of parole release. Baker v Russi, 188 A.D.2d 771, 591 N.Y.S.2d 540, 541 (3d Dept 1992). The Board may consider mental health assistance provided to the inmate during his incarceration. Gssime v New York State Division of Parole, 84 A.D.3d 1630, 923 N.Y.S.2d 307 (3d Dept. 2011); Wade v Stanford, 148 A.D.3d 1487, 52 N.Y.S.3d 508 (3d Dept. 2017).

Inmate's unwillingness to accept responsibility for violent crime is a sufficient basis for denying parole. Webb v Travis, 26 A.D.3d 614, 810 N.Y.S.2d 233 (3d Dept. 2006), lv.den. 7 N.Y.3d 709, 822 N.Y.S.2d 483; Okafor v. Russi, 222 A.D.2d 920, 635 N.Y.S.2d 340 (3d Dept. 1995); Epps v Travis, 241 A.D.2d 738, 660 N.Y.S.2d 1016, 1017 (3d Dept. 1997).

Credibility of an inmates explanation is to be made by the Board. The Board may consider the inmate's capacity to tell the truth, and how this impacts on the statutory factors. Siao-Pao v Dennison, 51 A.D.3d 105, 854 N.Y.S.2d 348 (1st Dept. 2008).

The Board set forth in adequate detail the reasons for its denial of the inmate's request for release. Burress v Evans, 107 A.D.3d 1216, 967 N.Y.S.2d 486 (3d Dept. 2013). The written Board decision in this case contains sufficient detail. McLain v New York State Division of Parole, 204 A.D.2d 456, 611 N.Y.S.2d 629 (2d Dept 1994); Walker v Russi, 176 A.D.2d 1185, 576 N.Y.S.2d 51 (3d Dept 1991), appeal dismissed 79 N.Y.2d 897, 581 N.Y.S.2d 660 (1992); Thomas v Superintendent of Arthur Kill Correctional Facility, 124 A.D.2d 848, 508 N.Y.S.2d 564 (2d Dept 1986), appeal dismissed 69 N.Y.2d 611, 517 N.Y.S.2d 1025 (1987); De la Cruz v Annucci, 122 A.D.3d 1413, 997 N.Y.S.2d 872 (4th Dept. 2014); Betancourt v Stanford, 148 A.D.3d 1497, 49 N.Y.S.3d 315 (3d Dept. 2017).

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Dileonardo, Paul

Facility: Otisville Correctional Facility

NYSID No.: [REDACTED]

Appeal Control #: 06-010-17-B

Dept. DIN# 04A3109

Findings: (continued from page 3)

As for due process/constitutional liberty interest in a legitimate expectation of early release, at the Federal level, there is no inherent constitutional right to parole. Greenholtz v Inmates of Nebraska Penal and Correctional Complex, 442 U.S. 1, 99 S.Ct. 2100, 2104, 60 L.Ed2d 668 (1979) or to be released before the expiration of a valid sentence. Swarthout v Cooke, 562 U.S. 216, 131 S.Ct. 859, 178 L.Ed2d 732 (2011). Nor, under the New York State Constitution, is there a due process right to parole. Russo v New York State Board of Parole, 50 N.Y.2d 69, 427 N.Y.S.2d 982, 984 (1980); Boothe v. Hammock, 605 F.2d 661 (2d Cir. 1979). The New York State parole scheme is not one that creates in any prisoner a legitimate expectancy of release. No entitlement to release is created by the parole provisions. Accordingly, appellant has no liberty interest in parole. Duettel v Fischer, 368 Fed.Appx. 180, 182 (2d Cir. 2010); Davis v Dennison, 219 Fed Appx 68 (2d Cir. 2007), cert. den. 552 U.S. 863, 128 S.Ct. 151, 169 L.Ed2d 103 (2007); Rodriguez v Alexander, 71 A.D.3d 1354, 896 N.Y.S.2d 693 (3d Dept. 2010), lv. den. 15 N.Y.3d 703, 906 N.Y.S.2d 817. Thus, the protections of the due process clause are inapplicable. Barna v Travis, 239 F.3d 169, 171 (2d Cir. 2001); Freeman v New York State Division of Parole, 21 A.D.3d 1174, 800 N.Y.S.2d 797 (3d Dept 2005); Watson v New York State Board of Parole, 78 A.D.3d 1367, 910 N.Y.S.2d 311 (3d Dept. 2010).

Completion of the minimum term of the sentence still does not create any protected liberty interest. Motti v Alexander, 54 A.D.3d 1114, 1115 (3d Dept. 2008).

Nothing in the due process clause requires the Parole Board to specify the particular evidence on which rests the discretionary determination an inmate is not ready for conditional release. Duettel v Fischer, 368 Fed.Appx. 180, 182 (2d Cir. 2010). There is no due process requirement that the Parole Board disclose its release criteria. Haymes v Regan, 525 F.2d 540 (2d Cir. 1975).

The due process clause is not violated by the Board's balancing of the statutory criteria, and which is not to be second guessed by the courts. Mathie v Dennison, 2007 WL 2351072 (S.D.N.Y. 2007); MacKenzie v Cunningham, 2014 WL 5089395 (S.D.N.Y. 2014).

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Dileonardo, Paul

Facility: Otisville Correctional Facility

NYSID No.: [REDACTED]

Appeal Control #: 06-010-17-B

Dept. DIN# 04A3109

Findings: (continued from page 4)

A claim that the denial of parole release amounted to a resentencing is without merit. Kalwasinski v Patterson, 80 A.D.3d 1065, 915 N.Y.S.2d 715 (3d Dept. 2011) lv.app.den. 16 N.Y.3d 710, 922 N.Y.S.2d 273 (2011); Marnell v Dennison, 35 A.D.3d 995, 824 N.Y.S.2d 812 (3d Dept. 2006) lv.den. 8 N.Y.3d 807, 833 N.Y.S.2d 426; Murray v Evans, 83 A.D.3d 1320, 920 N.Y.S.2d 745 (3d Dept. 2011); Gonzalez v Chair, New York State Board of Parole, 72 A.D.3d 1368, 898 N.Y.S.2d 737 (3d Dept. 2010); Borsok v New York State Division of Parole, 34 A.D.3d 961, 823 N.Y.S.2d 310 (3d Dept. 2006) lv.den. 8 N.Y.3d 803, 830 N.Y.S.2d 699. The Board was vested with discretion to determine whether release was appropriate, notwithstanding what the minimum period of incarceration which was set by the Court. Cody v Dennison, 33 A.D.3d 1141, 1142 (3d Dept. 2006), lv.den. 8 N.Y.3d 2007; Burress v Dennison, 37 A.D.3d 930, 829 N.Y.S.2d 283 (3d Dept. 2007).

That the sentencing court did not impose the maximum sentence is not an indication that the sentencing court made a favorable parole recommendation. Duffy v New York State Division of Parole, 74 A.D.3d 965, 903 N.Y.S.2d 479 (2d Dept. 2010).

Statistical probabilities alone do not generate constitutional protections. Connecticut Board of Pardons v Dumschat, 452 U.S. 458, 101 S.Ct. 2460, 2465, 69 L.Ed.2d 158 (1981). Neither the mere possibility of release, nor a statistical probability of release, gives rise to a legitimate expectancy of release on parole. Graziano v Pataki, 689 F.3d 110 (2nd Cir. 2012).

A positive COMPAS score does not create any guarantee to release, but rather is only one factor considered by the Board in exercising its discretion when making a parole determination. Rivera v New York State Division of Parole, 119 A.D.3d 1107, 990 N.Y.S.2d 295 (3d Dept. 2014); Dawes v Beale, 122 A.D.3d 1059, 994 N.Y.S.2d 747 (3d Dept. 2014); Byas v Fischer, 120 A.D.3d 1586, 992 N.Y.S.2d 813 (4th Dept. 2014); Matter of Montane v Evans, 116 A.D.3d 197, 981 N.Y.S.2d 866 (3d Dept.) appeal dismissed 24 N.Y.3d 1052, 999 N.Y.S.2d 360 (2014); LeGeros v New York State Board of Parole, 139 A.D.3d 1068, 30 N.Y.S.3d 834 (2d Dept. 2016); Wiley v State of New York Department of Corrections and Community Supervision, 139 A.D.3d 1289, 32 N.Y.S.3d 370 (3d Dept. 2016).

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Dileonardo, Paul

Facility: Otisville Correctional Facility

NYSID No.: [REDACTED]

Appeal Control #: 06-010-17-B

Dept. DIN# 04A3109

Findings: (continued from page 5)

Notably, the 2011 amendments to the Executive Law did not change the three substantive standards that the Board is required to apply when deciding whether to grant parole, namely (1) whether “there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law”; (2) whether release “is not incompatible with the welfare of society”; and (3) whether release “will not so deprecate the seriousness of his crime as to undermine respect for law.” See Executive Law § 259-i(2)(c)(A). Even uniformly low COMPAS scores and other evidence of rehabilitation would not resolve the broader questions of society’s welfare, public perceptions of the seriousness of a crime, or whether release would undermine respect for the law. Thus the COMPAS cannot mandate a particular result, and declining to afford the COMPAS controlling weight does not violate the 2011 amendments. *Matter of King v Stanford*, No. 521324, 2016 N.Y. App. Div. LEXIS 1732 (3d Dep’t Mar. 10, 2016); *Furman v Annucci*, 138 A.D.3d 1269, 28 N.Y.S.3d 352 (3d Dept. 2016). The COMPAS is an additional consideration that the Board must weigh along with the statutory factors for purposes of deciding whether the three standards are satisfied. See *Matter of Rivera v. N.Y. State Div. of Parole*, 119 A.D.3d 1107, 1108 (3d Dep’t 2014); accord *Matter of Dawes v. Annucci*, 122 A.D.3d 1059, 1061 (3d Dep’t 2014).

As for the required three part statutory standard, contrary to appellant’s claim, the Board is not required to repeat the language of the statute verbatim. Rather, it need merely insure that sufficient facts are in the decision which comply with the standard-which it has clearly done in this case. The factors cited, which were appellant’s heinous instant offense, danger to the public, DA opposition, and ongoing need for mental health treatment, show the required statutory findings were in fact made in this case. Language used in the decision which is only semantically different from the statutory language (e.g. continued incarceration serves the community standards) is permissible. *James v Chairman of the New York State Division of Parole*, 19 A.D.3d 857, 796 N.Y.S.2d 735 (3d Dept. 2005); *Miller v New York State Division of Parole*, 72 A.D.3d 690, 897 N.Y.S.2d 726 (2d Dept. 2010). Although the Board’s determination could have been stated more artfully, this is insufficient to annul the decision. *Ek v Travis*, 20 A.D.3d 667, 798 N.Y.S.2d 199 (3d Dept 2005). The Board’s failure to recite the precise statutory language of the first sentence in support of its conclusion to deny parole release does not undermine it’s determination. *Silvero v Dennison*, 28 A.D.3d 859, 811 N.Y.S.2d 822 (3d Dept. 2006); *Reed v Evans*, 94 A.D.3d 1323, 942 N.Y.S.2d 387 (3d Dept. 2012); *Mullins v New York State Board of Parole*, 136 A.D.3d 1141, 25 N.Y.S.3d 698 (3d Dept. 2016).

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Dileonardo, Paul

Facility: Otisville Correctional Facility

NYSID No.: [REDACTED]

Appeal Control #: 06-010-17-B

Dept. DIN# 04A3109

Findings: (continued from page 6)

No improper questions were asked. A parole release interview is not a full adversarial type proceeding. The nature and extent of the interview and attendant release considerations is solely within the discretion of the Parole Board. Matter of Briguglio v New York State Board of Parole, 24 N.Y.2d 21, 298 N.Y.S.2d 704, 710 (1969). The Parole Board is not the appellant's adversary. It has an identity of interest with him to encourage rehabilitation and readjustment to society. It is not an adversarial proceeding, and there are no charges or disputed issues of fact. Menechino v Oswald, 430 F.2d 403, 407 (2d Cir. 1970); cert. den. 400 U.S. 1023, 91 S.Ct. 588, 27 L.Ed2d 635 (1971).

Denial of parole is neither arbitrary nor capricious when the Parole Board relied on the factors defined by the New York statute. Hodge v Griffin, 2014 WL 2453333 (S.D.N.Y. 2014) citing Romer v Travis, 2003 WL 21744079. An arbitrary action is one without sound basis in reason and without regard to the facts. Rationality is what is reviewed under an arbitrary and capricious standard. Hamilton v New York State Division of Parole, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014). An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts. Ward v City of Long Beach, 20 N.Y.3d 1042 (2013).

As for a lack of future guidance, there is no due process right to an inmate obtaining a statement as to what he should do to improve his chances for parole in the future. Boothe v Hammock, 605 F.2d 661 (2d Cir. 1979); Watkins v Caldwell, 54 A.D.2d 42, 387 N.Y.S.2d 177 (4th Dept 1976); Freeman v New York State Division of Parole, 21 A.D.3d 1174, 800 N.Y.S.2d 797 (3d Dept 2005); Francis v New York State Division of Parole, 89 A.D.3d 1312, 934 N.Y.S.2d 514 (3d Dept. 2011).

Since the Board's decision was sufficiently detailed to inform the inmate of the reasons for the denial of parole, it satisfied the criteria set out in section 259-i of the Executive Law. Siao-Pao v Dennison, 11 N.Y.3d 777, 866 N.Y.S.2d 602 (Ct. App. 2008); Matter of Whitehead v. Russi, 201 A.D.2d 825, 607 N.Y.S.2d 751 (3d Dept. 1993); Matter of Green v. New York State Division of Parole, 199 A.D.2d 677, 605 N.Y.S.2d 148 (3d Dept. 1993).

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Dileonardo, Paul

Facility: Otisville Correctional Facility

NYSID No.: [REDACTED]

Appeal Control #: 06-010-17-B

Dept. DIN# 04A3109

Findings: (continued from page 7)

Moreover, the reasons stated by the Parole Board members for holding appellant are sufficient grounds to support their decision. People ex rel. Yates v. Walters, 111 A.D.2d 839, 490 N.Y.S.2d 573 (2d Dept. 1985); Matter of Ganci v Hammock, 99 A.D.2d 546, 471 N.Y.S.2d 630 (2d Dept. 1984); Matter of Vuksanaj v. Hammock, 93 A.D.2d 958, 463 N.Y.S.2d 61 (3d Dept. 1983); Matter of Pina v. Hammock, 89 A.D.2d 799, 453 N.Y.S.2d 479 (4th Dept. 1982). Since the Board's challenged decision was made in accordance with the pertinent statutory requirements, it exercised proper discretion in denying appellant early release on parole. In the Matter of Hawkins v. Travis, 259 A.D.2d 813, 686 N.Y.S.2d 198 (3d Dept. 1999), app. disp. 93 N.Y.2d 1033, 697 N.Y.S.2d 556 (1999); Matter of Barrett v. New York State Division of Parole, 242 A.D.2d 763, 661 N.Y.S.2d 857 (3d Dept. 1997).

Appellant's second claim is the Board violated the 8th amendment to the constitution in that youth considerations were ignored.

In response, the denial of parole under a statute invoking discretion in parole determinations does not violate the Eighth Amendment's prohibition against cruel and unusual punishment. Lustgarden v Gunter, 966 F.2d 552, 555, (10th Cir. 1992), cert den. 506 U.S. 1008, 113 S.Ct. 624, rehearing denied 507 U.S. 955, 113 S.Ct. 1374; Bressette v New York State Division of Parole, 2 F.Supp.2d 383, 387 (W.D.N.Y. 1998). And as appellant was 22 years old when he committed the instant offense, the cases he cites dealing with youth are inapplicable to this matter.

Appellant's third claim is the decision was predetermined, as is proven by looking at the Commissioner's Worksheet.

In response, the inmate has failed to demonstrate that the use of the worksheet by the interviewing Board members reflected a predetermined decision to deny him release to parole. See Duffy v. Evans et al., 2013 WL 3491119 (S.D.N.Y.)(Furman, U.S.D.J.). As the Duffy court stated, the Board has three different sets of pre-printed forms with some boilerplate language to record the decisions, and they select the appropriate form after the decision is rendered. The pre-printed portions of the worksheet state the factors and reasons considered by the panel in support of the decision, as well as the statutory standard the Board is legally obligated to apply. This helps to ensure the decisions are not arbitrary and capricious, are in compliance with law, and don't violate the due process clause of the constitution.

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Dileonardo, Paul

Facility: Otisville Correctional Facility

NYSID No.: [REDACTED]

Appeal Control #: 06-010-17-B

Dept. DIN# 04A3109

Findings: (continued from page 8)

The fact the transcript also shows numerous facts not used in the final decision were discussed at the interview also defeats this claim of predetermination.

There is a presumption of honesty and integrity that attaches to Judges and administrative fact-finders. People ex.rel. Johnson v New York State Board of Parole, 180 A.D.2d 914, 580 N.Y.S.2d 957, 959 (3d Dept 1992). And, Courts presume the Parole Board follows its statutory commands and internal policies in fulfilling its obligations. Garner v Jones, 529 U.S. 244, 120 S.Ct. 1362, 1371, 146 L.Ed2d 236 (2000). The decision was not predetermined. Dean v New York State Division of Parole, 21 A.D.3d 1207, 801 N.Y.S.2d 92 (3d Dept. 2005) lv. den. 6 N.Y.3d 705 (2006); Hakim-Zaki v New York State Division of Parole, 29 A.D.3d 1190, 814 N.Y.S.2d 414 (3d Dept. 2006). There is no merit to the inmate's contention that the parole interview was improperly conducted or that he was denied a fair interview. Black v New York State Board of Parole, 54 A.D.3d 1076, 863 N.Y.S.2d 521 (3d Dept. 2008); Rivers v Evans, 119 A.D.3d 1188, 989 N.Y.S.2d 400 (3d Dept. 2014); Mays v Stanford, 150 A.D.3d 1521, 55 N.Y.S.3d 502 (3d Dept. 2017).

Appellant's final claim is that the 24 month hold is excessive.

In response, the Board's decision to hold the inmate for the maximum period of 24 months is within the Board's discretion and within its authority pursuant to Executive Law § 259-i(2)(a) and 9 NYCRR § 8002.3 (d). Abascal v New York State Board of Parole, 23 A.D.3d 740, 802 N.Y.S. 2d 803 (3d Dept. 2005); Matter of Sinopoli v. New York State Board of Parole, 189 A.D.2d 960, 592 N.Y.S.2d 831 (3d Dept. 1993); Matter of Ganci v. Hammock, 99 A.D.2d 546, 471 N.Y.S.2d 630 (2d Dept. 1984). As such, appellant failed to demonstrate that the hold of 24 months was excessive. Hill v New York State Board of Parole, 130 A.D.3d 1130, 14 N.Y.S.3d 515 (3d Dept. 2015); Kalwasinski v Patterson, 80 A.D.3d 1065, 915 N.Y.S.2d 715 (3d Dept. 2011) lv. app.den. 16 N.Y.3d 710, 922 N.Y.S.2d 273 (2011); Matter of Madlock v. Russi, 195 A.D.2d 646, 600 N.Y.S.2d 283 (3d Dept. 1993); Confoy v New York State Division of Parole, 173 A.D.2d 1014, 569 N.Y.S.2d 846,848 (3d Dept 1991); Smith v New York State Division of Parole, 64 A.D.3d 1030, 882 N.Y.S.2d 759 (3d Dept. 2009); Smith v New York State Division of Parole, 81 A.D.3d 1026, 916 N.Y.S.2d 285 (3d Dept. 2011); Shark v New York State Division of Parole Chair, 110 A.D.3d 1134, 972 N.Y.S.2d 741 (3d Dept. 2013).

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Dileonardo, Paul

Facility: Otisville Correctional Facility

NYSID No.: [REDACTED]

Appeal Control #: 06-010-17-B

Dept. DIN# 04A3109

Findings: (continued from page 9)

Recommendation:

Accordingly, it is recommended the decision of the Board be affirmed.