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Administrative Appeal Decision - Johnston, Frank (2022-07-29)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Johnston, Frank

Facility: Otisville CF

NYSID: [REDACTED]

Appeal Control No.: 11-017-21 B

DIN: 87-A-0977

Appearances: Denae Kassotis Esq.
Selendy Gay and Elsberg
1290 Avenue of the Americas
New York, New York 10104

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


Board Member(s) who participated: Mitchell, Demosthenes, Segarra


Papers considered: Appellant's Brief received April 13, 2022

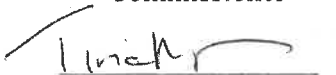
Appeals Unit Review: Statement of the Appeals Unit's Findings and Recommendation

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

7/29/2022
LB

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

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Johnston, Frank

DIN: 87-A-0977

Facility: Otisville CF

AC No.: 11-017-21 B

Findings: (Page.1 of 1)

Appellant challenges the October 2021 determination of the Board, denying release and imposing a 18-month hold. Appellant is incarcerated for two separate crimes. In the first, he was driving a stolen car. In the second, he drove a car and purposely ran over his estranged girlfriend, and then dragged her body for two blocks, killing her. He then led police on a high speed chase until he finally crashed the car. Appellant raises many issues. Two of the issues raised are as follows: 1) the decision lacks detail. 2) the COMPAS departure was done in an illegal manner.

The Board decision doesn't articulate a rationale as to why parole is being denied. Thus, the decision does appear to lack detail, and a de novo is warranted.

A review by the Appeals Unit is unable to determine whether or not the Board did in fact depart from the COMPAS. Since appellate review is frustrated on this point, a de novo is also warranted.

Recommendation: Vacate and remand for de novo interview.