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Administrative Appeal Decision - Clemens, Ronald (2022-03-14)

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STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Clemens, Ronald

DIN: 21-B-1175

Facility: Collins CF

AC No.: 01-019-22 B

Findings: (Page 1 of 4)

Appellant challenges the December 2021 determination of the Board, denying release and imposing a 12-month hold. Appellant's instant offense is for driving a car in an intoxicated condition (he blew a .23%) knowing his drivers license was suspended or revoked, and crashing into a police car. Appellant raises the following issues: 1) he was only convicted of Aggravated Unlicensed Operation, and not DWI, such that there should be no mention of any DWI criteria. 2) it isn't his fault that he hasn't completed programming, as he is on several waitlists. 3) any access by the Board to ██████████ records was done in violation of the HIPPA laws. 4) he is no longer a risk. 5) the Board ignored the positive portions of his COMPAS.

Executive Law § 259-i(2)(c)(A) requires the Board to consider factors 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). 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 (4th 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 (1st Dept. 1997). The Board need not explicitly refer to each factor in its decision, nor give them equal weight. Matter of Schendel v. Stanford, 185 A.D.3d 1365, 1366, 126 N.Y.S.3d 428, 429 (3rd Dept. 2020); Matter of Campbell v. Stanford, 173 A.D.3d 1012, 1015, 105 N.Y.S.3d 461 (2d Dept. 2019); Matter of Phillips v. Dennison, 41 A.D.3d 17, 21, 834 N.Y.S.2d 121, 124 (1st Dept. 2007).

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

The Board may consider an incarcerated individual's history of drug and/or alcohol abuse. Matter of Espinal v. New York Bd. of Parole, 172 A.D.3d 1816, 100 N.Y.S.3d 777 (3d Dept. 2019)

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(substance abuse history); Matter of Gonzalvo v. Stanford, 153 A.D.3d 1021, 56 N.Y.S.3d 896 (3d Dept. 2017) (substance abuse history and risk of future drug abuse); Matter of Dean v. New York State Div. of Parole, 21 A.D.3d 1207, 1208, 801 N.Y.S.2d 92, 93 (3d Dept. 2005) (involvement with weapons and drugs), lv. denied, 6 N.Y.3d 705, 812 N.Y.S.2d 34 (2006); Matter of Sanchez v. Dennison, 21 A.D.3d 1249, 801 N.Y.S.2d 423 (3d Dept. 2005) (history of drug abuse); Matter of Llull v. Travis, 287 A.D.2d 845, 846, 731 N.Y.S.2d 405, 406 (3d Dept. 2001) (drug abuse); Matter of Brant v. New York State Bd. of Parole, 236 A.D.2d 760, 761, 654 N.Y.S.2d 207, 208 (3d Dept. 1997) (history of alcohol and drug abuse); Matter of McLain v. New York State Div. of Parole, 204 A.D.2d 456, 611 N.Y.S.2d 629 (2d Dept. 1994) (history of alcohol abuse); 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) (drug addiction); Matter of Maciag v. Hammock, 88 A.D.2d 1106, 453 N.Y.S.2d 56 (3d Dept. 1982) (problem of alcohol and drug abuse with the concomitant need for programmed counseling).

The Board may cite an inmate's prior history of irresponsible driving in its decision. Confoy v New York State Division of Parole, 173 A.D.2d 1014, 569 N.Y.S.2d 846, 847 (3d Dept 1991); Wade v Stanford, 148 A.D.3d 1487, 52 N.Y.S.3d 508 (3d Dept. 2017).

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).

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). The Board is not required to examine how the records came into their possession.

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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).

An inmate's prior absconding may also be considered by the Board. Harden v New York State Board of Parole, 103 A.D.2d 777, 477 N.Y.S.2d 413 (3d Dept 1984).

The Board may inquire into the circumstances surrounding charges and the underlying incidents that were ultimately dismissed. Lynch v New York State Division of Parole, 82 A.D.2d 1012, 442 N.Y.S.2d 179 (3d Dept 1981); People ex rel. Herbert v New York State Board of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881, 884 (1st Dept 1983). The Board may consider all of the circumstances surrounding the conviction, including conduct for which the inmate was not convicted, as long as evidence of said conduct is in the record, and it is not the sole basis for the Board's decision. Williams v Travis, 11 A.D.3d 788, 783 N.Y.S.2d 413 (3d Dept. 2004); Nunez v Dennison, 51 A.D.3d 1240, 857 N.Y.S.2d 810 (3d Dept. 2008); Fransua v Alexander, 52 A.D.3d 1140, 860 N.Y.S.2d 327 (3d Dept. 2008); Brower v Alexander, 57 A.D.3d 1060, 867 N.Y.S.2d 801(3d Dept. 2008) lv. den. 12 N.Y.3d 707, 879 N.Y.S.2d 53. 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 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, 137 A.D.3d 1396, 26 N.Y.S.3d 815 (3d Dept. 2016). The COMPAS is an additional consideration that the Board must weigh along with the statutory factors for the 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, 990 N.Y.S.2d 295 (3d Dept. 2014); accord Matter of Dawes v. Annucci, 122 A.D.3d 1059, 994 N.Y.S.2d 747 (3d Dept. 2014).

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

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Recommendation: Affirm.

