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Administrative Appeal Decision - Castillo, David (2019-08-05)

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ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Castillo, David

Facility: Fishkill CF

NYSID: [REDACTED]

Appeal Control No.: 01-022-19 B

DIN: 96-A-8121

Appearances: Andre Sedlak Esq.
11 Market Street
Suite 205
Poughkeepsie, New York 12601

Decision appealed: December 2018 decision, denying discretionary release and imposing a hold of 18 months.

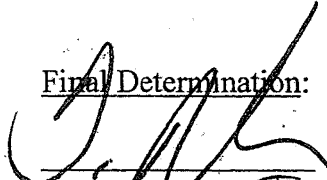
Board Member(s) who participated: Alexander, Berliner, Shapiro

Papers considered: Appellant's Brief received May 6, 2019

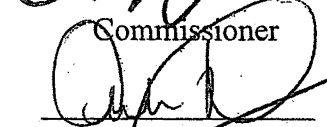
Appeals Unit Review: Statement of the Appeals Unit's Findings and Recommendation

Records relied upon: Pre-Sentence Investigation Report, Parole Board Report, Interview Transcript, Parole Board Release Decision Notice (Form 9026), COMPAS instrument, Offender Case Plan.

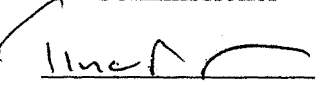
Final Determination: The undersigned determine that the decision appealed is hereby:

 _____ 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 Inmate and the Inmate's Counsel, if any, on 8/5/19

LB

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Castillo, David

DIN: 96-A-8121

Facility: Fishkill CF

AC No.: 01-022-19 B

Findings: (Page 1 of 1)

Appellant challenges the December 2018 determination of the Board, denying release and imposing an 18-month hold. Appellant's instant offense involved him shooting the victim to death when he was only 17 years old. Appellant raises the following issues: 1) the decision is arbitrary and capricious in that the Board didn't consider the parole packet or the statutory factors. 2) several documents were withheld from appellate counsel. 3) the decision lacks detail. 4) the decision lacks future guidance. 5) the decision violates the due process clause of the constitution. 6) all JO and YO matters are prohibited from consideration. 7) the appellant was 17 when he committed this crime, but youth and its transient immaturity factors were not considered. 8) the Parole Board Report has errors. 9) the Board didn't have the sentencing minutes. 10) the decision illegally resentenced him. 11) the interview process is defective, per comments from former Commissioner Manley. 12) the Parole Board Report is defective when compared to the prior Inmate Status Report. 13) the decision was due to the Governor's policy to deny release to all violent felons. 14) the Board failed to comply with the 2011 amendments to the Executive Law in that the 2014 regulations were violated, no written procedures exist, and the statutes are now rehabilitation and present/future based. 15) the 18 month hold is excessive.

Only one issue will be addressed. Appellant was only 17 years old when he committed this murder, and he did receive a sentence of 25 years to life. The decision in the cited Hawkins case, (140 A.D.3d 34, 39, 30 N.Y.S.3d 397, 400 (3d Dept. 2016), along with 9 N.Y.C.R.R 8002.2(c), require the Board in minor offender cases to consider the diminished culpability of youth, along with its transient immaturity issues. None of these required factors are inquired about in the interview to the extent legally required. As such, a de novo interview is required.

Recommendation: Vacate and remand for de novo interview.