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June 2023

### Administrative Appeal Decision - Branch, Walter (2019-07-25)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Branch, Walter

Facility: Wyoming CF

NYSID: [REDACTED]

Appeal  
Control No.: 01-052-19 B

DIN: 98-A-2006

Appearances: Norman Effman Esq  
Wyoming County Legal Aid  
18 Linwood Avenue  
Warsaw, New York 14569

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

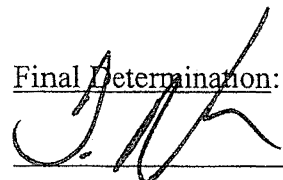
Board Member(s)  
who participated: Smith, Agostini

Papers considered: Appellant's Brief received May 8, 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 7/25/19.

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:** Branch, Walter

**DIN:** 98-A-2006

**Facility:** Wyoming CF

**AC No.:** 01-052-19 B

**Findings:** (Page 1 of 2)

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Appellant challenges the December 2018 determination of the Board, denying release and imposing a 18-month hold. Appellant's instant offense involved him stabbing, choking and trying to rape a woman doing missionary work and who was trying to help appellant transition back into society on his last release from prison. Appellant raises only one issue. Appellant claims the decision is arbitrary and capricious, and irrational bordering on impropriety, in that at his Rescission Hearing in August 2018, the Parole Board instructed him to complete the ART program and then return to see the Board in four months. Appellant has fully complied with that panel's directions, but the new panel denied release.

There is no legal requirement that a second Board panel must follow the recommendation of a prior Board panel, nor that the same members should constitute both panels. Matter of Flores v New York State Bd. of Parole, 210 A.D.2d 555, 620 N.Y.S.2d 141, 142 (3d Dept. 1994). The August 2018 Rescission decision did not make any promises.

An inmate's blaming his criminal conduct on peer pressure constitutes a failure to acknowledge responsibility, which is a basis for denying parole release. Herouard v Travis, 250 A.D.2d 911, 673 N.Y.S.2d 229, 230 (3d Dept 1998).

The inmate's behavior or demeanor may be considered. Matter of Thorn v. New York State Bd. of Parole, 156 A.D.3d 980, 66 N.Y.S.3d 712 (3d Dept. 2017) lv. denied, 31 N.Y.3d 902 (2018).

The Board may consider the inmate's history of violence. Matter of Allen v. Stanford, 161 A.D.3d 1503, 78 N.Y.S.3d 445 (3d Dept.), lv. denied, 32 N.Y.3d 903 (2018).

The Board may consider inadequate release plans in denying parole. See, e.g., Matter of Delrosario v. Stanford, 140 A.D.3d 1515, 34 N.Y.S.3d 696 (3d Dept. 2016) (concern about reentry plans in case immigration does not deport inmate); Matter of Murphy v. State of New York Exec. Dep't Div. of Parole Appeals Unit, 2010 N.Y. Slip Op 32825(U), 2010 N.Y. Misc. Lexis 4926 (Sup. Ct. Albany Co. Sept. 30, 2010) (Ceresia S.C.J.) (denial based in part on absence of legitimate release plan).

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). Denial is neither arbitrary nor capricious when the Board relies on factors defined by New York statute. Siao-Paul

STATE OF NEW YORK – BOARD OF PAROLE

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v. Connolly, 564 F. Supp. 2d 232, 242 (S.D.N.Y. 2008); Hanna v New York State Board of Parole, 169 A.D.3d 503, 92 N.Y.S.3d 621 (1<sup>st</sup> Dept. 2019).

The appellant has failed to demonstrate that the Parole Board's determination was affected by a showing of irrationality bordering on impropriety. Matter of Silmon v Travis, 95 N.Y.2d 470, 718 N.Y.S.2d 704 (2001); Matter of Russo v New York State Board of Parole, 50 N.Y.2d 69, 77, 427 N.Y.S.2d 982 (1980).

**Recommendation:** Affirm.