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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Singleton, Daniel Facility: Woodbourne CF

NYSID: [REDACTED] Appeal Control No.: 01-177-19 B

DIN: 92-A-9336

Appearances: John Ferrara Esq.
548 Broadway
Monticello, New York 12701

Decision appealed: January 2019 decision, denying discretionary release and imposing a hold of 24 months.

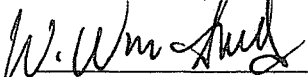
Board Member(s) who participated: Demosthenes, Agostini

Papers considered: Appellant's Brief received May 7, 2019
Appellant's Supplemental Brief received May 21, 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 66.

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Appellant challenges the January 2019 determination of the Board, denying release and imposing a 24-month hold. Appellant's instant offense involved him beating his two year old son to death with his fists, a belt, and by throwing him against a wall. Appellant raises the following issues: 1) the decision is arbitrary and capricious in that the Board failed to consider and/or properly weigh the required statutory factors. 2) statistically appellant is unlikely to reoffend. 3) the decision is the same as prior decisions. 4) the decision lacks detail. 5) the decision is the result of bias. 6) no aggravating factors exist. 7) the decision doesn't contain facts in support of the statutory standard cited. 8) the decision violated the due process clause of the constitution. 9) the decision resentenced him to life without parole. 10) the decision lacks future guidance. 11) the Board failed to comply with the 2011 amendments to the Executive Law in that the statutes are forward/rehabilitation based. 12) the 24 month hold is excessive.

Discretionary release to parole is not to be granted "merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law, **and** that his release is not incompatible with the welfare of society **and** will not so deprecate the seriousness of his crime as to undermine respect for the law." Executive Law § 259-i(2)(c)(A) (emphasis added); accord Matter of Hamilton v. New York State Div. of Parole, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014). Executive Law § 259-i(2)(c)(A) requires the Board to consider criteria which is relevant to the specific inmate, including, but not limited to, the inmate'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 Betancourt v. Stanford, 148 A.D.3d 1497, 49 N.Y.S.3d 315 (3d Dept. 2017); Matter of LeGeros v. New York State Bd. of Parole, 139 A.D.3d 1068, 30 N.Y.S.3d 834 (2d Dept. 2016); Matter of Phillips v. Dennison, 41 A.D.3d 17, 21, 834 N.Y.S.2d 121, 124 (1st Dept. 2007).

That the Board found Appellant's postconviction activities outweighed by the serious nature of his crimes does not constitute convincing evidence that the Board did not consider them, see Matter of McLain v. New York State Div. of Parole, 204 A.D.2d 456, 611 N.Y.S.2d 629 (2d Dept. 1994), or render the decision irrational, see 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).

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Although the Board place emphasis upon the heinous nature of the murder, the Board was not required to give equal weight to or specifically discuss each factor considered. Matter of Betancourt v. Stanford, 148 A.D.3d 1497, 49 N.Y.S.3d 315 (3d Dept. 2017); Matter of Marcus v. Alexander, 54 A.D.3d 476, 476, 862 N.Y.S.2d 414, 415 (3d Dept. 2008); Matter of Moore v. New York State Bd. of Parole, 274 A.D.2d 886, 712 N.Y.S.2d 179 (3d Dept. 2000), appeal dismissed, 95 N.Y.2d 958, 722 N.Y.S.2d 474 (2000), cert. denied, 532 U.S. 1026, 121 S. Ct. 1974 (2001).

Although the Board placed great emphasis on the violent nature of the crimes and petitioner's criminal history, it was not required to discuss or give equal weight to each statutory factor. Matter of Wise v. State Div. of Parole, 54 A.D.3d 463, 464, 862 N.Y.S.2d 644, 645 (3d Dept. 2008). The fact that the Board afforded greater weight to the inmate'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 inmate's failure to comply with DOCCS rules in denying parole. See Matter of Almonte v. New York State Bd. of Parole, 145 A.D.3d 1307, 42 N.Y.S.3d 691 (3d Dept. 2016), lv. denied, 29 N.Y.3d 905 (2017); Matter of Karlin v. Cully, 104 A.D.3d 1285, 1286, 960 N.Y.S.2d 827, 828 (4th Dept. 2013); 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).

The Board stressing the nature of the underlying offense, troubling criminal history and prison disciplinary record, does not constitute irrationality bordering on impropriety. Perez v Evans, 76 A.D.3d 1130, 907 N.Y.S.2d 701 (3d Dept. 2010); Mentor v New York State Division of Parole, 87 A.D.3d 1245, 930 N.Y.S.2d 302 (3d Dept. 2011) lv.app.den. 18 N.Y.3d 803, 938 N.Y.S.2d 860 (2012); Stanley v New York State Division of Parole, 92 A.D.3d 948, 939 N.Y.S.2d 132 (2d Dept. 2012); Moore v New York State Board of Parole, 137 A.D.3d 1375, 26 N.Y.S.3d 412 (3d Dept. 2016).

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).

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The Board may consider negative aspects of the COMPAS instrument. Matter of Espinal v. New York Bd. of Parole, 2019 NY Slip Op 04080, 2019 N.Y. App. Div. LEXIS 4057 (3d Dept. May 23, 2019) (COMPAS instrument yielded mixed results); Matter of Bush v. Annucci, 148 A.D.3d 1392, 50 N.Y.S.3d 180 (3d Dept. 2017) (COMPAS instrument with mixed results including substance abuse relevant given use before crime); Matter of Wade v. Stanford, 148 A.D.3d 1487, 52 N.Y.S.3d 508 (3d Dept. 2017) (low risk felony violence but probable risk for substance abuse alcohol related crimes); Matter of Crawford v. New York State Bd. of Parole, 144 A.D.3d 1308, 46 N.Y.S.3d 228 (3d Dept. 2016) (scores not uniformly low including family support), lv. denied, 29 N.Y.3d 901, 57 N.Y.S.3d 704 (2017).

The Board may reject the inmate's attempt to mitigate the serious nature of the crime. In the Matter of Morel v. Travis, 278 A.D.2d 580, 717 N.Y.S.2d 425 (3d Dept 2000), app. dismissed, lv. denied 96 N.Y.2d 752, 725 N.Y.S.2d 274 (2001); Applegate v New York State Board of Parole, 164 A.D.3d 996, 82 N.Y.S.3d 240 (3d Dept. 2018).

The Board may take note of the inmate's disregard for the life of another human being. Hakim v Travis, 302 A.D.2d 821, 754 N.Y.S.2d 600 (3d Dept 2003); Angel v Travis, 1 A.D.3d 589, 767 N.Y.S.2d 290 (3d Dept 2003).

The Board may place greater weight on the nature of the crime without the existence of any aggravating factors. Matter of Hamilton v. New York State Div. of Parole, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014).

As for an alleged similarity to prior Board decisions, since the Board is required to consider the same statutory factors each time an inmate appears before it, it follows that the same aspects of the individual's record may again constitute the primary grounds for a denial of parole. Matter of Hakim v. Travis, 302 A.D.2d 821, 754 N.Y.S.2d 600 (3d Dept. 2003); Matter of Bridget v. Travis, 300 A.D.2d 776, 750 N.Y.S.2d 795 (3d Dept. 2002). The Board is required to consider the same factors each time he appears in front of them. Matter of Williams v. New York State Div. of Parole, 70 A.D.3d 1106, 894 N.Y.S.2d 224 (3d Dept.), lv. denied, 14 N.Y.3d 709, 901 N.Y.S.2d 143 (2010).

There must be support in the record to prove an alleged bias and proof that the decision flowed from such bias. Matter of Hernandez v. McSherry, 271 A.D.2d 777, 706 N.Y.S.2d 647 (3d Dept. 2000), lv. denied, 95 N.Y.2d 769, 722 N.Y.S.2d 472 (2000); see also Matter of Gonzalvo v. Stanford, 153 A.D.3d 1021, 56 N.Y.S.3d 896 (3d Dept. 2017) (rejecting bias claim); Matter of Grune v. Board of Parole, 41 A.D.3d 1014, 838 N.Y.S.2d 694 (3d Dept. 2007). No such proof exists here. There is a presumption of honesty and integrity that attaches to Judges and administrative fact-finders. See People ex rel. Carlo v. Bednosky, 294 A.D.2d 382, 383, 741 N.Y.S.2d 703 (2d Dept. 2002); People ex. rel. Johnson v. New York State Bd. of Parole, 180 A.D.2d 914, 916, 580 N.Y.S.2d 957, 959 (3d Dept. 1992). The Board is presumed to follow its statutory commands and

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internal policies in fulfilling its obligations. See Garner v. Jones, 529 U.S. 244, 256, 120 S. Ct. 1362, 1371 (2000). Appellant has failed to overcome the presumption that the Board complied with its duty. See Matter of Davis v. New York State Div. of Parole, 114 A.D.2d 412, 494 N.Y.S.2d 136 (2d Dept. 1985).

That the Board “did not recite the precise statutory language of Executive Law § 259-i (2)(c)(A) in support of its conclusion to deny parole does not undermine its conclusion.” Matter of Mullins v. New York State Bd. of Parole, 136 A.D.3d 1141, 1142, 25 N.Y.S.3d 698 (3d Dept. 2016) (citation omitted); accord Matter of Reed v. Evans, 94 A.D.3d 1323, 942 N.Y.S.2d 387 (3d Dept. 2012). The language used by the Board was “only semantically different” from the statute. Matter of Miller v. New York State Div. of Parole, 72 A.D.3d 690, 691–92, 897 N.Y.S.2d 726, 727 (2d Dept. 2010); Matter of James v. Chairman of New York State Div. of Parole, 19 A.D.3d 857, 858, 796 N.Y.S.2d 735, 736 (3d Dept. 2005); see also 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) (upholding decision that denied release as “contrary to the best interest of the community”); Matter of Murray v. Evans, 83 A.D.3d 1320, 920 N.Y.S.2d 745 (3d Dept. 2011) (Board provided adequate statutory rationale).

The Board’s decision satisfied the criteria set out in Executive Law § 259-i(2)(a), as it was sufficiently detailed to inform the inmate of the reasons for the denial of 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 Kozlowski v. New York State Bd. of Parole, 108 A.D.3d 435, 968 N.Y.S.2d 87 (1st Dept. 2013); Matter of Little v. Travis, 15 A.D.3d 698, 788 N.Y.S.2d 628 (3d Dept. 2005); Matter of Davis v. Travis, 292 A.D.2d 742, 739 N.Y.S.2d 300 (3d Dept. 2002); 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).

As for Appellant’s complaint about lack of future guidance, the Board is not required to state what an inmate should do to improve his chances for parole in the future. Matter of Francis v. New York State Div. of Parole, 89 A.D.3d 1312, 934 N.Y.S.2d 514 (3d Dept. 2011); Matter of Freeman v. New York State Div. of Parole, 21 A.D.3d 1174, 800 N.Y.S.2d 797 (3d Dept. 2005); Matter of Partee v. Evans, 40 Misc.3d 896, 969 N.Y.S.2d 733 (Sup. Ct. Albany Co. 2013), *aff’d*, 117 A.D.3d 1258, 984 N.Y.S.2d 894 (3d Dept. 2014), *lv. denied*, 24 N.Y.3d 901, 995 N.Y.S.2d 710 (2014).

Appellant’s assertion that the denial of parole release amounted to an improper resentencing is without merit inasmuch as the Board fulfilled its obligation to determine the propriety of release per Executive Law § 259-i(2)(c)(A) and after considering the factors set forth therein. Executive Law § 259 et seq.; Penal Law § 70.40; Matter of Murray v. Evans, 83 A.D.3d 1320, 920 N.Y.S.2d 745 (3d Dept. 2011); Matter of Crews v. New York State Exec. Dept. Bd. of Parole Appeals Unit, 281 A.D.2d 672, 720 N.Y.S.2d 855 (3d Dept. 2001). The Board was vested with discretion to determine whether release was appropriate notwithstanding the minimum period of incarceration set by the Court. Matter of Burress v. Dennison, 37 A.D.3d 930, 829 N.Y.S.2d 283 (3d Dept.

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2007); Matter of Cody v. Dennison, 33 A.D.3d 1141, 1142, 822 N.Y.S.2d 677 (3d Dept. 2006), lv. denied, 8 N.Y.3d 802, 830 N.Y.S.2d 698 (2007). The appellant has not in any manner been resentenced. Matter of Mullins v. New York State Bd. of Parole, 136 A.D.3d 1141, 1142, 25 N.Y.S.3d 698 (3d Dept. 2016).

Nothing in the Board’s decision indicates a permanent denial of parole consideration. Hodge v Griffin, 2014 WL 2453333 (SDNY 2014).

An inmate has no Constitutional right to be conditionally released on parole before expiration of a valid sentence. Greenholtz v. Inmates of Nebraska Penal & Correctional Complex, 442 U.S. 1, 99 S. Ct. 2100, 2104 (1979); Matter of Russo v. Bd. of Parole, 50 N.Y.2d 69, 427 N.Y.S.2d 982 (1980); Matter of Vineski v. Travis, 244 A.D.2d 737, 664 N.Y.S.2d 391 (3d Dept. 1997). The New York State parole scheme “holds out no more than a possibility of parole” and thus does not create a protected liberty interest implicating the due process clause. Matter of Russo, 50 N.Y.2d at 75-76, 427 N.Y.S.2d at 985; see also Barna v. Travis, 239 F.3d 169, 171 (2d Cir. 2001); Matter of Freeman v. New York State Div. of Parole, 21 A.D.3d 1174, 800 N.Y.S.2d 797 (3d Dept. 2005). That the inmate has served his minimum sentence does not give him a protected liberty interest in parole release. Matter of Russo v. Bd. of Parole, 50 N.Y.2d 69, 427 N.Y.S.2d 982 (1980); Matter of Motti v. Alexander, 54 A.D.3d 114, 115, 863 N.Y.S.2d 839, 839-40 (3d Dept. 2008); Matter of Warren v. New York State Div. of Parole, 307 A.D.2d 493, 493, 761 N.Y.S.2d 883, 883 (3d Dept. 2003); Matter of Vineski v. Travis, 244 A.D.2d 737, 664 N.Y.S.2d 391 (3d Dept. 1997).

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. Duемmel 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).

Parole is not constitutionally based, but is a creature of statute which may be imposed subject to conditions imposed by the state legislature. Banks v Stanford, 159 A.D.3d 134, 71 N.Y.S.3d 515 (2d Dept. 2018).

Petitioner attempts to reduce parole release decisions to a mathematical equation and elevate statistics to a statutory factor that the Board must consider and address in denial decisions. However, that is not the law and the cited statistics do not translate into a calculation of Petitioner’s re-offense risk. Moreover, the Board does not hold evidentiary hearings but conducts interviews in furtherance of its discretionary decisions. Executive Law § 259-i(2)(c)(A); Matter of Banks v. Stanford, 159 A.D.3d 134, 144, 71 N.Y.S.3d 515, 522 (2d Dept. 2018). Each case is unique and the Board is not bound by statistics. Cf. Matter of Phillips v. Dennison, 41 A.D.3d 17, 22, 834 N.Y.S.2d 121, 124-25

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(1st Dept. 2007) (“each case is sui generis, and the Board has full authority in each instance to give the various factors a unique weighted value”). Instead, there must be a showing of irrationality “bordering on impropriety” before judicial intervention is warranted. Matter of Banks, 159 A.D.3d at 142, 71 N.Y.S.3d 515, 521. 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).

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 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 (1st Dept. 2019).

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 Div. of Parole, 204 A.D.2d 456, 611 N.Y.S.2d 629 (2d Dept. 1994); Matter of McKee v. New York State Bd. of Parole, 157 A.D.2d 944, 945, 550 N.Y.S.2d 204, 205 (3d Dept. 1990); People ex rel. Herbert, 97 A.D.2d 128, 468 N.Y.S.2d 881.

Appellant’s claim that the Board failed to comply with the 2011 amendments to the Executive Law is rejected. Dolan v New York State Board of Parole, 122 A.D.3d 1058, 995 N.Y.S.2d 850 (3d Dept. 2014); Tran v Evans, 126 A.D.3d 1196, 3 N.Y.S.3d 633 (3d Dept. 2015); Boccadisi v Stanford, 133 A.D.3d 1169, 20 N.Y.S.3d 477 (3d Dept. 2015).

The 2011 amendments to the Executive Law, as well as the state regulations governing parole, do not create a legitimate expectancy of release that would give rise to a due process interest in parole. Fuller v Evans, 586 Fed.Appx. 825 (2d Cir. 2014) cert.den. 135 S.Ct. 2807, 192 L.Ed2d 851.

Contrary to Appellant’s claim, the 2011 amendments and 9 NYCRR § 8002.2(a) as amended do not represent a forward-looking shift requiring the COMPAS to be the fundamental basis for release decisions. This proposition is not supported by the language of the statute itself, considering the relatively modest change to Section 259-c(4) and the absence of any substantive

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change to Section 259-i(2), which governs the discretionary release consideration process. In 2011, the Executive Law was amended to require procedures incorporating risk and needs principles to “assist” the Board in making parole release decisions. Executive Law § 259–c(4). The Board satisfies this requirement in part by using the COMPAS instrument. Matter of Montane v. Evans, 116 A.D.3d 197, 202, 981 N.Y.S.2d 866, 870 (3d Dept. 2014); see also Matter of Hawthorne v. Stanford, 135 A.D.3d 1036, 1042, 22 N.Y.S.3d 640, 645 (3d Dept. 2016); Matter of LeGeros, 139 A.D.3d 1068, 30 N.Y.S.3d 834; Matter of Robles v. Fischer, 117 A.D.3d 1558, 1559, 985 N.Y.S.2d 386, 387 (4th Dept. 2014). However, the COMPAS is not predictive and was never intended to be the sole indicator of risk and needs as the Board gets risk and needs information from a variety of sources, including the statutory factors and the interview. Notably, the 2011 amendments did not eliminate the requirement that the Board conduct a case-by-case review of each inmate by considering the statutory factors, including the instant offense. Executive Law § 259-i(2)(c)(A); Matter of Montane, 116 A.D.3d at 202, 981 N.Y.S.2d at 870. The amendments also did not change the three substantive standards that the Board is required to apply when deciding whether to grant parole. Executive Law § 259-i(2)(c)(A). Thus, the COMPAS instrument cannot mandate a particular result. Matter of King, 137 A.D.3d 1396, 26 N.Y.S.3d 815. Rather, the COMPAS is an additional consideration that the Board must weigh along with the statutory factors for the purposes of deciding whether all three statutory 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); see also Matter of Gonzalvo v. Stanford, 153 A.D.3d 1021, 56 N.Y.S.3d 896 (3d Dept. 2017).

The Board’s decision to hold an 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 N.Y.C.R.R. § 8002.3(b). Matter of Tatta v. State of N.Y., Div. of Parole, 290 A.D.2d 907, 737 N.Y.S.2d 163 (3d Dept. 2002), lv. denied, 98 N.Y.2d 604, 746 N.Y.S.2d 278 (2002); see also Matter of Campbell v. Evans, 106 A.D.3d 1363, 965 N.Y.S.2d 672 (3d Dept. 2013). In the absence of impropriety, the reconsideration date set by the Board will not be disturbed. Matter of Tatta v. State of N.Y., Div. of Parole, 290 A.D.2d 907, 908, 737 N.Y.S.2d 163 (3d Dept. 2002); accord Matter of Evans v. Dennison, 13 Misc. 3d 1236(A), 831 N.Y.S.2d 353 (Sup. Ct. Westchester Co. 2006) (rejecting challenge to 24-month hold).

Recommendation: Affirm.