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Administrative Appeal Decision - Rispers, Michael (2019-09-30)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Rispers, Michael

Facility: Sullivan CF

NYSID: [REDACTED]

Appeal
Control No.: 02-015-19 B

DIN: 16-A-0346

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

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

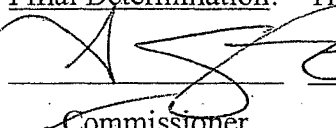
Board Member(s)
who participated: Coppola, Crangle


Papers considered: Appellant's Brief received June 3, 2019

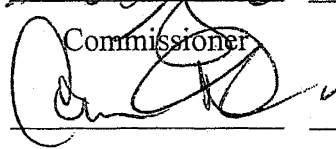
Appeals Unit Review: Statement of the Appeals Unit's Findings and Recommendation

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 7/30/19 CC.

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

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Appellant challenges the January 2019 determination of the Board, denying release and imposing a 24-month hold. Appellant is incarcerated for several different crimes. In one, while in a courtroom, he attacked the court officers by spitting and kicking and charging at them, resulting in one officer having a fractured leg and a herniated disc. In a second crime, appellant broke into a residence, and stole a TV, an iPad, a Wii deluxe, an iPod, a computer and a debit card. In the third crime, the appellant punched and kicked a woman and put his hand around her neck, and then raped her. Appellant raises the following issues: 1) the decision is irrational bordering on impropriety in that appellant [REDACTED], which clearly impact his programming and discipline history. 2) and the Board should have focused on his release plans, but didn't.

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).

Although the Board placed great emphasis on the violent nature of the crimes, 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 seriousness of the offense alone has long been held to constitute a sufficient ground to deny parole release. Matter of Secilmic v Keane, 25 A.D.2d 628, 639 N.Y.S.2d 437 (2d Dept 1996);

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Howithi v Travis, 19 A.D.3rd 727, 796 N.Y.S.2d 195 (3d Dept. 2005); Matter of Dudley v Brown, 227 A.D.2d 863, 642 N.Y.S.2d 386 (3d Dept 1996), lv to app. den. 88 N.Y.2d 812; People ex rel Thomas v Superintendent Arthurkill Correctional Facility, 124 A.D.2d 848, 508 N.Y.S.2d 564 (2d Dept 1986) app. den. 69 N.Y.2d 611.

The Board may consider the deviant nature of the crime. Wellman v Dennison, 23 A.D.3d 974, 805 N.Y.S.2d 159 (3d Dept. 2005).

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 could cite the inmate's poor institutional record as a factor against parole release. Porter v New York State Board of Parole, 282 A.D.2d 843, 722 N.Y.S.2d 922, 923 (3d Dept. 2001); Abascal v New York State Board of Parole, 23 A.D.3d 740, 802 N.Y.S.2d 803 (3d Dept. 2005); Almonte v New York State Board of Parole, 145 A.D.3d 1307, 42 N.Y.S.3d 691 (3d Dept. 2016).

The Board may consider an inmate's need to complete rehabilitative programming in denying parole. See 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 denial of an EEC. Matter of Grigger v. Goord, 41 A.D.3d 1128, 840 N.Y.S.2d 174 (3d Dept. 2007); see also Matter of Frett v. Coughlin, 156 A.D.2d 779, 550 N.Y.S.2d 61 (3d Dept. 1989).

The Board may take into account an inmate'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 may consider [REDACTED] provided to the inmate during his incarceration; however, it does not mandate release. See Matter of Wade v. Stanford, 148 A.D.3d

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1487, 52 N.Y.S.3d 508 (3d Dept. 2017); Matter of Gssime v. New York State Div. of Parole, 84 A.D.3d 1630, 923 N.Y.S.2d 307 (3d Dept.), lv. dismissed, 17 N.Y.3d 847, 930 N.Y.S.2d 542 (2011). There is no indication that the Board improperly considered the inmate's [REDACTED], or that his disciplinary infractions could be excused because of it.

As for appellant's release plans, the Board did consider this, and did not use it as a reason to deny release. So, this issue is dismissed as moot.

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).

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.

Recommendation: Affirm.