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Administrative Appeal Decision - Pineda, Francisco (2019-11-25)

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ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Pineda, Francisco

Facility: Watertown CF

NYSID: [REDACTED]

Appeal Control No.: 03-036-19 B

DIN: 18-R-1307

Appearances: Francisco Pineda, 18-R-1307
Watertown CF
23147 Swan Road
Watertown, NY 13601-9340

Decision appealed: February 2019 decision denying discretionary release and imposing a hold of 18 months.

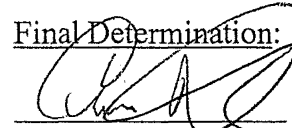
Board Member(s) who participated: **Alexander, Crangle**

Papers considered: Appellant’s Letter-brief received July 9, 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 11/25/19.

LB

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Pineda, Francisco

DIN: 18-R-1307

Facility: Watertown CF

AC No.: 03-036-19 B

Findings: (Page 1 of 2)

Appellant was sentenced to two to four years upon his conviction of Criminal Contempt in the first degree and Aggravated Family Offense. In the instant appeal, Appellant challenges the February 2019 determination of the Board denying release and imposing an 18 -month hold on two grounds. First, Appellant argues the decision is arbitrary and capricious because he has an EEC, low COMPAS scores and completed recommended programs. Second, he argues that, for those reasons, the 18-month hold also is excessive. These arguments are without merit.

Generally, discretionary release to parole is not to be granted unless the Board determines that an inmate meets three standards: “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). The Board must consider factors relevant to the specific inmate, including, but not limited to, the inmate’s institutional record and criminal behavior. Executive Law § 259-i(2)(c)(A). Whereas here the inmate has received an EEC, the Board may deny release to parole on a finding that there is a reasonable probability that, if such inmate is released, the inmate will not live and remain at liberty without violating the law and that his release is not compatible with the welfare of society. Correction Law § 805; Matter of Heitman v. New York State Bd. of Parole, 214 A.D.2d 673, 625 N.Y.S.2d 264 (2d Dept. 1995); Matter of Salcedo v. Ross, 183 A.D.2d 771, 771, 583 N.Y.S.2d 502, 503 (1st Dept. 1992); Matter of Walker v. Russi, 176 A.D.2d 1185, 576 N.Y.S.2d 51 (3d Dept. 1991), appeal dismissed, 79 N.Y.2d 89 7, 581 N.Y.S.2d 660 (1992). An EEC does not automatically guarantee release or eliminate consideration of the statutory factors, including the instant offense. Matter of Corley v. New York State Div. of Parole, 33 A.D.3d 1142, 1143, 822 N.Y.S.2d 817, 818 (3d Dept. 2006); Matter of Pearl v. New York State Div. of Parole, 25 A.D.3d 1058, 808 N.Y.S.2d 816, 817 (3d Dept. 2006); Matter of White v. Dennison, 29 A.D.3d 1144, 814 N.Y.S.2d 393 (3d Dept. 2006).

The record as a whole, including the interview transcript, reflects that the Board considered the appropriate factors, including: the instant offense; Appellant’s criminal history; institutional record including clean discipline, completion of ART and receipt of an EEC; and release plans to live with his aunt and return to his previous job. The Board also had before it and considered, among other things, the sentencing minutes, Appellant’s case plan, the COMPAS instrument, and letters of support/assurance.

After considering all required factors and principles, the Board acted within its discretion in denying release. In doing so, the Board permissibly relied on the instant offense involving multiple acts in violation of an order of protection, that it is a continuation of Appellant’s criminal history and

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record on community supervision, and, despite his COMPAS instrument, Appellant's limited insight into his repeated words and actions towards his victim and the harm caused. The Board acted within its discretion in determining these considerations rebutted any presumption created by the EEC and rendered discretionary release inappropriate at this time. See generally Matter of Neal v. Stanford, 131 A.D.3d 1320, 16 N.Y.S.3d 342 (3d Dept. 2015). Furthermore, the Board's decision was sufficiently detailed. Executive Law § 259-i(2)(a); 9 N.Y.C.R.R. § 8002.3; 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 Little v. Travis, 15 A.D.3d 698, 788 N.Y.S.2d 628 (3d Dept. 2005).

As for the length of the hold, the Board's decision to hold an inmate for a 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). Appellant has failed to demonstrate that a hold of 18 months for discretionary release was excessive or improper.

Recommendation: Affirm.