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June 2023

### Administrative Appeal Decision - Waldron, Christopher J (2019-11-25)

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ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Waldron, Christopher

Facility: Mid-State CF

NYSID: [REDACTED]

Appeal Control No.: 03-106-19 B

DIN: 17-A-5147

Appearances: James P. Godemann, Esq.  
Oneida County Public Defender's Office  
250 Boehlert Center at Union Station  
321 Main Street  
Utica, NY 13501

Decision appealed: February 2019 decision, denying discretionary release and imposing a hold of 15 months.


Board Member(s) who participated: Smith, Davis

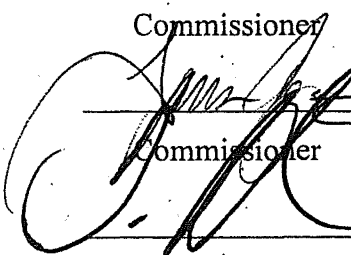
Papers considered: Appellant's Brief received July 1, 2019


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:** Waldron, Christopher

**DIN:** 17-A-5147

**Facility:** Mid-State CF

**AC No.:** 03-106-19 B

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Appellant challenges the February 2019 determination of the Board, denying release and imposing a 15-month hold. The instant offense involves the appellant stealing a loaded 9mm semi-automatic handgun and, in a separate incident, stealing a purse from an unlocked car and using the credit card of the female victim to buy a television and cigarettes. Appellant raises the following issues: 1) the Board’s decision is arbitrary and capricious because it emphasized the instant offense, Appellant’s prior criminal history, and past failures at rehabilitation despite his COMPAS instrument and other factors such as his institutional record and the fact that he has release plans; and 2) the Board did not explain how it weighted the factors it considered or adequately explain the reasons for the denial of parole release. These arguments are without merit.

As an initial matter, 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).

In 2011, the law was amended to further 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 v. New York State Bd. of Parole, 139 A.D.3d 1068, 30 N.Y.S.3d 834 (2d Dept. 2016); Matter of Robles v. Fischer, 117 A.D.3d 1558, 1559, 985 N.Y.S.2d 386, 387 (4th Dept. 2014). 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. 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 v. Stanford, 137 A.D.3d 1396, 26 N.Y.S.3d 815 (3d Dept. 2016). Rather, the COMPAS is an additional consideration that the Board must weigh along with the statutory factors for the purposes of deciding whether the three 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,

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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).

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 (4<sup>th</sup> 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 (1<sup>st</sup> 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 (1<sup>st</sup> Dept. 2007). 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 (4<sup>th</sup> 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.

The record as a whole, including the interview transcript, reflects that the Board considered the appropriate factors, including: the instant offenses wherein Appellant stole a loaded handgun from one victim and used the stolen credit card of another victim to buy a television and cigarettes; his criminal record including a prior state bid; and his institutional record including a recent drug ticket and vocational programming. The Board also had before it and considered, among other things, the case plan, the COMPAS instrument, and the sentencing minutes.

After considering all required factors, the Board acted within its discretion in determining release would not satisfy the standards provided for by Executive Law § 259-i(2)(c)(A). In reaching its conclusion, the Board permissibly relied on the instant offenses, that they represented an escalation in criminal behavior, and Appellant’s recent drug ticket. See 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); Matter of Symmonds v. Dennison, 21 A.D.3d 1171, 1172, 801 N.Y.S.2d 90, 90 (3d Dept.), lv. denied, 6 N.Y.3d 701, 810 N.Y.S.2d 415 (2005); Matter of Maricevic v. Evans, 86 A.D.3d 879, 927 N.Y.S.2d 471 (3d Dept. 2011). The Board cited the COMPAS instrument’s probable risk score for reentry substance abuse indicating a need for treatment to address the addiction fueling his criminal behavior. See Matter of Bush v. Annucci, 148 A.D.3d 1392, 50 N.Y.S.3d 180 (3d Dept. 2017); Matter of Wade v. Stanford, 148 A.D.3d 1487,

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52 N.Y.S.3d 508 (3d Dept. 2017). The Board also encouraged Appellant to complete required programs and prepare a documented release plan. 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 Delrosario v. Stanford, 140 A.D.3d 1515, 34 N.Y.S.3d 696 (3d Dept. 2016).

Finally, 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). The Board addressed a number of the factors considered in individualized terms and explained those that ultimately weighed most heavily in its deliberations. However, the Board was not required to address, or articulate the weight accorded to, each factor considered in its decision. See 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); Matter of Allis v. New York State Div. of Parole, 68 A.D.3d 1309, 1309, 890 N.Y.S.2d 200, 201 (3d Dept. 2009).

In conclusion, Appellant has failed to demonstrate the Board’s decision was not made in accordance with the pertinent statutory requirements or was irrational “bordering on impropriety.” Matter of Silmon v. Travis, 95 N.Y.2d 470, 476, 718 N.Y.S.2d 704 (2000) (quoting Matter of Russo v. New York State Bd. of Parole, 50 N.Y.2d 69, 427 N.Y.S.2d 982 (1980)).

**Recommendation:** Affirm.