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Administrative Appeal Decision - Rodriquez, Fermin (2019-09-30)

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ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Bryant, Keith

Facility: Orleans CF

NYSID: [REDACTED]

Appeal Control No.: 04-120-19 B

DIN: 18-B-2645

Appearances: Keith Bryant 18B2645
Orleans Correctional Facility
3531 Gaines Basin Road
Albion, New York 14411

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

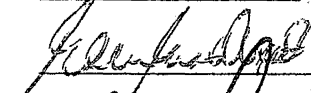
Board Member(s) who participated: Berliner, Demosthenes

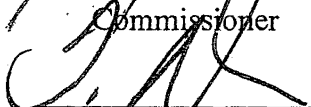
Papers considered: Appellant's Letter-brief received April 15, 2019

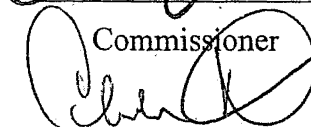
Appeals Unit Review: Statement of the Appeals Unit's Findings and Recommendation

Records relied upon: Pre-Sentence Investigation Report, Parole Board Report, 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 7/10/19 66.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Bryant, Keith

DIN: 18-B-2645

Facility: Orleans CF

AC No.: 04-120-19 B

Findings: (Page 1 of 1)

Appellant challenges the April 2019 determination of the Board, denying release and imposing a 24-month hold. Appellant is incarcerated for two separate crimes. In the first, he stole over \$2,000 worth of merchandise from a department store. In the second, appellant stole merchandise from a different department store from which he was previously banned, and when exiting the store got physical with a store employee who tried to stop him. Appellant raises the following issues: 1) appellant did not refuse to attend his Parole Board interview, and if the Board believes he did, then it should first order a mental competency exam. [REDACTED] 3) appellant has never refused programs. 4) one disciplinary matter is still under appeal.

Official DOCCS records show appellant refused to appear for this Parole Board interview, and that he has also refused to take many DOCCS programs. Pursuant to Executive Law sections 259-i(2)(c)(A) and 259-k(1), the Board is required to obtain official reports and may rely on the information contained therein. See, e.g., Matter of Silmon v. Travis, 95 N.Y.2d 470, 474, 477, 718 N.Y.S.2d 704, 706, 708 (2000) (discussing former status report); Matter of Carter v. Evans, 81 A.D.3d 1031, 916 N.Y.S.2d 291 (3d Dept.) (presentence investigation report), lv. denied, 16 N.Y.3d 712, 923 N.Y.S.2d 416 (2011); see also Billiteri v. United States Bd. of Parole, 541 F.2d 938, 944-945 (2d Cir. 1976). And, if the inmate refuses to attend, then he has failed to preserve any procedural challenges to the manner in which the proceeding was conducted. Shaw v Fischer, 126 A.D.3d 1533, 4 N.Y.S.3d 568 (4th Dept. 2015). Nor is a mental competency exam required for a waiver of the right to appear for the Parole Board Release Interview.

Per 9 N.Y.C.R.R. 8006.1 and 8006.3, a certificate of relief from disabilities is beyond the scope of the jurisdiction of the Appeals Unit. Thus, this claim is dismissed for lack of subject matter jurisdiction.

It is not improper for the Board to consider a DOCS prison disciplinary finding against the appellant, even if the case is pending on appeal at the time of the Parole Board Release Interview. Matter of Arce v Travis, 273 A.D.2d 564, 710 N.Y.S.2d 554 (3d Dept 2000). Appellant is not automatically entitled to a new parole release interview due to the subsequent reversal of a DOCS disciplinary hearing. Matter of Collins v. Hammock, 52 N.Y.2d 798, 436 N.Y.S.2d 704 (1980).

Recommendation: Affirm.