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June 2023

### Administrative Appeal Decision - Clark, Tyrell (2019-08-09)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Thompson, Rahmel Facility: Bare Hill CF  
NYSID: [REDACTED] Appeal Control No.: 04-142-19 B  
DIN: 03-A-3043

Appearances: Rahmel Thompson 03A3043  
Bare Hill Correctional Facility  
Caller Box 20  
181 Brand Road  
Malone, New York 12953

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

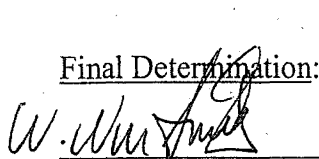
Board Member(s) who participated: Cruse, Davis, Shapiro

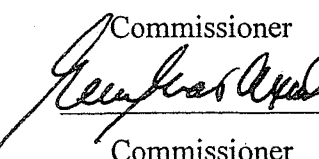
Papers considered: Appellant’s Letter-brief received May 8, 2019


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 \_\_\_\_\_

**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 9/30/19.

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Thompson, Rahmel

**DIN:** 03-A-3043

**Facility:** Bare Hill CF

**AC No.:** 04-142-19 B

**Findings:** (Page 1 of 1)

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Appellant challenges the April 2019 determination of the Board, denying release and imposing an 18-month hold. Appellant's instant offense involved him shooting the victim to death during a robbery. Appellant raises only one issue. Appellant claims the decision is based upon erroneous information. Specifically, appellant contends the crime took place in a store, and not in a residence, as the Board decision states.

The Pre-sentence Investigation Report only says the crime took place on "premises." On page #3 of the interview transcript, when the Board in a question states the transaction took place in a residence, the appellant answered in the affirmative. If a Board member makes an erroneous statement during the interview, but the inmate doesn't try to correct it during the interview, then the Board decision will not be vacated. Gordon v Stanford, 148 A.D.3d 1502, 50 N.Y.S.3d 627 (3d Dept. 2017). If the inmate makes no objection during the interview to an erroneous statement, the decision will not be vacated. Rivera v Stanford, 149 A.D.3d 1445, 53 N.Y.S.3d 404 (3d Dept. 2017).

If in fact the crime took place in a store and not in a residence, then the misstatement of fact in the Board determination did not rise to a level where it affected the Board's decision, and as such any alleged error would be deemed harmless such that no new proceeding is required. Matter of Rossney v. New York State Division of Parole, 267 A.D.2d 648, 649, 699 N.Y.S.2d 319 (3d Dept. 1999); Khatib v New York State Board of Parole, 118 A.D.3d 1207, 988 N.Y.S.2d 286 (3d Dept. 2014). Matter of Gordon v. Stanford, 148 A.D.3d 1502, 50 N.Y.S.3d 627 (3d Dept. 2017). It would constitute mere harmless error at most.

**Recommendation:** Affirm.