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June 2023

### Administrative Appeal Decision - Derti, Naser (2022-02-11)

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STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Derti, Nasar

**DIN:** 97-A-6020

**Facility:** Elmira CF

**AC No.:** 05-084-21 B

**Findings:** (Page 1 of 2)

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Appellant is serving a sentence of 25 years to life upon his conviction by verdict of Robbery in the First Degree, Robbery in the Second Degree and Assault in the Second Degree. The instant offense involved the Appellant and his co-defendant, organizing and planning a robbery of a jewelry store. During the course of the robbery, one of the employees suffered physical injuries.

In the instant appeal, Appellant, through counsel, challenges the May 2021 determination of the Board, denying release and imposing a 24-month hold on the ground that the Board departed from the COMPAS instrument without sufficient reasoning in violation of §9 NYCRR 8002.2(a). This argument is without merit.

The 2011 amendments 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). This is encompassed in the Board’s regulations. 9 N.Y.C.R.R. § 8002.2(a). However, the COMPAS is not predictive and was never intended to be the sole indicator of risk and needs as the Board gets risk and needs information from a variety of sources, including the statutory factors and the interview. Notably, the 2011 amendments did not eliminate the requirement that the Board conduct a case-by-case review of each incarcerated individual 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 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, 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). That is exactly what occurred here.

The Board considered the Appellant’s COMPAS instrument but expressed disagreement with the low score of low risk of arrest in light of the Appellant’s lengthy disciplinary record while incarcerated. Additionally, the Board considered and disagreed with the COMPAS finding that the Appellant’s need for reentry substance abuse upon release was only probable, especially given the Appellant’s admissions during his interview wherein he stated that he used drugs as recently as October of 2020. In doing so, the Board identified the scale from which it was departing and

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provided an explanation consistent with §9 NYCRR 8002.2(a). See Matter of Montane, 116 A.D.3d at 202, 981 N.Y.S.2d at 870

**Recommendation:** Affirm.

STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Derti, Nasar

Facility: Elmira CF

NYSID: [REDACTED]

Appeal Control No.: 05-084-21 B

DIN: 97-A-6020

Appearances: Steven P. Maio, Esq.  
319 East Second Street  
Corning, New York 14830

Decision appealed: May 2021 decision, denying discretionary release and imposing a hold of 24 months.

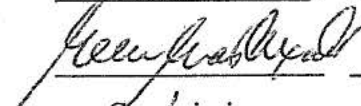
Board Member(s) who participated: Berliner, Segarra

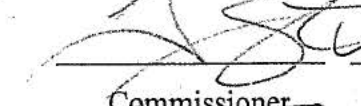
Papers considered: Appellant's Brief received August 23, 2021


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 Appellant and the Appellant's Counsel, if any, on 02/11/2022 66.