

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

Parole Administrative Appeal Decisions

Parole Administrative Appeal Documents

June 2023

Administrative Appeal Decision - Harris, Curtis (2022-03-30)

Follow this and additional works at: <https://ir.lawnet.fordham.edu/aad>

Recommended Citation

"Administrative Appeal Decision - Harris, Curtis (2022-03-30)" (2023). Parole Information Project
<https://ir.lawnet.fordham.edu/aad/1424>

This Parole Document is brought to you for free and open access by the Parole Administrative Appeal Documents at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Parole Administrative Appeal Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Harris, Curtis

DIN: 85-A-3894

Facility: Mohawk CF

AC No.: 08-100-21 B

Findings: (Page 1 of 5)

Appellant challenges the July 2021 determination of the Board, denying release and imposing a 20-month hold. Appellant is incarcerated for two separate crimes. In the first, while burglarizing a house, he and a co-defendant tied up and strangled the female victim, causing her death, and then stole her personal property. In the second, during court proceedings for the first, he and the same co-defendant managed to temporarily blind a court officer and then took his gun, and during the struggle and attempted escape shot a court officer and caused injuries to other officers. Appellant raises the following issues: 1) the decision is arbitrary and capricious, and irrational bordering on impropriety, in that the Board failed to consider and/or properly weigh the required statutory factors. 2) the decision illegally resentenced him to life without parole. 3) the decision was predetermined. 4) appellant should have been granted [REDACTED] parole. 5) his co-defendant has already been released. 6) the decision failed to list any facts in support of the statutory standard cited. 7) the decision lacks detail. 8) the decision is the same as prior decisions. 9) there is no record of the Board's deliberations. 10) the Board failed to comply with the 2011 amendments to the Executive Law in that the positive portions of the COMPAS were ignored, and the laws are now forward based.

Executive Law § 259-i(2)(c)(A) requires the Board to consider factors relevant to the specific incarcerated individual, including, but not limited to, the individual'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). 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 (4th 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 (1st Dept. 1997). The Board need not explicitly refer to each factor in its decision, nor give them equal weight. Matter of Schendel v. Stanford, 185 A.D.3d 1365, 1366, 126 N.Y.S.3d 428, 429 (3rd Dept. 2020); Matter of Campbell v. Stanford, 173 A.D.3d 1012, 1015, 105 N.Y.S.3d 461 (2d Dept. 2019); Matter of Phillips v. Dennison, 41 A.D.3d 17, 21, 834 N.Y.S.2d 121, 124 (1st Dept. 2007).

The Board placing particular emphasis on the callous nature of the offense does not demonstrate irrationality bordering on impropriety. Olmosperez v. Evans, 114 A.D.3d 1077, 980 N.Y.S.2d 845 (3d Dept. 2014); Garcia v. New York State Division of Parole, 239 A.D.2d 235, 657 N.Y.S.2d 415 (1st Dept. 1997).

The extraordinarily serious and violent nature of the crimes are sufficient ground to deny parole. Matter of Secilmic v. Keane, 225 A.D.2d 628, 629, 639 N.Y.S.2d 437, 437 (1st Dept. 1996).

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Harris, Curtis

DIN: 85-A-3894

Facility: Mohawk CF

AC No.: 08-100-21 B

Findings: (Page 2 of 5)

The Board was not required to give each factor equal weight and was entitled to place greater emphasis on the gravity of the crime. Matter of Copeland v. New York State Bd. of Parole, 154 A.D.3d 1157, 63 N.Y.S.3d 548 (3d Dept. 2017).

The fact that the Board afforded greater weight to the incarcerated individual's criminal history, as opposed to other positive factors, does not render the denial of parole for that reason irrational or improper. Matter of Davis v. Evans, 105 A.D.3d 1305, 963 N.Y.S.2d 485 (3d Dept. 2013); Matter of Lashway v. Evans, 110 A.D.3d 1417, 1418, 974 N.Y.S.2d 164, 165 (3d Dept. 2013); Matter of McKee v. New York State Bd. of Parole, 157 A.D.2d 944, 550 N.Y.S.2d 204 (3d Dept. 1990).

The Board may acknowledge the senseless and violent nature of the crime. Sanchez v Dennison, 21 A.D.3d 1249, 801 N.Y.S.2d 423 (3d Dept. 2005); Dorman v New York State Board of Parole, 30 A.D.3d 880, 816 N.Y.S.2d 765 (3d Dept. 2006).

The Board may take note of the inmate's disregard for the life of another human being. Hakim v Travis, 302 A.D.2d 821, 754 N.Y.S.2d 600 (3d Dept 2003); Angel v Travis, 1 A.D.3d 589, 767 N.Y.S.2d 290 (3d Dept 2003). The Board may consider the inmate's blatant disregard for the law and the sanctity of human life. Campbell v Stanford, 173 A.D.3d 1012, 105 N.Y.S.3d 461 (2nd Dept. 2019).

The Board may cite the failure of the inmate to acknowledge the impact of the criminal conduct on the victims. Gaito v New York State Board of Parole, 238 A.D.2d 634, 655 N.Y.S.2d 692 (3d Dept 1997); Romer v Dennison, 24 A.D.3d 866, 804 N.Y.S.2d 872 (3d Dept. 2005).

The Board may consider negative aspects of the COMPAS instrument. Matter of Espinal v. New York Bd. of Parole, 172 A.D.3d 1816, 100 N.Y.S.3d 777 (3d Dept. 2019) (COMPAS instrument yielded mixed results); Matter of Bush v. Annucci, 148 A.D.3d 1392, 50 N.Y.S.3d 180 (3d Dept. 2017) (COMPAS instrument with mixed results including substance abuse relevant given use before crime); Matter of Wade v. Stanford, 148 A.D.3d 1487, 52 N.Y.S.3d 508 (3d Dept. 2017) (low risk felony violence but probable risk for substance abuse alcohol related crimes); Matter of Crawford v. New York State Bd. of Parole, 144 A.D.3d 1308, 46 N.Y.S.3d 228 (3d Dept. 2016) (scores not uniformly low including family support), lv. denied, 29 N.Y.3d 901, 57 N.Y.S.3d 704 (2017).

Appellant's assertion that the denial of parole release amounted to an improper resentencing is without merit inasmuch as the Board fulfilled its obligation to determine the propriety of release per Executive Law § 259-i(2)(c)(A) and after considering the factors set forth therein. Executive Law § 259 et seq.; Penal Law § 70.40; Matter of Murray v. Evans, 83 A.D.3d 1320, 920 N.Y.S.2d 745 (3d Dept. 2011); Matter of Crews v. New York State Exec. Dept. Bd. of Parole Appeals Unit, 281 A.D.2d 672, 720 N.Y.S.2d 855 (3d Dept. 2001). The Board was vested with discretion to determine whether release was appropriate notwithstanding the minimum period of

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Harris, Curtis

DIN: 85-A-3894

Facility: Mohawk CF

AC No.: 08-100-21 B

Findings: (Page 3 of 5)

incarceration set by the Court. Matter of Burress v. Dennison, 37 A.D.3d 930, 829 N.Y.S.2d 283 (3d Dept. 2007); Matter of Cody v. Dennison, 33 A.D.3d 1141, 1142, 822 N.Y.S.2d 677 (3d Dept. 2006), *lv. denied*, 8 N.Y.3d 802, 830 N.Y.S.2d 698 (2007). The appellant has not in any manner been resentenced. 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). Nothing in the Board's decision indicates a permanent denial of parole consideration. Hodge v Griffin, 2014 WL 2453333 (SDNY 2014).

There is no evidence the Board's decision was predetermined based upon the instant offense. Matter of Gonzalvo v. Stanford, 153 A.D.3d 1021, 56 N.Y.S.3d 896 (3d Dept. 2017); Matter of Hakim-Zaki v. New York State Div. of Parole, 29 A.D.3d 1190, 814 N.Y.S.2d 414 (3d Dept. 2006); Matter of Guerin v. New York State Div. of Parole, 276 A.D.2d 899, 695 N.Y.S.2d 622 (3d Dept. 2000).

██████ parole is a different procedure and involves a special process. This interview was not a ██████ parole interview.

The parole status of a co-defendant from the underlying criminal transaction is irrelevant. Each application for parole release is to be considered on its own individual merits. Baker v. McCall, 543 F. Supp. 498, 501 (S.D.N.Y. 1981), *aff'd*, 697 F.2d 287 (2d Cir. 1982); Matter of Larney v. New York State Bd. of Parole, Index # 0062-16, *Memorandum Decision & Order* dated June 29, 2016 (Sup. Ct. Cayuga Co.)(Leone A.J.S.C.).

The Board provided its statutory rationale for denying parole. Matter of Murray v. Evans, 83 A.D.3d 1320, 920 N.Y.S.2d 745 (3d Dept. 2011) (Board provided adequate statutory rationale).

The Board's decision satisfied the criteria set out in Executive Law § 259-i(2)(a), as it was sufficiently detailed to inform the incarcerated individual 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 is not required to record its internal deliberations or discussions. Matter of Barnes v. New York State Div. of Parole, 53 A.D.3d 1012, 862 N.Y.S.2d 639 (3d Dept. 2008); Matter of Borcsok v. New York State Div. of Parole, 34 A.D.3d 961, 823 N.Y.S.2d 310 (3d Dept. 2006); Matter of Collins v. Hammock, 96 A.D.2d 733, 465 N.Y.S.2d 84 (4th Dept. 1983).

Appellant objects to the fact that the Board decision is based on the same reasons given after his last appearance before the Board. However, as the Board is required to consider the same statutory factors each time an incarcerated individual appears, it follows that the Board may deny release on the same grounds as relied upon in previous determinations. Matter of Hakim v. Travis, 302

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Harris, Curtis

DIN: 85-A-3894

Facility: Mohawk CF

AC No.: 08-100-21 B

Findings: (Page 4 of 5)

A.D.2d 821, 754 N.Y.S.2d 600 (3d Dept. 2003); see also Matter of Siao-Pao v. Dennison, 51 A.D.3d 105, 110, 854 N.Y.S.2d 348 (1st Dept.), aff'd, 11 N.Y.3d 777, 866 N.Y.S.2d 602 (2008) (affirming parole decision, which was worded similarly to two prior denials of parole affirmed by court).

“Arbitrary action is without sound basis in reason and is generally taken without regard to the facts”; or, put differently, “[r]ationality is what is reviewed under . . . the arbitrary and capricious standard.” Hamilton v. New York State Division of Parole, 119 A.D.3d 1268, 1270 n.1, 990 N.Y.S.2d 714, 716 (3d Dept. 2014) (quoting Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 231, 356 N.Y.S.2d 833, 839 (1974)).

The petitioner 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)).

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 (4th 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.

Appellant’s claim that the Board failed to comply with the 2011 amendments to the Executive Law is rejected. Dolan v New York State Board of Parole, 122 A.D.3d 1058, 995 N.Y.S.2d 850 (3d Dept. 2014); Tran v Evans, 126 A.D.3d 1196, 3 N.Y.S.3d 633 (3d Dept. 2015); Boccadisi v Stanford, 133 A.D.3d 1169, 20 N.Y.S.3d 477 (3d Dept. 2015).

Contrary to Appellant’s claim, the 2011 amendments and 9 NYCRR § 8002.2(a) as amended do not represent a forward-looking shift requiring the COMPAS to be the fundamental basis for release decisions. This proposition is not supported by the language of the statute itself, considering the relatively modest change to Section 259-c(4) and the absence of any substantive change to Section 259-i(2), which governs the discretionary release consideration process. In 2011, the Executive Law was amended to 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, 139 A.D.3d 1068, 30 N.Y.S.3d 834; Matter of Robles v. Fischer, 117 A.D.3d 1558, 1559,

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Harris, Curtis

DIN: 85-A-3894

Facility: Mohawk CF

AC No.: 08-100-21 B

Findings: (Page 5 of 5)

985 N.Y.S.2d 386, 387 (4th Dept. 2014). 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. Executive Law § 259-i(2)(c)(A); Matter of Montane, 116 A.D.3d at 202, 981 N.Y.S.2d at 870. 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, 137 A.D.3d 1396, 26 N.Y.S.3d 815. Rather, the COMPAS is an additional consideration that the Board must weigh along with the statutory factors for the purposes of deciding whether all three statutory 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).

Recommendation: Affirm.

STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Harris, Curtis

Facility: Mohawk CF

NYSID: [REDACTED]

Appeal Control No.: 08-100-21 B

DIN: 85-A-3894

Appearances: Daniel Rayner Esq.
40 Fulton Street
14th Floor
New York, New York 10038

Decision appealed: July 2021 decision, denying discretionary release and imposing a hold of 20 months.

Board Member(s) who participated: Coppola, Davis, Lee

Papers considered: Appellant’s Brief received February 1, 2022

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

03/30/2022 66