October 2019

Administrative Appeal Decision - Lockwood, Carla

STATE OF NEW YORK – BOARD OF PAROLE

Administrative Appeal Decision Notice

Inmate Name: Lockwood, Carla

Facility: Bedford Hills Correctional Facility

NYSID No.: 08381994J

Appeal Control #: 05-174-15 B

Dept. DIN#: 97-G-1603

Appearances:
For the Board, the Appeals Unit
For Appellant:

Martha Rayner, Esq.
Fordam Univ. School of Law
150 W. 62nd St., 9th Floor
New York, New York 10023

Board Member(s) who participated in appealed from decision: Ferguson, Elovich.

Decision appealed from: 4/2015 Denial of Discretionary Release; 24-month hold.

Pleadings considered:
Brief on behalf of the Appellant submitted on: July 2, 2015.
Statement of the Appeals Unit's Findings and Recommendation.

Documents 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 have determined that the decision from which this appeal was taken be and the same is hereby

M. Clark — Commissioner — ✓ **Affirmed** ___ **Reversed for De Novo Interview** ___ **Modified to** _____

Christopher Ward — Commissioner — ✓ **Affirmed** ___ **Reversed for De Novo Interview** ___ **Modified to** _____

_____ — Commissioner — ✓ **Affirmed** ___ **Reversed 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 9/24/15 PK.

Distribution: Appeals Unit – Inmate - Inmate's Counsel - Inst. Parole File - Central File
P-2002(B) (5/2011)

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

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Appellant raises a number of issues in her brief submitted in support of the administrative appeal. The Appeals Unit has reviewed each of the issues raised by Appellant, and finds that the issues have no merit.

Appellant contends that the decision made by the State Board of Parole (hereafter "the Board") denying her parole release was arbitrary. In response to this claim, we note that unless Appellant is able to demonstrate convincing evidence to the contrary, the Board is presumed to have acted properly in accordance with statutory requirements, and judicial intervention is warranted only when there is a showing of irrationality to the extent that it borders on impropriety. Matter of Silmon v. Travis, 95 N.Y.2d 470 (2000); Matter of Williams v. New York State Div. of Parole, 114 A.D.3d 992 (3rd Dept. 2014); Matter of Thomches v. Evans, 108 A.D.3d 724 (2d Dept. 2013).

In determining whether to grant parole to an inmate, the Board is required to consider a number of statutory factors (see Executive Law §259-i (2)(c)(A)). In addition, the Board's decision must detail the reasons for a denial of discretionary release (see Executive Law §259–i(2)(a)(i)). However, the Court of Appeals has ruled that the Board does not have to expressly discuss each of these factors in its decision to deny parole release. Matter of King v. New York State Div. of Parole, 83 N.Y.2d 788, 791(1994). Moreover, the Board is not required to give each factor it considered equal weight. Matter of Vigliotti v. State of N.Y. Exec. Div. of Parole, 98 A.D.3d 789 (3d Dept. 2012); Matter of Stanley v. New York State Div. of Parole, 92 A.D.3d 948 (2d Dept. 2012); Matter of Miller v. New York State Div. of Parole, 72 A.D.3d 690 (2d Dept. 2010).

The Board is entitled to afford more weight to the nature and seriousness of the underlying crime and the inmate's criminal history than other factors. See Matter of Perez v. Evans, 76 A.D.3d 1130 (3d Dept. 2010). In this regard, the denial of release to community supervision primarily because of the gravity of the inmate's crime is appropriate. Karlin v. Alexander, 57 A.D.3d 1156 (3d Dept. 2008); Matter of Alamo v. New York State Div. of Parole, 52 A.D.3d 1163 (3d Dept. 2008); Matter of Flood v. Travis, 17 A.D.3d 757 (3d Dept. 2005).

It is not improper for the Board to base its decision to deny parole release on the seriousness of the offense, nor is the Board required to expressly discuss in its determination each of the factors it considered, or to give equal weight to each factor it considered, and the Board can consider the credibility of statements made by the inmate in regard to whether he took full responsibility for his criminal behavior. Matter of Siao-Pao v. Dennison, 51 A.D.3d 105 (1st Dept. 2008), aff'd, 11 N.Y.3d 777 (2008).

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Findings:(continued from page 1)

So long as the decision denying release to community supervision is made in accordance with the statutory requirements, it is not to be set aside when subject to administrative or judicial review, particularly given the narrow scope of judicial review of discretionary parole denial determinations. White v. Dennison, 29 A.D.3d 1144 (3d Dept. 2006); Sutherland v. Evans, 82 A.D.3d 1428 (3d Dept. 2011). The Board is not required to list each factor it relied upon in making its determination, and its actual or perceived emphasis on a specific factor is not improper as long as the Board complied with statutory requirements. Romer v. Dennison, 24 A.D.3d 866 (3d Dept. 2005); Matter of Collado v. New York State Division of Parole, 287 A.D.2d 921 (3d Dept. 2001); Matter of Rivera v. Executive Department, Board of Parole, 268 A.D.2d 928 (3d Dept. 2000).

That an inmate has numerous achievements within a prison's institutional setting does not automatically entitle her to release to community supervision. Pearl v. New York State Div. of Parole, 25 A.D.3d 1058 (3d Dept. 2006); Corley v. New York State Div. of Parole, 33 A.D.3d 1142 (3d Dept. 2006); Rivera v. Travis, 289 A.D.2d 829 (3d Dept. 2001). In addition, per Executive Law §259-i(2)(c)(A), an application for release to community supervision shall not be granted merely as a reward for Appellant's good conduct or achievements while incarcerated. Matter of Larrier v. New York State Board of Parole Appeals Unit, 283 A.D.2d 700 (3d Dept 2001). Therefore, a determination that the inmate's exemplary achievements are outweighed by the severity of the crimes is within the Board's discretion. Matter of Anthony v. New York State Division of Parole, 17 A.D.3d 301 (1st Dept. 2005); Matter of Kirkpatrick v. Travis, 5 A.D.3d 385 (2d Dept. 2004).

The Board's decision was sufficiently detailed to apprise Appellant of the reasons for her denial of release to community supervision, and no further detail was necessary. Little v. Travis, 15 A.D.3d 698 (3d Dept. 2005); Matter of Davis v. Travis, 292 A.D.2d 742 (3d Dept. 2002), lv. denied, 98 N.Y.2d 669 (2002); Matter of Green v. New York State Division of Parole, 199 A.D.2d 677 (3d Dept. 1993).

Appellant has the burden of showing that the Board of Parole's determination was irrational, bordering on impropriety, before administrative appellate or judicial intervention is warranted (Matter of Silmon v. Travis, 95 N.Y.2d 470 (2000); Matter of Russo v. New York State Board of Parole, 50 N.Y.2d 69 (1980); Singh v. Dennison, 107 A.D. 3d 1274 (3d Dept. 2013)). Appellant has not demonstrated that any abuse or infirm decision-making on the part of the Board has occurred so as to warrant a *de novo* release interview.

If Appellant wanted to raise, or discuss in further detail, any issue with the Board during the interview, she should have made greater use of the opportunity provided by the Board. See

STATE OF NEW YORK - BOARD OF PAROLE

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Facility: Bedford Hills Correctional Facility
Appeal Control #: 05-174-15 B

Findings:(continued from page 2)

Matter of Serna v. New York State Division of Parole, 279 A.D.2d 684 (3d Dept. 2001); Matter of Garcia v. New York State Div. of Parole, 239 A.D.2d 235 (1st Dept. 1997). Furthermore, any issues now raised by Appellant which could have been addressed during her interview, including but not limited to any alleged errors in any Departmental or other records, but were not preserved on the record, have been waived. See Matter of Shaffer v. Leonardo, 179 A.D.2d 980 (3d Dept. 1992); Matter of Morrison v. Evans, 81 A.D.3d 1073 (3d Dept. 2011); Matter of Jones v. New York State Div. of Parole, 24 A.D.3d 827 (3d Dept. 2005).

The 24 month period for community supervision reconsideration set by the Board is not excessive. It is well established that the Board's decision to hold an inmate for the maximum period of 24 months is within its discretion and consistent with its authority pursuant to Executive Law §259-i(2)(a) and 9 NYCRR §8002.3(d). Matter of Abascal v. New York State Board of Parole, 23 A.D.3d 740 (3d Dept. 2005); Matter of Tatta v. State, 290 A.D.2d 907 (3d Dept. 2002). As such, Appellant failed to demonstrate that the hold of 24 months was excessive. Matter of Madlock v. Russi, 195 A.D.2d 646 (3d Dept. 1993); Matter of Confoy v. New York State Division of Parole, 173 A.D.2d 1014 (3d Dept 1991).

The information contained in the COMPAS instrument is but one of many factors that the Board considers in assessing the suitability of an inmate's possible release to community supervision, and is used to assist the Board of Parole in making its decision, but the quantified results contained in the COMPAS instrument are not alone determinative factors in the decision-making process. See Matter of William Gonzalez v. Fischer, Index #2012-870, *Decision and Judgment* dated December 19, 2013 (Sup. Ct., Franklin Co.)(Feldstein, AJSC).

The name of the Transitional Accountability Plan (TAP) was changed to "Offender Case Plan". An Offender Case Plan was prepared for Appellant and was made available to the Board at the time of the interview.

Former Board Chairwoman Andrea Evans had prepared a memorandum which outlined the changes made to the Executive Law by Chapter 62 of the Laws of 2011, and had provided her fellow Board members with instructions as to how they needed to proceed in light of that legislation when assessing the appropriateness of an offender's possible release to parole. This memorandum of former Chairwoman Evans served as the written procedures of the Board pursuant to Executive Law §259-c(4), which procedures have since become memorialized by the Board through written procedures contained in Departmental regulations to 9 N.Y.C.R.R. Parts 8001 and 8002, which were implemented through a notice of adoption filed with Department of

STATE OF NEW YORK - BOARD OF PAROLE

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Appeal Control #: 05-174-15 B

Findings:(continued from page 3)

State on July 14, 2014, and published in the *State Register* on July 30, 2014. Appellant's interview with the Board occurred after July 30, 2104, the date these written procedures contained in regulations were so published. Accordingly, in assessing the appropriateness of Appellant's possible release to parole, the Board considered the procedures required under Executive Law §259-c(4), which included the factors contained in both Executive Law §259-i(2)(c)(A), and the regulations contained in Part 8002 of subtitle CC of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

The denial of release to community supervision did not amount to a resentencing. Matter of Crews v. New York State Executive Department Board of Parole Appeals Unit, 281 A.D.2d 672 (3d Dept 2001).

Regarding the many alleged errors contained in various records before the Board, and issues concerning sentencing minutes, as noted above, if Appellant had any concerns about any of these issues she had a full opportunity to raise these issues during the interview, and has waived any objections that were not raised during the interview. The Board reviewed the packet of materials submitted by Appellant's attorney, and the Commissioner stated that any additional documents would be reviewed if faxed to them, and that Appellant could state to the Board during the interview any issues she wanted to raise at that time that may have been contained in her written statement. The Board relied on an affidavit from the sentencing court stating that the sentencing minutes could not be produced, and then the Commissioner stated to Appellant she could raise any issues relating to the sentencing minutes she wanted to during the interview.

Simply stated, the Appeals Unit recognizes the procedures in place for addressing the many alleged errors only now raised by Appellant with respect to various records considered at the time of the interview: that is, Appellant could have, prior to the Board interview, asked staff at the facility to sit down and review her entire parole file with her and could, using the Freedom of Information Law (FOIL) process, request copies of records. Appellant could further have utilized the FOIL appeals process if certain records were being withheld. Appellant could have asked for an adjournment of the Board interview if any records requests had not been satisfactorily addressed. Finally, Appellant could have raised, and by law was required to (as referenced above), any issues concerning the availability of Departmental records, or the accuracy of such records, at the time of the interview, and all objections relating thereto are waived if not so raised.

STATE OF NEW YORK - BOARD OF PAROLE

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Appeal Control #: 05-174-15 B

Findings:(continued from page 4)

Recommendation:

It is the recommendation of the Appeals Unit that the Board's decision be affirmed.