

STATE OF NEW YORK – EXECUTIVE DEPARTMENT – BOARD OF PAROLE

Administrative Appeal Decision Notice

Inmate Name: Vido, Barbara

Facility: Albion Correctional Facility

NYSID No.: 5590001L

Appeal Control #: 11-311-06 B

Dept. DIN# 05G0616

Appearances:

For the Division, the Appeals Unit

For Appellant: Cheryl Kates, Esq.
P.O. Box 711
Honeoye, New York 14471

Board Member(s) who participated in appealed from decision: Vizzie, Crowe, Croce

Decision appealed from: 11/2006 Denial of Discretionary Release, with an imposition of a 24-month hold.

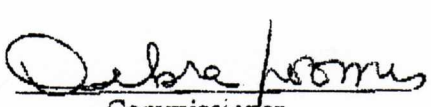
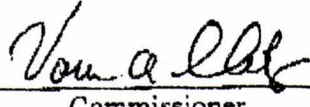
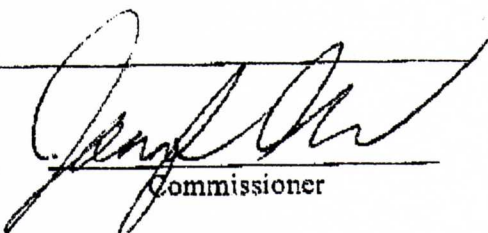
Pleadings considered:

Brief submitted by counsel on the behalf of appellant received on January 29, 2007
Statement of the Appeals Unit's Findings and Recommendation

Documents relied upon:

Pre-Sentence Investigation Report, Inmate Status Report, Interview Transcript, Parole Board Release Decision Notice (Form 9026).

Final Determination: The undersigned have determined that the decision from which this appeal was taken be and the same is hereby

Affirmed Reversed Modified (explain) _____
  
Commissioner Commissioner Commissioner

If the Final Determination is at variance with findings and recommendation of Appeals Unit, the written reasons for such determination shall be annexed hereto.

This Final Determination, the related Statement of the Appeals Unit's Findings and separate findings of the Board, if any, were mailed to the Inmate and the Inmate's Counsel, if any, on 6/11/07 JP

Distribution: Appeals Unit – Inmate - Inmate's Counsel - Inst. Parole File - Central File

STATE OF NEW YORK - EXECUTIVE DEPARTMENT - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Vido, Barbara
NYSID No.: 5590001L
Dept. DIN#: 05G0616

Facility: Albion Correctional Facility
Appeal Control #: 11-311-06 B

Findings:

The appellant appeals the Board's decisions to deny discretionary release on the grounds that: 1) the Board has ignored the wishes of the sentencing judge and the district attorney as demonstrated in the sentencing minutes as such the Board re-sentenced the appellant; 2) the Board ignored New York Correction Law Section 805; and 3) the Board ignored the statutory provisions of Section 259-i of the Executive Law. This appeal has merit with respect to one issue only.

As the appellant correctly points out, the Board did not have the sentencing minutes before it at the time of the interview. In light of two recent court decisions, In the Matter of McLaurin v. New York State Board of Parole, 27 AD3d 565 (2nd Dept. 2006) and In the Matter of Standley v. New York State Division of Parole, 34 AD3d 1169 (3rd Dept. 2006), it is recommended that the Division obtains the sentencing minutes and conducts a *de novo* interview before different Board members.

Recommendation:

It is the recommendation of the Appeals Unit that the Board's decision be reversed and that a *de novo* interview be conducted before new Board members.