

Administrative Appeal Decision Notice

Inmate Name: FERRIN, Donald
NYSID No.: 0849319-N
Dept. DIN#: 74-A-1241

Facility: Green Haven C.F.
Appeal Control #: 01-242-08B

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: Gallivan, Ortloff, and Smith

Decision appealed from: 01/2008 Denial of Discretionary Release with the imposition of a 24 month hold

Pleadings considered:

Brief on behalf of the appellant submitted on April 25, 2008;
Letter of Ms. Maria Ferrin dated July 31, 2008 with attachments; and
Statement of the Appeals Unit's Findings and Recommendation

Documents relied upon:

Presentence Investigation Report, Inmate Status Report, Interview Transcript, 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

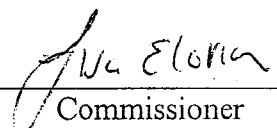
Affirmed Reversed ^{DE NOVO} Modified to _____



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 10/4/08 JP

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

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: FERRIN, Donald

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Findings:

The appellant appeals from the Parole Board's most recent denial of parole following his reappearance release interview of January 22, 2008. In 1974, the appellant was convicted of Murder for shooting another individual and was sentenced 20 years to life imprisonment. Appellant raises several points in his Brief in support of his contention that a *de novo* interview is warranted.

First, appellant claims the Board's decision should be reversed because the Board ignored alleged recommendations of the sentencing judge contained in two letters; one submitted in May 1997 and the other in January 2000. Second, appellant argues that he should be given a *de novo* interview because the Board, at the subject interview, ignored a favorable psychological report, and two letters submitted by correction officers in his behalf for release on parole. Third, the appellant argues that the Board's decision should be reversed because it was allegedly based upon erroneous information concerning the circumstances surrounding a disciplinary violation that occurred in December 2006. With respect to this argument, appellant, who had an operation for cancer of larynx which necessitated the insertion of an artificial tube in his throat, argues that this disciplinary violation which involved an alleged unhygienic act of not keeping the tube's cap secured, is being reviewed by Counsel's Office of the New York State Department of Correctional Services. He maintains that the violation should be expunged because the cap interfered with his breathing and as such, should not have constituted inmate misbehavior. Fourth, appellant argues that the Board improperly applied the standards governing the discretionary release to parole under Executive Law §259-i(2)(c)(A). In this regard, appellant claims that the Board used improper subjective criteria in considering him for release on parole, and further, placed undue emphasis upon the commission of the instant offense in support of the appealed from decision. Fifth, appellant argues that the Board failed to properly apply the provisions of 9 NYCRR §§8002.3(b)(1),(2) and (3). As to this claim, he argues that he has fulfilled the pertinent requirements under 9 NYCRR §§8002.3(b)(1),(2), and (3) in that he has furthered his education, while incarcerated, by obtaining his G.E.D. and by attending three college programs, the most notable accomplishment being his placement on the Dean's List at Cayuga Community College. Lastly, appellant argues that a *de novo* interview should be granted because the Board

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

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The appellant's argument that the record was incomplete when the Board rendered its decision because it did not consider a letter submitted by a New York State Senator has merit. The subject letter from a State Senator contains a favorable recommendation for the appellant being granted release on parole. Moreover, a review of the file reveals that while submitted to the Board in advance of the appellant's January 2008 reappearance interview, this letter had not made its way to the facility parole file so that it could be reviewed and considered by the Board at the time it rendered its decision denying appellant release to parole supervision. While not dispositive of the ultimate decision to be made by the Parole Board, letters of recommendation that are unique in their content which were submitted in advance of an inmate's appearance before the Board should be considered and weighed when assessing the appropriateness of an inmate's release to parole.

Recommendation:

Accordingly, it is recommended that the appealed from decision be reversed and that the appellant be afforded a de novo reappearance release interview.