

Administrative Appeal Decision Notice

Inmate Name: KILLEEN, John

Facility: Mid-State Correctional Facility

NYSID No.: 2834145-N

Appeal Control #: 11-289-07-B

Dept. DIN#: 95-A-4794

Appearances:

For the Division, the Appeals Unit

For Appellant:

Cheryl L. Kates, Esq.
P.O. Box 711
Honeoye, N.Y. 14471

Board Member(s) who participated in appealed from decision: **Ortloff & Lemons**

Decision appealed from: 11/2007-Denial of discretionary release with the imposition of 24 month hold

Pleadings considered:

Brief submitted by counsel for appellant received on March 3, 2008;
Letter of Cheryl L. Kates, Esq. dated March 24, 2008;
Letter of Cheryl L. Kates, Esq. dated April 1, 2008; and,
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 ^{DENOVO} 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 12/3/08
JP

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

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: KILLEEN, John
NYSID No.: 2834145-N
Dept. DIN#: 95-A-4794

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Findings:

On this appeal, counsel for the appellant raises numerous arguments in support of the request that the decision of the Parole Board denying appellant release to parole supervision following its interview of November 1, 2007 be set aside and that he be afforded a *de novo* release interview. While some of the arguments fail to present a basis for granting appellant the relief requested, others have merit so as to warrant a reversal of the appealed from decision and the scheduling of a *de novo* release interview. Before addressing the appellant's meritorious arguments, those that are lacking in merit will be addressed.

Appellant argues that the Board's decision-making process in this case, as well as the attendant decision, were infirm because it failed to consider the transcript of the court proceeding during which appellant entered a plea of guilty to the charges for which he is now incarcerated. As there that there is no statutory authority or settled case law that requires the Parole Board to consider an inmate's "plea minutes" when assessing the appropriateness of their discretionary release, this argument does not serve as a basis for setting aside the appealed from decision.

Appellant also claims that the Parole Board's decision was defective because it failed to articulate specific or aggravating reasons to occasion his incarceration beyond that period of time recommended by the guidelines. It has long been settled that the Board is not obligated to state additional reasons when denying an inmate release to parole when that decision results in his or her continued incarceration beyond the period recommended under the guidelines. Matter of Davis v. Travis, 292 A.D.2d 742 (3d Dept.), leave to appeal denied, 98 N.Y.2d 669 (2002); Matter of Richards v. Travis, 288 A.D.2d 604 (3d Dept. 2001); Matter of Abrams v. New York State Board of Parole, 88 AD2d 951 (2d Dept. 1982).

As for the appellant's argument that the language used by the Board in denying him release to parole supervision was defective, this argument does have merit. There can be no question that the appealed from decision fails to incorporate or tangentially cite the statutory standard that governs such decisions, i.e. Executive Law §259-i(2)(c)(A). In this regard, courts have made clear that when decisions of the Board fail to reflect or incorporate this standard, they cannot be sustained and that *de novo* consideration should be afforded to remedy this infirmity. See Matter of Vaello v. Parole Board Division of the State of New York, 48 A.D.3d 1018 (3d Dept. 2008); Matter of Prout v. Dennison, 26 A.D.3d 540 (3d Dept. 2006); Matter of Borcsok v. N.Y.S. Board of Parole, 2008 W.L. 4325880, Index #0111908/2008, *Decision/Order/Judgment* dated April 25, 2008 (Sup. Ct.; Albany Co.)(Ceresia, Jr., JSC).