

Administrative Appeal Decision Notice

Inmate Name: WINGFIELD, James
NYSID No.: 4507064-K
Dept. DIN#: 82-B-1312

Facility: Otisville C.F.
Appeal Control #: 08-522-07-B

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: Smith, Arena (Greenan *as possible participant*)

Decision appealed from: August 2007 decision denying release with imposition of 24 month hold.

Pleadings considered:

Brief on behalf of the appellant submitted on December 27, 2007;
Letter of Cheryl L. Kates, Esq. dated September 10, 2008;
Letter of Cheryl L. Kates, Esq. dated November 3, 2008; and
Statement of the Appeals Unit's Findings and Recommendation

Documents relied upon:

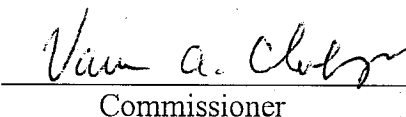
Transcript of August 22, 2007 Interview, Parole Board Decision (Form 9026), Presentence Investigation Report and Inmate Status Report.

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

Affirmed ^{DE NOVO} Reversed 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 2/18/09
JP

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

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION**Inmate Name:** WINGFIELD, James**Facility:** Otisville C.F.**NYSID No.:** 4507064-K**Appeal Control #:** 08-522-07-B**Dept. DIN#:** 82-B-1312**Findings:**

The appeal of the Parole Board's denial of discretionary release to the appellant in August 2007 with the imposition of a 24 month hold argues the decision was arbitrary, capricious and contrary to law. In addition, it is argued that the transcript of the interview does not accurately reflect the identities of the Parole Board members who participated in the appellant's interview and rendered the appealed from decision. The appellant also claims that the Board erred by not having the minutes from his sentencing proceeding under Kings County Indictment #3232-80 and the plea minutes for Kings County Indictment #2295-81. Finally, the appellant claims that there is erroneous information contained within the presentence investigation report prepared in connection with his conviction under Kings County Indictment #3832-80, and that this information was removed from his files as maintained by the New York State Department of Correctional Services.

As for the appellant's argument regarding the accuracy of the transcript of the August 22, 2007 Parole Board interview, Executive Law §259-i(6) requires that "[t]he [B]oard shall provide for the making of a verbatim record of all parole interviews ..." In this instance, the transcript indicates that Commissioners Smith and Arena were the Board members conducting the interview. On page 2 of the transcript, line 5, Commissioner Smith states "[w]ith me today is Commissioner Arena" and there is no reference to any other Board member being present. However, on page 8 of the transcript, line 16, the interviewing Board member states "Commissioner Greenan and I weren't working on the panel." In addition, on page 10 of the transcript, the page upon which Commissioner Smith's dictated decision appears, line 22 indicates that "[t]he Commissioners concurred." Finally, the Form 9026, the formal written decision that is served upon the inmate and retained within his Division of Parole files indicates that the Board members participating in the August 22, 2007 interview and the related decision were Commissioners Smith, Greenan and Arena. Because the transcript fails in any way to unambiguously reflect whether Commissioner Greenan participated in this interview and the decision to deny appellant release to parole, it is infirm under subdivision (6) of section 259-i of the Executive Law.

As for appellant's claim regarding the existence of erroneous information within the presentence investigation report prepared in connection with Kings County Indictment #3832-80, there can be no dispute that the information complained of was removed from his files as maintained by the New York State Department of Correctional Services. (See Letter of Cheryl L. Kates, Esq. to Terrence Tracy, Counsel, dated September 10, 2008 and the attachments thereto). Executive Law §259-i(1) requires the Board of Parole to consider the presentence investigation report of an inmate in the course of assessing the appropriateness of his or her release to parole

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Findings: (cont. from p.1)

supervision, and it is assumed that the Board does so for all cases. In addition, as a general principle, the Parole Board is not authorized to question the accuracy of such reports and lacks the ability to correct the same. Matter of Simmons v. Travis, 15 A.D.3d 896, 788 N.Y.S.2d 752 (4th Dept. 2005); Matter of Williams v. Travis, 11 A.D.3d 788, 783 N.Y.S.2d 413 (3d Dept. 2004); Matter of Cox v. New York State Division of Parole, 11 A.D.3d 766, 783 N.Y.S.2d 410 (3d Dept. 2004); Watkins v. Annucci, 305 A.D.2d 889, 758 N.Y.S.2d 853 (3d Dept. 2003). However, the action taken by the New York State Department of Correctional Services to remove this significant information from the appellant's correctional file is so compelling that it warrants removal from the his parole file as maintained by the Division of Parole. And while there is nothing within the record to demonstrate the Board's express reliance on this information for denying the appellant release to parole supervision, that it was considered as part of the documents that the Board was obligated to review and it has been removed from the Department of Correctional Services' files, warrants a de novo interview where the appellant can be assured that the erroneous information has not been considered.

As for the remaining arguments advanced in as bases for setting aside the appealed from decision, they have been considered and are without merit.

Recommendation: For the above-stated reasons, it is recommended that the appealed from decision be reversed and that a de novo interview be conducted consistent with these findings.