

Administrative Appeal Decision Notice

**Inmate Name:** MATCHALETTI, Rocky, G.

**Correctional Facility:** Mid State C. F.

**NYSID No.:** 5017929Q

**Appeal Control #:** 09-197-09B

**Dept. DIN#:** 84 C 0959

Appearances:

For the Division, the Appeals Unit

For Appellant:

Cheryl Kates, Esq..  
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Honeoye, N.Y. 14471

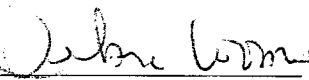
Board Member(s) who participated in appealed from decision: Casey, Thompson, and Crangle

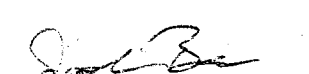
Decision appealed from: 09/2009 Denial of Discretionary Release with the imposition of a 24 month hold


Pleadings considered: Brief of appellant submitted on Jan. 4, 2010,  
Statement of the Appeals Unit's Findings and Recommendation

Documents relied upon: Presentence Investigation Report, Inmate Status Report, Interview Transcript, Board Release Decision , 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 for De Novo Interview/Hearing  Modified to \_\_\_\_\_  
Commissioner

  Affirmed  Reversed for De Novo Interview/Hearing  Modified to \_\_\_\_\_  
Commissioner

  Affirmed  Reversed for De Novo Interview/Hearing  Modified to \_\_\_\_\_  
Commissioner

***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 5/17/10.

JP

Distribution: Appeals Unit – Inmate - Inmate's Counsel - Inst. Parole File - Central File  
P-2002- (1/10)

STATE OF NEW YORK - EXECUTIVE DEPARTMENT - BOARD OF PAROLE  
STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

**Inmate Name:** MATCHALETTI, Rocky, G.

**Facility:** Orleans C.F.

**NYSID No.:** 5017929Q

**Appeal Control #:** 09-197-09B

**Dept. DIN#:** 84-C-0959

**Findings:**

Appellant, in a reappearance interview before the Board in September of 2009 challenges his denial of release on parole, with the imposition of a 24 month hold. Appellant argues that the Board's decision should be vacated on grounds that the Board has failed to articulate any of the criteria concerning whether or not to grant him discretionary release to parole supervision, pursuant to Executive Law § 259-i (2) (c) (A). In pertinent part, Executive Law § 259-i (2) (c) (A) states as follows:

“ Discretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties while confined but only after considering if there is a reasonable probability that if such inmate is released, he will live and remain at liberty without violating the law and that his release is not incompatible with the welfare of society and will not so deprecate the seriousness of the crime as to undermine respect for the law...”

While the Board, in its decision, concluded that appellant will continue to break the law, if granted parole, as a discretionary matter, such wording is vague, and, as such, the Board has not articulated any of the criteria of Executive Law § 259-i (2) ( c ) (A) referenced above in support of denying appellant such parole. The Board's failure to incorporate any of the criteria set forth under Executive Law § 259-i (2) (c) (A) is reversible error warranting a de novo Board release interview. Valleo v. Parole Board Division of the State of New York, 48 A.D. 3d. 1018, 851 N.Y.S. 2d. 261 (3<sup>rd</sup> Dept. 2008); Prout v. Dennison, 26 A.D. 3d. 540, 809 N.Y.S. 2d. 261 (3<sup>rd</sup> Dept. 2006).

In view of the above, appellant should be given a de novo interview before the Board.

**Recommendation:**

Accordingly, it is recommended that the appealed from decision be reversed.