

Administrative Appeal Decision Notice

Inmate Name: Kyheim Bethea **Facility:** Fishkill Correctional Facility
NYSID No.: 8375401P **Appeal Control #:** 03-305-10B
Dept. DIN#: 98-B-0219

Appearances:

For the Board, the Appeals Unit

For Appellant:

Cheryl L. Kates, Esq.
P.O. Box 734
Victor, New York 14564

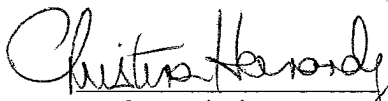
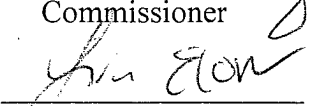
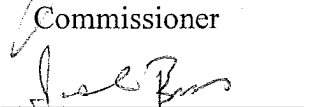
Board Member(s) who participated in appealed from decision: **Ferguson, Gallivan**

Decision appealed from: March 2010 denial of discretionary release

Pleadings considered: Brief on behalf of the appellant submitted on July 12, 2010, and subsequent 2011 correspondence
Statement of the Appeals Unit's Findings and Recommendation

Documents relied upon: Presentence Investigation Reports, Inmate Status Report, Interview Transcript, Parole 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

 _____ Commissioner	___ Affirmed	<input checked="" type="checkbox"/> Reversed for De Novo Interview	___ Modified to _____
 _____ Commissioner	___ Affirmed	<input checked="" type="checkbox"/> Reversed for De Novo Interview	___ Modified to _____
 _____ Commissioner	⁹⁸ ___ Affirmed	<input checked="" type="checkbox"/> Reversed for De Novo Interview	___ Modified to _____

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 11/14/11 ff.

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Kyheim Bethea **Facility:** Fishkill Correctional Facility
NYSID No.: 8375401P **Appeal Control #:** 03-305-10B
Dept. DIN#: 98-B-0219

Findings:

Appellant challenges his March 2010 denial of parole release. One of the arguments contained in the lengthy administrative appeal brief is addressed herein. The remaining arguments submitted in the appeal are without merit, and they also do not warrant further discussion in light of the below recommendation that a de novo parole interview be afforded to appellant.

Appellant's instant offenses are juvenile offense Murder 2nd Degree and Robbery 1st Degree for separate offenses in 1995 and prosecuted under one indictment, and Assault 2nd Degree committed while he was in a Division for Youth facility in 1997. Through brief of appeal counsel, appellant alleges: "It is upon information and belief the Parole Board failed to contact the District Attorney, Sentencing Judge or the defense attorney to obtain an official statement in this case" (Appeal Brief, p.10). He limits this allegation to the fact there was no letter to his defense attorney in the Assault 2nd Degree case. In that regard he says, correctly, that all that had been sent from parole / community supervision staff, was a 1998 letter to the court clerk asking them to forward a letter requesting the defense attorney to provide a recommendation with respect to appellant's potential parole release. Counsel adds: "This writer has contacted Ira [Pessier], the defense attorney] and he indicated he will write an official statement. When the statement is received it will be forwarded to your attention." (Id., p.11). This letter was in fact provided directly by the defense attorney some eight months after submission of the appeal brief and it is now a part of the record.

Former Executive Law § 259-i(1)(a)(i) (now § 259-i(2)(c)(A)(vii)), states in part that the Board is to consider "the seriousness of the offense with due consideration to the... recommendations of the sentencing court, the district attorney, the attorney for the inmate...." The provision does not mandate that recommendations be solicited, and appellant's argument in this proceeding does not legally compel reversal of his parole denial. Nevertheless, the agency has a policy of requesting such recommendations, it appears the policy was not complied with here, and a pertinent recommendation has now been provided. Note is also made that the aforementioned letter to the court clerk was generic in appearance and incorrectly stated that the relevant "probation report(s) did not provide the address for the subject's attorney." The defense attorney's full name and address appeared on the first/cover page of the pre-sentence investigation report.

Recommendation:

Upon the record of this case, it is recommended that the appealed from decision be set aside and a de novo parole interview be afforded to appellant.