

Administrative Appeal Decision Notice

Inmate Name: DeSANNA, Thomas
NYSID No.: 3407487-N
Dept. DIN#: 79-A-0984

Facility: Otisville C.F.
Appeal Control #: 01-215 10B

Appearances:

For the Board, the Appeals Unit
For Appellant:

Cheryl I. Kates. Esq.
P.O. Box 734
Victor, N.Y. 14564


Board Member(s) who participated in appealed from decision: Ferguson & Greenan

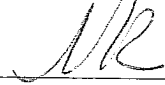
Decision appealed from: January 2010 Denial Discretionary Release with a 24 Month Reappearance Date.

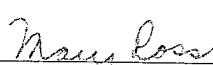
Pleadings considered: Brief on behalf of the appellant submitted on April 19, 2010;
Supplemental Brief on behalf of appellant submitted on February 24, 2011;
Letter of Cheryl L Kates, Esq. dated May 20 2011;
Letter of Cheryl L. Kates, Esq. dated May 22, 2011 with;
Statement of the Appeals Unit's Findings and Recommendation.

Documents relied upon: Presentence Investigation Report, Inmate Status Report, Interview Transcript,
Parole Board Release Decision (Form 9026); Letter of Barry Gene Rhodes, Esq.
dated April 29, 2011.

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 _____ Modified to _____
Commissioner

 _____ Affirmed Reversed for De Novo Interview _____ Modified to _____
Commissioner

 _____ Affirmed Reversed for De Novo Interview _____ 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 12/13/11 RF.

Distribution: Appeals Unit - Inmate - Inmate's Counsel - Inst. Parole File - Central File
P-2002(B) (5/2011)

STATE OF NEW YORK - BOARD OF PAROLE
STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATIONS

Inmate Name: DeSANNA, Thomas

Facility: Otisville C.I.

NYSID No.: 3407487-N

Appeal Control #: C-215-10B

Dept. DIN#: 79-A-0984

Findings:

The appellant appeals from a January 2010 decision of the Parole Board that denied him release to parole supervision and set a 24 month reappearance date for his next parole release consideration. One of the arguments advanced in this appeal is that staff of the former Division of Parole failed to solicit from the appellant's defense counsel any recommendation regarding his possible release to parole supervision.

A review of the record reveals that for the purpose of soliciting such a recommendation, Division staff may have written a letter to appellant's defense counsel, Barry Gene Rhodes, Esq., on November 9, 1989 that was addressed to her office location on Court Street in Brooklyn, New York as that address appeared in the appellant's pre-sentence investigation report. While this document correctly identifies appellant's defense counsel, the appellant, his crimes of conviction and indictment numbers under which the convictions were obtained, the remainder of the document is devoid of any text. Consequently, it cannot be determined what information was contained in the letter, beyond what is described above, for the purpose of soliciting a recommendation from this individual. In addition, the record is clear that at no time prior to the appellant's release interview of January 20, 2010 did Ms. Rhodes submit for the Board's consideration a letter regarding the possibility of her former client's release to parole. Finally, by a letter dated April 29, 2011, Ms. Rhodes has tendered her written recommendation that her former client be granted release to parole supervision.

When assessing the appropriateness of granting an inmate release to parole supervision, former Executive Law §259-i(1)(a)(i), now Executive Law §259-i(2)(c)(A)(vii), (see Chapter 62 of the Laws of 2011, Part C, Subpart A, §38-f-1), required the Board of Parole to consider the specific recommendations of the sentencing judge, district attorney and defense counsel regarding the inmate's possible release. By the record on this appeal, it cannot be demonstrated that the Division solicited a recommendation from the attorney who represented the appellant in connection with his current convictions upon which he seeks release to parole supervision. In addition, a letter from the appellant's former defense counsel has now been secured for the Board's consideration. Because the Board was, and remains, statutorily obligated to consider the recommendation of an inmate's defense counsel when assessing the appropriateness of granting them release to parole and it cannot be demonstrated that a recommendation was solicited from the appellant's defense counsel and now a recommendation has now been secured, the appealed from decision should be set aside so that a *de novo* release interview can be conducted where the Parole Board can consider that recommendation consistent with its obligation under the pertinent provision of the Executive Law.

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

Inmate Name: DeSANNA, Thomas

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Findings: (Cont. from Page 1.)

Recommendation: Upon the foregoing it is recommended that the January 2010 decision denying discretionary release be set aside and that a *de novo* reappearance release interview be afforded to the appellant.
