

Administrative Appeal Decision Notice

Inmate Name: JONES, Robert
NYSID No.: 7638118-P
Dept. DIN#: 06-A-2830

Facility: Elmira C.F.
Appeal Control #: 09-06611B

Appearances:
For the Board, the Appeals Unit
For Appellant:

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

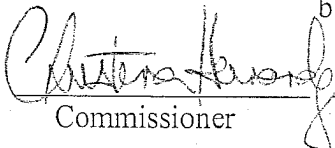
Board Member(s) who participated in appealed from decision: **Ludlow, Lemons & Brown**


Decision appealed from: August 11, 2011 Denial Discretionary Release with a 24 Month Reappearance Date.


Pleadings considered: Letter of Cheryl L Kates, Esq. received on October 3, 2011 with enclosed letter of Christopher L. Davis dated September 27, 2011; and 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 Christopher L. Davis dated September 28, 2011.

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

 Commissioner 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 _____

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 10/13/11 PF.

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 & RECOMMENDATION

Inmate Name: JONES, Robert

Facility: Elmira C.F.

NYSID No.: 7638118-P

Appeal Control #: 09-066-11B

Dept. DIN#: 06-A-2830

Findings:

The appellant appeals from an August 2011 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 wrote a letter dated June 12, 2006 addressed to Mr. Christopher Davis, Esq., the appellant's defense counsel, at an address that was no longer current. While the appellant was sentenced in the Essex County Court on March 14, 1994 for the convictions on which he is now incarcerated, he was not received into New York State custody until May 2006 due to his incarceration for other offenses committed outside of New York. The address utilized by Division staff for communicating with Mr. Davis in June 2006 was taken from the appellant's 1994 Essex County presentence investigation report; however, Mr. Davis's office was no longer situated at that location. Through the appellant's counsel on this appeal, the Board of Parole has now been provided with a letter from Mr. Davis dated September 28, 2011 which contains a recommendation regarding the appellant's possible release to parole supervision. In addition, by a separate letter to appellant's present counsel, Ms. Cheryl L. Kates, Esq., dated September 27, 2011, Mr. Davis states that at no time in the past was he contacted by the Division about the appellant's appearance before the Parole Board. Mr. Davis also makes clear in his September 27, 2011 letter that it was he who represented the appellant on the Essex County indictment.

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 recommendations of the sentencing judge, district attorney and defense counsel regarding the inmate's possible release to parole. By the record on this appeal, it appears that the Division did not solicit a recommendation from the attorney who represented the appellant in connection with his Essex County 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 him or her release to parole and it cannot be demonstrated that a recommendation was solicited

STATE OF NEW YORK - BOARD OF PAROLE

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Findings: (Cont. from Page 1.)

from the appellant's defense counsel and such 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.

Recommendation: Upon the foregoing it is recommended that the August 2011 decision denying discretionary release be set aside and that a *de novo* initial appearance release interview be afforded to the appellant.