

Administrative Appeal Decision Notice

**Inmate Name:** RESTIVO, Andrew, M.

**Correctional Facility:** Auburn C. F.

**NYSID No.:** 4509885Y

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

**Dept. DIN#:** 82 C 0180

Appearances:

For the Division, the Appeals Unit

For Appellant:

Cheryl Kates, Esq.  
P.O. Box 711  
Honeoye, N.Y. 14471

Board Member(s) who participated in appealed from decision: Elovich and Greenan

Decision appealed from: 08/2010 Denial of Discretionary Release with the imposition of a 24 month hold

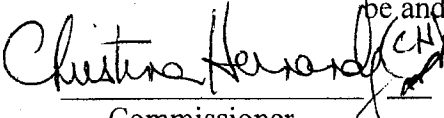
Pleadings considered: Brief of appellant submitted on Dec.22, 2010;

Supplemental Brief of Appellant submitted on Feb. 22, 2011;

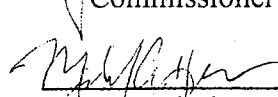
Statement of the Appeals Unit's Findings and Recommendation

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 4/15/11.

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

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

**Inmate Name:** RESTIVO, Andrew, M.

**Facility:** Auburn C.F.

**NYSID No.:** 4509885Y

**Appeal Control #:** 05-344-09B

**Dept. DIN#:** 82-C-0180

**Findings:**

Appellant, in a reappearance interview before the Board in May of 2010 challenges his denial of release on parole, with the imposition of a 24 month hold. One of the arguments advanced by appellant is that the Board's decision is based upon erroneous information regarding one of his past convictions. Specifically, appellant refers to the Board's statement in its decision denying him parole, in part, upon a prior Federal conviction of what is termed a Bank Robbery with a Deadly Weapon. A review of the record before the Board, however, reveals that appellant was not convicted of such offense. Rather, the record reveals that appellant was convicted of Bank Robbery without the Use of A Deadly Weapon. Since the Board's misstatement had a direct bearing upon its decision denying appellant release to parole supervision, appellant should be granted a de novo Board interview.

**Recommendation:**

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