

Administrative Appeal Decision Notice

Inmate Name: Evans, Rodney

Facility: Otisville Correctional Facility

NYSID No.: 5762922Z

Appeal Control #: 09-245-11 B

Dept. DIN#: 89B1972

Appearances:

For the Board, the Appeals Unit

For Appellant:

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

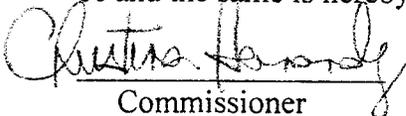
Board Member(s) who participated in appealed from decision: **Ferguson, Elovich**

Decision appealed from: 9/11 Denial of Discretionary Release with an 18-month hold.

Pleadings considered: Brief on behalf of the appellant received on December 13, 2011
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)

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 5/22/11 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 & RECOMMENDATION

Inmate Name: Evans, Rodney

Facility: Otisville Correctional Facility

NYSID No.: 5762922Z

Appeal Control #: 09-245-11 B

Dept. DIN# 89B1972

Findings:

The appellant appeals the Board's decision to deny discretionary release to parole supervision on the grounds that: 1) the Board failed to acknowledge an official statement from the defense attorney; 2) the Board failed to do a risk and needs assessment: DOCCS failed to do a transitional accountability plan prior to appellant's Board appearance; 3) the Board ignored insight from their own agency, including Correctional officials advocating for release and outside clearance approval and achievement of the Limited Time Credit Allowance ("LCTA"); 4) the appellant's entire Board experience was tainted with erroneous information, therefore, he must be granted a *de novo* interview; 5) the Board did not render a detailed decision; 6) the Board has rendered a decision outside the scope of their duties usurping the sentencing court, implementing their personal opinion, and imposing a sentence they feel is appropriate for the appellant; and 7) the Appeals Unit refuses to review an administrative appeal within 120 days. This appeal does have merit as discussed below. Therefore, it is recommended that the Board orders a *de novo* interview.

The appellant contends that the Board's decision contains erroneous information and that it relied upon erroneous information. A review of the record shows that the appellant is correct. First of all, the appellant contends that the Board erroneously stated in the decision that the appellant has a "prior felony and prior prison." The appellant has no prior felony other than the current underlying offenses and has no prior prison term.

Additionally, the months of the total time served at the time of the appearance is inconsistent with prior appearances. Thus, it is recommended that staff at the Community Supervision Facility Office review the number of months served and make corrections to the record as needed. The appellant had his Initial interview on September 23, 2008. At the time of that appearance, he had served a combination of 197 days (6.5 months = 197 divided by 30) in local jail plus 233 months in state prison, for a total of 240 months. He then received an 18-month hold from the Board. Therefore, he reappeared on March 17, 2010. The 2010 Inmate Status Report shows that he had served a total of 260 months, while in reality, the calculation should have been 258 months. In 2010, the appellant received another 18-month hold. The 2011 Inmate Status Report reflects that he has served 272 months. However, since the appellant received an 18-month hold in 2010, the number of months that he served is actually 276 months at the time of the appearance on September 13, 2011. Thus the number of months shown on the Inmate Status Reports for 2010 and 2011 are incorrect. As such, steps should be taken by the Facility Community Supervision Office to correct the record reflecting the correct calculation.

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Evans, Rodney

Facility: Otisville Correctional Facility

NYSID No.: 5762922Z

Appeal Control #: 09-245-11 B

Dept. DIN# 89B1972

Findings: (continued from page 1)

Finally, the Board stated that the victim was 18 years old in the decision listed in the transcript, but the 9026 form stated that the victim was 15 years old. According to the Pre-Sentence Report, the victim was 18 years old. Standing alone, both the issues regarding the number of months served and the age of the victim are de minimis and would not require a *de novo* interview. However, these issues combined with the erroneous decision warrant a *de novo* interview.

Recommendation:

Due to the foregoing, it is the recommendation of the Appeals Unit that the Board's decision be reversed and that a *de novo* interview be conducted.