

Administrative Appeal Decision Notice

Inmate Name: KIRKPARTICK, Christian

Correctional Facility: Wyoming C.F.

NYSID No.: 8384477Y

Appeal Control #: 05-016-11B

Dept. DIN#: 00 A 4596

Appearances:

For the Board, the Appeals Unit

For Appellant:

Cheryl Kates, Esq.  
PO Box 734  
Victor NY 14564

Board Member(s) who participated in appealed from decision: Ferguson and Lemons

Decision appealed from: 04/2011 Denial of Discretionary Release with the imposition of a 24 month hold

Pleadings considered: Brief on behalf of the appellant by Counsel submitted on: 10/17/11; 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

Christina Herold Commissioner  Affirmed  Reversed for De Novo Interview  Modified to \_\_\_\_\_

Mary Lou Commissioner  Affirmed  Reversed for De Novo Interview  Modified to \_\_\_\_\_

[Signature] 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 3/7/12 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:** KIRKPATRICK, Christian

**Facility:** Wyoming C.F.

**NYSID No.:** 8384477Y

**Appeal Control #:** 05-016-11B

**Dept. DIN#:** 00-A-4596

**Findings:**

Appellant, in a Board reappearance interview on April 26, 2011, challenges the Board's decision denying him discretionary release to parole supervision following such Board reappearance. One of the arguments that appellant has advanced concerns erroneous information that the Board set forth in its decision in support of denying him such release to parole supervision. Specifically, appellant submits that the Board misstated his involvement in a prior matter involving a Robbery when acting in concert with co-defendants. Appellant submits that his involvement in such incident did not consist of pistol whipping the victim or using a gun. Rather, appellant submits that such activity was perpetrated by a co-defendant during the Robbery.

A review of the Pre-sentence Investigative Report and the Inmate Status Report confirms that appellant did not use a gun during such Robbery and that a co-defendant used a gun during such incident and pistol whipped the victim after demanding more money.

Since the Board relied upon a misstatement of fact to deny appellant discretionary release to parole supervision, appellant should be afforded a de novo Board interview.

**Recommendation:**

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