

Administrative Appeal Decision Notice

Inmate Name: MARTINEZ, Ronmel

Correctional Facility: Cayuga C.F.

NYSID No.: 6772537J

Appeal Control #: 11-331-11B

Dept. DIN#: 94 A 4530

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: Lemons and Ross

Decision appealed from: 11/2011 Denial of Discretionary Release with the imposition of a 24 month hold

Pleadings considered: Brief on behalf of the appellant by Counsel submitted on: 04/04/12; Letter from appellate Attorney Cheryl Kates dated 09/06/12 with attached letter by trial attorney on behalf of appellant for Board's consideration submitted on 09/10/12; 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 Hardy Commissioner Affirmed Reversed for De Novo Interview Modified to _____

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

B. Kevin Rudlaw 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 11/19/12 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: MARTINEZ, Ronmel

Facility: Cayuga C.F.

NYSID No.: 6772537J

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Findings:

The appellant appeals from a November 2011 decision of the Parole Board that denied him release to parole supervision and set a 24 month reappearance date for his next parole consideration. One of the arguments advanced in this appeal is that staff of the former Division of Parole failed to solicit from 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 on April 3, 1995 to the Clerk of the sentencing Court requesting the Clerk to contact appellant's defense attorney and forward to the defense attorney a form letter that staff attached to such correspondence seeking a statement or recommendation on behalf of appellant for the Board's consideration of granting appellant discretionary release to parole supervision. While there was no response from appellant's defense counsel to such request, it is unknown whether the Clerk of the sentencing Court transmitted such request to defense counsel. Through the appellant's counsel on this appeal, the Board of Parole has now been provided with a letter from Mark L. Groothuis, Esq., dated August 27, 2012 which contains a recommendation regarding appellant's possible release to parole supervision. In addition, Mr. Groothuis makes it clear in his letter that he represented the appellant in appellant's prosecution for the controlling offense.

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 directly solicit a recommendation from the attorney who represented the appellant in connection with his Suffolk County conviction 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

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Findings:

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granting such inmate release to parole and it cannot be demonstrated that a recommendation was solicited directly 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 November 2011 decision denying discretionary release be set aside and that a *de novo* initial appearance release interview be afforded to the appellant.