

Administrative Appeal Decision Notice

Inmate Name: Santana, Jose

Facility: Fishkill Correctional Facility

NYSID No.: 5637947P

Appeal Control #: 02-270-12-B

Dept. DIN#: 87A1599

Appearances:

For the Board, the Appeals Unit

For Appellant:

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

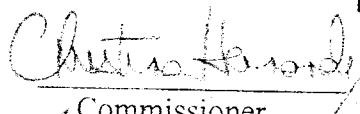
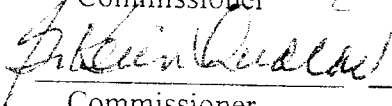
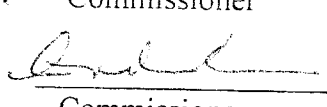
Board Member(s) who participated in appealed from decision: **Crangle, Smith, Thompson**

Decision appealed from: 1/2012-Denial of discretionary release, with imposition of 24 month hold.

Pleadings considered: Letter-briefs on behalf of the appellant received on June 29, 2012 and July 23, 2012, and supplemental letters received on July 9, 2012 and October 9, 2012.  
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

 Commissioner	___ Affirmed	<input checked="" type="checkbox"/> Reversed for De Novo Interview	___ Modified to _____
 Commissioner	___ Affirmed	<input checked="" type="checkbox"/> Reversed for De Novo Interview	___ Modified to _____
 Commissioner	___ Affirmed	<input checked="" type="checkbox"/> 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 2/8/13 AF.

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:** Santana, Jose

**Facility:** Fishkill Correctional Facility

**NYSID No.:** 5637947P

**Appeal Control #:** 02-270-12-B

**Dept. DIN#** 87A1599

**Findings:**

Counsel for the appellant has submitted two letter-briefs, and two supplemental letters, to serve as the perfected appeal. For the reason explained below, only one issue raised will be addressed.

One of appellant's claims is the Board of Parole never made the statutorily required inquiry of the criminal defense lawyer in the instant offense.

In response, per Executive Law 259-i(1)(a), the Board of Parole is required to seek the recommendation of the defense lawyer from the former criminal case as to whether or not to release the inmate to parole. A review of the case history indicates it was not properly done in this case. The Appeals Unit has now reached out to the lawyer, and he has responded. Based upon his response, a de novo is warranted.

**Recommendation:**

Accordingly, it is recommended the decision of the Board be vacated, and that a de novo interview in front of a different panel of Commissioners be held forthwith.