

Administrative Appeal Decision Notice

Inmate Name: Simmonds, Roger

Facility: Otisville Correctional Facility

NYSID No.: 4823440L

Appeal Control #: 06-320-12-B

Dept. DIN#: 86B0440

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: **Elovich, Ferguson, Hernandez, Ludlow, Smith, Thompson, Greenan**

Decision appealed from: 6/2012-Denial of discretionary release, with imposition of 24 month hold.

Pleadings considered: Letter-briefs on behalf of the appellant received on October 26, 2012 and February 20, 2013, and two letters received on April 1, 2013, and one letter dated June 5, 2013.
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

[Signature] Affirmed Reversed for De Novo Interview Modified to _____
Commissioner

[Signature] Affirmed Reversed for De Novo Interview Modified to _____
Commissioner

[Signature] 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 8/28/13 CF

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: Simmonds, Roger

Facility: Otisville Correctional Facility

NYSID No.: 4823440L

Appeal Control #: 06-320-12-B

Dept. DIN# 86B0440

Findings:

Counsel for the appellant has submitted two letter-briefs, and three 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 decision is based upon erroneous information; specifically, the part of the Board decision which states "your instant offense in Brooklyn involved your fatal shooting of a male victim." Appellant denies this.

In response, this issue was fully discussed during the interview. Appellant was convicted in his first crime only of Criminal Possession of a Weapon 3rd Degree. While he did kill somebody in that crime, all homicide related charges were dismissed on self-defense grounds. In the second crime, while a murder did take place during a robbery, and shots were fired, the appellant did not fire the shots, and the victim did not die of gun shot wounds. Thus, contrary to the statement in the Board decision, appellant has not been convicted of fatally shooting a male victim. Since the Board decision rests on significant erroneous information, a de novo hearing 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 (including the prior interviews that ended in a lack of consensus) be held forthwith.