

Administrative Appeal Decision Notice

Inmate Name: UBIERA, Gilberto

Correctional Facility: <sup>Franklin</sup> Groveland C.F.

NYSID No.: 7657192N

Appeal Control #: 09-383-11B

Dept. DIN#: 96-R-0221

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, Thompson, and Brown

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

Pleadings considered: Brief on behalf of the appellant submitted on: 5/4/12; Supplemental Letter Briefs submitted by Counsel on 7/9/12; 10/9/12; 11/16/12;  
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

[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 2/8/13 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:** UBIERA, Gilberto

**Facility:** Groveland C.F.

**NYSID No.:** 7657192N

**Appeal Control #:** 09-383-11B

**Dept. DIN#:** 96-R-0221

**Findings:**

Appellant, in a Board reappearance interview in September of 2011, challenges the Board's decision denying him release on parole, with the imposition of a 24 month hold. One of the issues that appellant raises is that the appellant's defense attorney was not contacted about whether or not to submit a statement regarding appellant's scheduled Board appearance for discretionary release to parole supervision. Since the record reveals that there was conflicting information in appellant's file about his defense attorney's address, and in view of appellant's defense attorney recently submitting a letter on behalf of appellant for the Board's review, appellant should be afforded a de novo Board interview so that the Board shall make an in camera review of appellant's defense attorney's written statement.

**Recommendation:**

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