

Administrative Appeal Decision Notice

Inmate Name: Castronova, Earlayne

Facility: Albion Correctional Facility

NYSID No.: 8132082J

Appeal Control #: 03-002-07 B

Dept. DIN# 06G0435

Appearances:

For the Division, the Appeals Unit

For Appellant: Cheryl Kates, Esq.
P.O. Box 711
Honeoye, New York 14471

Board Member(s) who participated in appealed from decision: **Clarke, Johnson**

Decision appealed from: 2/2007 Denial of Discretionary Release, with an imposition of a 24-month hold.

Pleadings considered:

Brief submitted by counsel on the behalf of appellant received on May 17, 2007
Statement of the Appeals Unit's Findings and Recommendation

Documents relied upon:

Pre-Sentence Investigation Report, Inmate Status Report, Interview Transcript, Parole Board Release Decision Notice (Form 9026).

Final Determination: The undersigned have determined that the decision from which this appeal was taken be and the same is hereby

Affirmed Reversed Modified (explain) _____


Commissioner


Commissioner


Commissioner

If the Final Determination is at variance with findings and recommendation of Appeals Unit, the written reasons for such determination shall be annexed hereto.

This Final Determination, the related Statement of the Appeals Unit's Findings and separate findings of the Board, if any, were mailed to the Inmate and the Inmate's Counsel, if any, on 8/13/07 JP.

Distribution: Appeals Unit – Inmate - Inmate's Counsel - Inst. Parole File - Central File

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Castronova, Earlayne
NYSID No.: 8132082J
Dept. DIN#: 06G0435

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Findings:

The appellant appeals the Board's decision to deny discretionary release on the grounds that the Board did not have the sentencing/plea minutes before it at the time of the interview. This appeal does have merit.

It is admitted that the Board did not have the sentencing minutes before it at the time of the Board interview. In light of two recent court decisions, In the Matter of McLaurin v. New York State Board of Parole, 27 AD3d 565 (2nd Dept. 2006) and In the Matter of Standley v. New York State Division of Parole, 34 AD3d 1169 (3rd Dept. 2006), it is recommended that the Division conducts a *de novo* interview before a new panel of Board members.

Recommendation:

It is the recommendation of the Appeals Unit that the Board's decision be reversed and that a *de novo* interview be conducted.