

Administrative Appeal Decision Notice

Inmate Name: CRUTCHFIELD, Earl

Facility: Sing Sing C.F.

NYSID No.: 3639025-P

Appeal Control #: 02-094-09-B

Dept. DIN#: 82-A-5425

Appearances:

For the Division, the Appeals Unit

For Appellant:

Cheryl L. Kates, Esq.
P.O. Box 711
Honeoye, N.Y. 14471

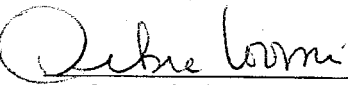
Board Member(s) who participated in appealed from decision: Casey, Ferguson & Ross

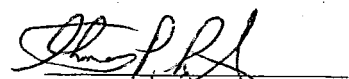
Decision appealed from: January 2009 Denial of release to parole supervision and imposition of a 24 month reappearance date.

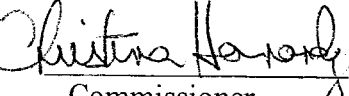
Pleadings considered: Brief on behalf of the appellant submitted on July 8, 2009;
Letter of Cheryl L. Kates, Esq. dated March 4, 2010
Statement of the Appeals Unit's Findings and Recommendation

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

 _____ Affirmed Reversed for De Novo Interview Modified to _____
Commissioner

 _____ Affirmed Reversed for De Novo Interview Modified to _____
Commissioner

 _____ 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 4/13/10.

Distribution: Appeals Unit – Inmate - Inmate's Counsel - Inst. Parole File - Central File
P-2002(B) (1/10)

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STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: CRUTCHFIELD, Earl

Facility: Sing Sing C.F.

NYSID No.: 3639025-P

Appeal Control #: 02-094-09-B

Dept. DIN#: 82-A-5425

Findings:

In this appeal, the appellant raises seven arguments in support of his contention that the Parole Board's decision to deny him release to parole supervision was arbitrary, capricious and contrary to law. One of the arguments being advanced is that the Board erred when it stated in its decision that "[d]uring the robbery of a social club, you [the appellant] shot three individuals."

According to the Inmate Status Report generated in connection with this release consideration:

"the [appellant] and co-defendant entered [a social club] and announced a robbery. A male victim interjected in the robbery and shots were fired hitting and wounding a female victim in her right leg. More shots were fired and two more victims were wounded and subsequently died."

This version of the event is corroborated by the Kings County presentence report generated in connection with this conviction. On this point, it is noteworthy that the presentence investigation report indicates that information then on file was contradictory as to whether the appellant was the sole shooter or whether his codefendant also participated in the shooting.

In past decisions, the Parole Board examined appellant's criminal behavior in the context of a somewhat chaotic situation where individuals within the social club were struggling to secure the weapons displayed by the appellant and his codefendant in the course of their attempted robbery, and in that chaos, there was discharge of those weapons resulting in three people suffering gunshot wounds, two mortally. However, in its most recent decision, the Board appears to portray the appellant as being the person solely responsible for intentionally shooting the three individuals. As the Board's most recent characterization of appellant's role in the instant offenses is not supported by the record, the decision to deny him parole primarily because of the seriousness of the instant offense cannot stand.

As for the remaining arguments advanced in this appeal, they have been considered and are determined to be without merit.

Recommendation: For the above-stated reasons, it is recommended that the appealed from decision be reversed and that a *de novo* interview be conducted consistent with these findings.