



**STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION**

**Inmate Name:** Murphy, Michael  
**NYSID No.:** 5545465Q  
**Dept. DIN#:** 91B2342

**Facility:** Fishkill Correctional Facility  
**Appeal Control #:** 01-251-10 B

**Findings:**

The appellant appeals the decision to deny discretionary release to parole supervision on the grounds that: 1) the NYS Board of Parole evaluated the appellant as an adult offender because they failed to apply the juvenile offender guidelines; 2) the Board ignored the sentencing judge's recommendations; 3) the Board failed to specify why the appellant was held above the guidelines; 4) the Board relied upon two pieces of erroneous information; 5) the Board failed to consider mitigating factors and arbitrarily denied release; 6) the Board failed to read the parole plan submitted; 7) the Board failed to consider a public risk assessment submitted in the parole plan; 8) the Board did not render a detailed decision; 9) the Board has usurped the duties of the sentencing court; and 10) the standing policy of the Appeals Unit to refuse to review administrative appeals until 120 days have passed is in direct conflict with the NYS Rules of Professional Conduct since attorneys employed by Parole are not above these standards of practice. This appeal has merit with respect to one issue only.

As appellant correctly notes, the Board did rely upon one piece of erroneous information. The appellant was convicted and sentenced as a juvenile offender. Thus, he is subject to the juvenile offender guidelines. A review of the Inmate Status Report erroneously shows that the Guideline Range is unspecified, when in reality, if the juvenile offender guidelines are applied, the guideline range is 36 to 60 months. The appellant previously received a *de novo* interview after a court decision from the Honorable John R. LaCava in a decision rendered on November 16, 1999 pursuant to an Article 78 petition for the exact same reason. The court ruled that because the Inmate Status Report incorrectly stated the guidelines, the appellant was entitled to a *de novo* interview. Subsequent to that decision, the Inmate Status Report was corrected to reflect the correct guideline range, however, when preparing the 2010 Inmate Status Report, the Facility Parole Office incorrectly stated that the guideline range was unspecified. As such, the Inmate Status Report must be corrected and it is recommended that the Board conduct a *de novo* interview.

It should also be noted that the Parole Board Decision Notice states that the appellant was interviewed by Commissioners Hagler, Crangle, and Ludlow however the transcript shows that the appellant was interviewed by Commissioners Hagler and Crangle. Nonetheless, so that there is no showing of impropriety, the appellant should be interviewed by a different panel that does not include Commissioners Hagler, Crangle or Ludlow.

**Recommendation:**

Due to the foregoing, it is the recommendation of the Appeals Unit that the Board's decision be reversed and that a *de novo* interview be conducted.