

Administrative Appeal Decision Notice

Inmate Name: York, Charazz

Facility: Fishkill Correctional Facility

NYSID No.: 6791878H

Appeal Control #: 08-380-09 B

Dept. DIN#: 94A5091

Appearances:

For the Division, the Appeals Unit

For Appellant:

Cheryl L. Kates, Esq.

P.O. Box 711

Honeoye, NY 14471

Board Member(s) who participated in appealed from decision: **Ferguson, Loomis, Crangle**

Decision appealed from: 8/09 Denial of Discretionary Release with a 24-month hold.

Pleadings considered: Brief on behalf of the appellant received on December 17, 2009
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

Joe Elor _____ **Affirmed** **Reversed for De Novo Interview** _____ **Modified to** _____
Commissioner

Christina Howard _____ **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 10/12/10
JP

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

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: York, Charazz
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Findings:

The appellant appeals the decision to deny discretionary release to parole supervision on the grounds that: 1) the appellant's entire parole experience was tainted with erroneous information supplied directly to the Board by the Facility Parole Office; 2) new evidence presents from an evidence-based risk assessment that appellant is not a threat to society; 3) the Board failed to review the defense attorney's letter as an official statement; 4) the Board ignored letters from Correctional officials advocating for release; 5) the hearing was not conducted properly as the Board failed to review appellant's parole plan; 6) the Board's decision did not give detailed reasons for the denial of parole; 7) the Board has destroyed the criminal justice system and has disheveled the American plea bargain and has become a re-sentencing authority; 8) Parole is creating a disparate impact on plea-bargained defendants in violation of the 14th Amendment's Equal Protection/Due Process Clause by implementing the refusal to review plea minutes; and 9) the standing policy in operation in the Appeals Unit of the Division of Parole to refuse to review administrative appeals until 120 days have passed is in direct conflict with the NYS Rules of Professional Conduct and attorneys employed by Parole are not above these standards of practice. This appeal has merit with respect to one issue only.

The Inmate Status Report incorrectly states that the sentence for the appellant's Criminal Possession of a Weapon 2nd conviction is 12 ½ to 25 years, when according to the Sentence and Commitment, he actually has a sentence of 7 ½ to 15 years. During the interview, the Board states that the sentence is 12 ½ to 25 years, which is incorrect. Thus, the Board clearly was under the impression that the sentence was longer than it actually is. This information should be corrected in the file and an undated Inmate Status Report needs to be done.

Additionally, the appellant was previously on Temporary Work Release, when he absconded and committed the current underlying offenses. Temporary Work Release is part of the Department of Correctional Services and not the Division of Parole. The Board however stated in the decision that the appellant was under parole supervision when he absconded and committed the offenses of Murder 2nd, Robbery 1st (3 counts) and Criminal Possession of a Weapon 2nd. Since the Board incorrectly stated this in the decision, the Appeals Unit recommends that the Board's decision be reversed and that a *de novo* interview be conducted.

Although a *de novo* interview has been recommended by the Appeals Unit, two issues that the appellant raised should be addressed. The appellant alleges that the Board did not consider the sentencing minutes or the letter from the defense attorney. The Board did have a copy of the sentencing minutes before it the time of the interview, thus there is nothing to show that the Board

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Findings:(continued from page 1)

did not consider them. Regarding the issue of the defense attorney, the Facility Parole Office did request a statement from Attorney J. Kousoros, the appellant's defense attorney, on December 8, 1998, however there was no response from him at that time. He later did provide a letter on May 7, 2009, which was included in the appellant's submission to the Board. The address on the 1998 letter from the Facility Parole Office is the same address as what is on the letter that was provided on May 7, 2009. There is nothing to indicate that Mr. Kousoros did not receive the original letter requesting any recommendations from him with respect to the appellant. Notwithstanding that fact, the Board had the appellant's submission at the time of the interview. In the absence of a convincing demonstration that the Board did not consider the statutory factors set out under Executive Law §259-i, it must be presumed that the Board fulfilled its duty. Matter of Strickland v. NYS Division of Parole, 275 ADd2d 830 (3d Dept. 2000), *lv. to appeal den'd* 95 NY2d 505; People ex rel. Herbert v. New York State Bd. of Parole, 97 AD2d 128, 133 (1st Dept. 1983); Brown v. Thomas, 2003 WL 941940 (S.D.N.Y 2003).

Recommendation:

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