

Administrative Appeal Decision Notice

**Inmate Name:** Castillo, Orlando

**Facility:** Livingston Correctional Facility

**NYSID No.:** 4490611Z

**Appeal Control #:** 02-013-11 B

**Dept. DIN#:** 95A5603

Appearances:

For the Board, the Appeals Unit

For Appellant:

Cheryl Kates, P.C.

P.O. Box 734

Victor, NY 14564

Board Member(s) who participated in appealed from decision: **Green, Hagler**

Decision appealed from: 1/11 Denial of Discretionary Release with a 24-month hold.

Pleadings considered: Brief on behalf of the appellant received on May 23, 2011  
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

John Elvino \_\_\_\_\_ Affirmed  Reversed for De Novo Interview \_\_\_\_\_ Modified to \_\_\_\_\_  
Commissioner

Christopher Hardy \_\_\_\_\_ Affirmed  Reversed for De Novo Interview \_\_\_\_\_ Modified to \_\_\_\_\_  
Commissioner

Andrew Dea \_\_\_\_\_ 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 11/8/11

Distribution: Appeals Unit - Inmate - Inmate's Counsel - Inst. Parole File - Central File  
P-2002(B) (5/2011)

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STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

**Inmate Name:** Castillo, Orlando

**Facility:** Livingston Correctional Facility

**NYSID No.:** 490611Z

**Appeal Control #:** 02-013-11 B

**Dept. DIN#** 95.5603

**Findings:**

The appellant appeals the Board's decision to deny discretionary release to parole supervision on the grounds that: 1) the Board failed to contact the district attorney, sentencing judge, or the defense attorney to obtain an official statement in this case; 2) the Board's experience was tainted with erroneous information, therefore, he must be granted an immediate *de novo* interview; 3) the Board ignored the provisions of 9 NYCRR § 8002.3(b); 4) the Board did not render a detailed decision; 5) the Board rendered a decision outside the scope of their duties, usurping the sentencing court and imposing a sentence they feel is appropriate for the appellant; 6) the Board failed to specify why the appellant was held above and beyond the guidelines; and 7) the Appeals Unit has a standing policy to refuse to review administrative appeals until 120 days have passed. This appeal has merit with respect to one issue only.

The appellant accurately states that the amount of prison time listed on the Inmate Status Report is not correct. A review of the file indicates that this is correct. In looking at the 2007 and 2009 Inmate Status Reports, both indicate that the appellant served 166 months. Assuming that he 166 months took into account the fact that the appellant had also served 806 days of jail time before being taken into DOCCS custody, the 2009 Inmate Status Report should have said that the appellant served 190 months. The January 2011 Inmate Status Report shows that the appellant served 190 months. Additionally, the 2011 Parole Board Release Decision Notice shows that the amount of prison time served has been 185 months. This too, is inaccurate. As a result of these errors in the record, it is recommended that the Board conduct a *de novo* interview.

**Recommendation:**

Due to the foregoing, it is the recommendation of the Appeals Unit that a *de novo* interview be conducted.