

Administrative Appeal Decision Notice

Inmate Name: Haye, Robert Seth

Facility: Wende Correctional Facility

NYSID No.: 157548117

Appeal Control #: 10-056-10 B

Dept. DIN#: 74A2280

Appearances:

For the Board, the Appeals Unit

For Appellant:

Cheryl L. Kates, Esq.
P.O. Box 734
Victor, New York 14564

Board Member(s) who participated in appealed from decision: **Greenan, Thompson**

Decision appealed from: 9/10 Denial of Discretionary Release with a 24-month hold.

Pleadings considered: Brief on behalf of the appellant submitted on February 28, 2011, Supplemental Letter dated May 22, 2011, and Supplemental Letter with letter from Defense Attorney dated 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

Christina Hernandez
Commissioner

Affirmed Reversed for De Novo Interview Modified to

B. Kevin Quinn
Commissioner

Affirmed Reversed for De Novo Interview Modified to

Jira Elor
Commissioner

Affirmed Reversed for De Novo Interview Modified to

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 9/19/11 RF.

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

STATE OF NEW YORK - BOARD OF PAROLE

STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: Hayes, Robert Seth

Facility: Wende Correctional Facility

NYSID No.: 1575481Y

Appeal Control #: 10-056-10 B

Dept. DIN# 74A2280

Findings:

The appellant appeals the Board's decision to deny discretionary release to parole supervision on several grounds, however, since only one ground warrants a *de novo* interview, that ground will be addressed herein.

When the Board of Parole considers the appropriateness of granting an inmate release to parole supervision, former Executive Law §259-i(1)(a)(i), now Executive Law §259-i(2)(c)(A)(vii), (see Chapter 62 of the Laws of 2011, Part C, Subpart A, §38-f-1), required the Board to consider the recommendations of the sentencing judge, district attorney and defense counsel regarding the inmate's possible release to parole. Counsel for the appellant correctly argues and the record amply demonstrates, that a recommendation regarding appellant's possible release to parole was never solicited from the attorney who represented him in connection with the conviction for which he is now incarcerated and upon which he seeks release to parole supervision. In addition, the appellant's counsel has been able to secure a letter from his former defense counsel, (see Letter of Donald Altman, Esq. faxed on May 23, 2011) regarding the appellant. Because the Board was, and remains, statutorily obligated to consider the recommendation of an inmate's defense counsel when assessing the appropriateness of granting them release to parole and such recommendation was never solicited from the appellant's defense counsel and that recommendation has now been secured, the appealed from decision should be set aside so that a *de novo* release interview can be conducted where the Parole Board can consider that recommendation consistent with its obligation under the pertinent provision of the Executive Law.

The appellant's counsel also notes in the appeal that his other defense counsel Stanley Cohen, Esq. cannot be located. This office also conducted a search for Mr. Cohen since no letter soliciting his recommendation was ever sent to him. Since the search from both appellant's counsel and the Appeals Unit for Mr. Cohen was unsuccessful, this issue regarding Mr. Cohen is concluded since a continued search for him is futile.

Recommendation:

Upon the foregoing, it is recommended that the September 2010 decision denying discretionary release be set aside and that a *de novo* initial release interview be afforded to the appellant.