

Administrative Appeal Decision Notice

**Inmate Name:** Kenneth Zerweck      **Facility:** Groveland Correctional Facility  
**NYSID No.:** 0968611Y      **Appeal Control #:** 02-041-11E  
**Dept. DIN#:** 83-A-0360

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, Hagler**

Decision appealed from: January 2011 denial of discretionary release

Pleadings considered: Brief on behalf of the appellant submitted on May 31, 2011, and June 2011  
correspondence  
Statement of the Appeals Unit's Findings and Recommendation

Documents relied upon: Presentence Investigation Reports, 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

<u><i>Christina...</i></u> Commissioner	<input type="checkbox"/> Affirmed	<input checked="" type="checkbox"/> Reversed for De Novo Interview	<input type="checkbox"/> Modified to _____
<u><i>L. Egan</i></u> Commissioner	<input type="checkbox"/> Affirmed	<input checked="" type="checkbox"/> Reversed for De Novo Interview	<input type="checkbox"/> Modified to _____
<u><i>Bill</i></u> Commissioner	<input type="checkbox"/> Affirmed	<input checked="" type="checkbox"/> Reversed for De Novo Interview	<input type="checkbox"/> 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 10/3/11 LF.

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:** Kenneth Zerweck      **Facility:** Groveland Correctional Facility  
**NYSID No.:** 0968611Y      **Appeal Control #:** 02-041-11B  
**Dept. DIN#:** 83-A-0360

**Findings:**

Appellant challenges his January 2011 denial of discretionary release. Only one of his arguments is addressed herein. Through brief of counsel, appellant contends generally that "The Parole Board failed to contact the District Attorney, Sentencing Judge or the defense attorney to obtain an official statement in this case" (Appeal Brief, p.14). But he then limits his specific discussion to contact with the defense attorneys, stating the following: "There are two cases in this matter. Kenneth had two defense attorneys that should be contacted. Both requests sent were returned (See Exhibit C). This writer is trying to obtain the proper addresses and contact the defense attorneys. Any statements will be forwarded after receipt." (Id.).

For his numerous 1982 and 1983 convictions, appellant was committed to state prison in 1983, the greatest term to which he was/is subject to being 25 years to life. Exhibit C to the appeal brief contains copies of two letters from Division of Parole staff dated September 16, 2002 to appellant's defense attorneys, as well as apparent copies of envelopes suggesting that each of those letters were returned as undeliverable due to the addresses not being current. The letters had solicited recommendations with respect to appellant's possible parole release. Facility parole staff has confirmed that there were no additional letters sent to the defense attorneys and nothing reveals any additional efforts by staff to contact them. However, in June 2011, appeal counsel, following through on her aforementioned representation, submitted a letter from one of those defense attorneys - Robert P. McGrath, Esq.. It is now September 2011, and attempts by this Appeals Unit to identify the current address of the remaining defense attorney have been unsuccessful, and no further correspondence has been submitted by appeal counsel.

Former Executive Law § 259-i(1)(a)(i) (now § 259-i(2)(c)(A)(vii)), states in part that the Board is to consider "the seriousness of the offense with due consideration to the... recommendations of the sentencing court, the district attorney, the attorney for the inmate...." While that provision does not mandate that such recommendations be proactively solicited, the agency has an internal policy of doing so. Here, however, there was a significant passage of time that may have contributed to the failure to properly convey the requests to the defenses attorneys. The letter from Mr. McGrath falls within the scope of the cited statutory provision.

**Recommendation:**

It is recommended that the appealed from decision be set aside and a de novo parole interview be afforded to appellant.