

Administrative Appeal Decision Notice

Inmate Name: COMER, Wallee

Facility: Southport Correctional Facility

NYSID No.: 4550667-H

Appeal Control #: 05-04500-B

Dept. DIN#: 86-A-6915

Appearances:

For the Board, the Appeals Unit

For Appellant:

Cheryl I. Kates, Esq.  
P.O. Box 734  
Victor, N.Y. 14564

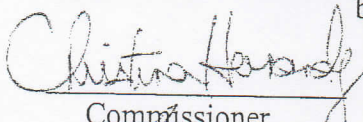
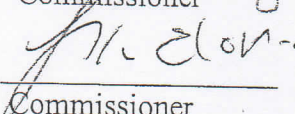
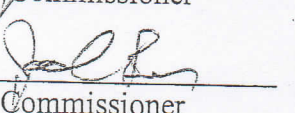
Board Member(s) who participated in appealed from decision: Ferguson and Lemons

Decision appealed from: April 2011 De Novo Interview and Denial Discretionary Release with a 24 Month Reappearance Date.


Pleadings considered: Brief on behalf of the appellant submitted on October 18, 2010;  
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); Letter of Bernard H. Udell, Esq. dated April 26, 2011.

**Final Determination:** The undersigned have determined that the decision from which this appeal was taken be and the same is hereby

 Commissioner	<input type="checkbox"/> Affirmed	<input checked="" type="checkbox"/> Reversed for De Novo Interview	<input type="checkbox"/> Modified to _____
 Commissioner	<input type="checkbox"/> Affirmed	<input checked="" type="checkbox"/> Reversed for De Novo Interview	<input type="checkbox"/> Modified to _____
 Commissioner	<input checked="" 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 8/15/11 

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: COMER, Wallee

Facility: Southport Correctional Facility

NYSID No.: 4550667-H

Appeal Control #: 05-045-10-B

Dept. DIN# 86-A-6915

Findings:

On this appeal from Mr. Comer's April 2010 appearance before the Parole Board for a *de novo* interview conducted in relation to his June 30, 2009 initial appearance and the attendant decision that denied him release to parole supervision, (see *Amended Administrative Appeal Notice* dated March 17, 2010 for Appeal Control #07-133-09-B), his counsel raises numerous arguments that she maintains warrant the appealed from decision being set aside and a second *de novo* interview being conducted. As one of the arguments appears to have merit so as to warrant a grant of the relief requested, only that argument 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, §38-1), 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 Division has been able to secure a letter from his former defense counsel, (see Letter of Bernard H. Udell, Esq. dated April 26, 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.

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