

Administrative Appeal Decision Notice

Inmate Name: HERNANDEZ, Billy  
NYSID No.: 6052924-P  
Dept. DIN#: 96-A-1274

Facility: Mohawk C.F.  
Appeal Control #: 03-158-10B

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: Elovich, Ludlow & Brown

Decision appealed from: March 2010 Denial Discretionary Release with a 24 Month Reappearance Date.

Pleadings considered: Brief on behalf of the appellant submitted on June 21, 2010;  
Supplemental Brief on behalf of appellant submitted on February 24, 2011;  
Letter of Cheryl L. Kates, Esq. dated May 22, 2011;  
Letter of Cheryl L. Kates, Esq. dated May 25, 2011 with enclosure;  
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 Geoffrey S. Stewart, Esq.  
dated May 25, 2011.

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

Christina Herod Commissioner Affirmed  Reversed for De Novo Interview \_\_\_ Modified to \_\_\_

ML Commissioner \_\_\_ Affirmed  Reversed for De Novo Interview \_\_\_ Modified to \_\_\_

Mary Reed 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 12/16/11 EF.

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: HERNANDEZ, Billy

Facility: Mohawk C.F.

NYSID No.: 6052924-P

Appeal Control #: 03-158-10B

Dept. DIN#: 96-A-1274

Findings:

The appellant appeals from a March 2010 decision of the Parole Board that denied him release to parole supervision and set a 24 month reappearance date for his next parole release consideration. One of the arguments advanced in this appeal is that staff of the former Division of Parole failed to solicit from the appellant's defense counsel any recommendation regarding his possible release to parole supervision.

A review of the record reveals that for the purpose of soliciting such a recommendation, Division staff wrote a letter on July 18, 1997 to "The Legal Aid Society, Stewart". While this document correctly identifies the last name of the appellant's defense counsel, the appellant, his crimes of conviction and the New York County indictment number under which the convictions were obtained, there is nothing in appellant's record indicating that Mr. Stewart was affiliated with The Legal Aid Society. To the contrary, the pre-sentence investigation report simply identifies Mr. Stewart as being appellant's counsel pursuant to a County Law Article 18-b assignment. Through the appellant's counsel on this appeal, the Board of Parole has now been provided with a letter from Geoffrey S. Stewart, Esq. dated May 25, 2011 which contains a recommendation regarding the appellant's possible release to parole supervision. In addition, Mr. Stewart makes clear in his letter that it was he who represented the appellant on the New York County indictment.

When assessing 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 of Parole to consider the recommendations of the sentencing judge, district attorney and defense counsel regarding the inmate's possible release to parole. By the record on this appeal, it appears that the Division did not solicit a recommendation from the attorney who represented the appellant in connection with his New York County convictions upon which he seeks release to parole supervision. In addition, a letter from the appellant's former defense counsel has now been secured for the Board's consideration. Because the Board was, and remains, statutorily obligated to consider the recommendation of an inmate's defense counsel when assessing the appropriateness of granting him or her release to parole and it cannot be demonstrated that a recommendation was solicited from the appellant's defense counsel and such 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.

STATE OF NEW YORK - BOARD OF PAROLE  
STATEMENT OF APPEALS UNIT FINDINGS & RECOMMENDATION

Inmate Name: HERNANDEZ, Billy

Facility: Mohawk C.F.

NYSID No.: 6052924-P

Appeal Control #: 03-158-10B

Dept. DIN#: 96-A-1274

Findings: (Cont. from Page 1.)

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