

Administrative Appeal Decision Notice

Inmate Name: CAMPO, Mario
NYSID No.: 33538 2-K
Dept. DIN#: 91-A-4337

Facility: Washington C.F.
Appeal Control #: 05-143-10B

Appearances:

For the Board, the Appeals Unit
For Appellant:

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

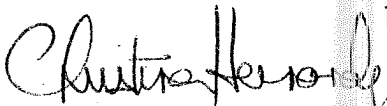
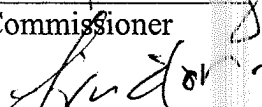
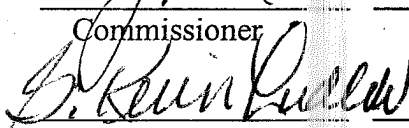
Board Member(s) who participated in appealed from decision: **Ferguson, Lemons & Ross**

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

Pleadings considered: Brief on behalf of the appellant submitted on August 5, 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 July 18, 2011 with;
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 Paul T. Saqqal dated July 18, 2011.

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

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|---|-------|----------|-------------------------------------|--------------------------------|-------|-------------------|
|  | _____ | Affirmed | <input checked="" type="checkbox"/> | Reversed for De Novo Interview | _____ | Modified to _____ |
| Commissioner | | | | | | |
|  | _____ | Affirmed | <input checked="" type="checkbox"/> | Reversed for De Novo Interview | _____ | Modified to _____ |
| Commissioner | | | | | | |
|  | _____ | Affirmed | <input checked="" type="checkbox"/> | 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 9/13/11 RF.

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

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

Inmate Name: CAMPO, Mario

Facility: Washington C.F.

NYSID No.: 3353892-K

Appeal Control #: 05-143-10B

Dept. DIN#: 91-A- 4337

Findings:

The appellant appeals from an April 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 the appellant's possible release to parole supervision.

A review of the record reveals that for the purpose of soliciting a recommendation, Division staff did not correspond directly with the appellant's defense counsel. Instead, by letter dated February 22, 2002, Division staff wrote to the clerk of the trial court, requesting that the court as a forward an enclosed letter from the Division soliciting defense counsel's recommendation. In the letter of February 22, 2002, Division staff indicated that they were seeking the assistance of the court as "the records provided to [the Division] by your Probation Department did not include the name and/or address of the counsel."

At the time of the appellant's last appearance before the Board in April 2010, there was no response in his file to the aforementioned letter from his defense counsel. In the context of this appeal, appellant's counsel has submitted the letter of Paul T. Saqqal, Esq. dated July 18, 2011, the attorney who served as appellant's defense counsel. In his letter, Mr. Saqqal states that at no time did he receive a letter soliciting his recommendation regarding his former client's possible release to parole; in addition, he offers a recommendation regarding the appellant's possible release to parole. It is also noteworthy that contrary to the representation made in the letter of February 22, 2002, the county pre-sentence investigation report contained both the name and address of the appellant's defense counsel.

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 specific recommendations of the sentencing judge, district attorney and defense counsel regarding the inmate's possible release. 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 his current conviction upon which he seeks release to parole supervision. In addition, a letter from the appellant's his 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

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Findings: (cont.)

appropriateness of granting them release to parole and a recommendation was never solicited from the appellant's defense counsel despite the availability of contact information 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.

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.