

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Willis, Mandie
Facility: Bedford Hills CF

DIN: 17-G-0768
AC No.: 03-169-19 R

Findings: (Page 1 of 2)

Appellant challenges the February 27, 2019 determination of the administrative law judge (“ALJ”), revoking release and imposing a 7-month time assessment. Appellant is on parole for stealing items from stores and from the customers in the stores. The current sustained parole violation, which appellant pled guilty to and does not dispute on this appeal, [REDACTED]

[REDACTED] Appellant raises the following issues on appeal: 1) she was denied her right to counsel. 2) the time assessment imposed is harsh and excessive, and she should instead be sent to a rehabilitation program instead of prison.

Appellant’s parole was revoked at the hearing upon her unconditional plea of guilty. Given her failure to object and plea of guilty, all issues are now waived and/or moot and are not preserved for judicial review. Stanbridge v Hammock, 55 N.Y.2d 661, 663, 446 N.Y.S.2d 929 (1981); Herman v Blum, 54 N.Y.2d 677, 678, 442 N.Y.S.2d 510 (1981); Wescott v New York State Board of Parole, 256 A.D.2d 1179, 682 N.Y.S.2d 499 (4th Dept 1998); Kirk v Hammock, 119 A.D.2d 851, 500 N.Y.S.2d 424, 426 (3d Dept 1986); Chavis v Superintendent, 236 A.D.2d 892, 653 N.Y.S.2d 752 (4th Dept 1997).

As is explained in detail in the transcript, appellant had been sitting in the Broome County jail for three months on Cortland County parole charges, and was still waiting for an attorney to appear. This was a problem for all Cortland County parolees. So the ALJ stated he would make a much lower plea offer than normal for appellant due to this problem. Appellant understood and knowingly waived her right to an attorney.

The ALJ may impose a time assessment instead of providing rehabilitative treatment. Robinson v Travis, 295 A.D.2d 719, 743 N.Y.S.2d 330 (3d Dept 2002). A short time on parole before the violation also may be used. See Matter of Wilson v. Evans, 104 A.D.3d 1190, 1191, 960 N.Y.S.2d 807, 809 (4th Dept. 2013) (finding no impropriety in 30 month time assessment where releasee violated by consuming alcohol two days after release); Matter of Davidson v. N.Y. State Div. of Parole, 34 A.D.3d 998, 999, 824 N.Y.S.2d 466, 467 (3d Dept. 2006) (hold to ME was not excessive given violent attack and that it occurred less than four months after release), lv. denied, 8 N.Y.3d 803, 830 N.Y.S.2d 699 (2007); Matter of Drayton v. Travis, 5 A.D.3d 891, 892, 772 N.Y.S.2d 886 (3d Dept. 2004) (“ALJ properly considered petitioner’s short time on parole” in imposing 40 month time assessment for traveling outside city without permission and failing to report to parole officer following release for prior curfew violations). It is presumed the Administrative Law Judge considered all of the relevant factors. Ramirez v New York State Board of Parole, 214 A.D.2d 441, 625 N.Y.S.2d 505 (1st Dept 1995). The time assessment imposed is clearly permissible. Otero v New York State Board of Parole, 266 A.D.2d 771, 698 N.Y.S.2d 781 (3d Dept 1999), leave to appeal denied 95 N.Y.2d 758, 713 N.Y.S.2d 2 (2000); Carney v New York State Board of Parole, 244 A.D.2d 746, 665 N.Y.S.2d 687 (3d Dept

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1997); Issac v. New York State Division of Parole, 222 A.D.2d 913, 635 N.Y.S.2d 756 (3d Dept. 1995); Robinson v Travis, 295 A.D.2d 719, 743 N.Y.S.2d 330 (3d Dept 2002); People ex rel. Lee v La Paglia, 251 A.D.2d 834, 673 N.Y.S.2d 945 (3d Dept 1998), lv.den. 92 N.Y.2d 809, 680 N.Y.S.2d 54 (1998).

Recommendation: Affirm.