

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Labumbard, Lisa

**DIN:** 16-G-0254

**Facility:** Taconic CF

**AC No.:** 04-131-19 R

**Findings:** (Page 1 of 2)

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Appellant challenges the March 11, 2019 determination of the administrative law judge (“ALJ”), revoking release and imposing a 15-month time assessment. Appellant’s instant offense consisted of her breaking into a residence, while on parole, and stealing prescription medications. The current parole revocation charges are for marijuana use and use of medications without a doctor’s prescription. Appellant pled guilty at the final revocation hearing to use of marijuana. There was no promise as to the time assessment, other than it would not exceed 18 months. The ALJ imposed a 15 month time assessment. Appellant raises the following issues: 1) use of a Parole Revocation Specialist is unconstitutional, as they are not a parole officer. 2) appellant should have been placed into category three. 3) the 15 month time assessment is excessive. She needs drug rehabilitation. 4) appellant received ineffective assistance of counsel.

Appellant’s parole was revoked at the hearing upon her unconditional plea of guilty. Appellant was represented by counsel at the final hearing, and the Administrative Law Judge explained the substance of the plea agreement. The inmate confirmed she understood and there is nothing to indicate she was confused. The guilty plea was entered into knowingly, intelligently and voluntarily, and is therefore valid. Matter of Steele v. New York State Div. of Parole, 123 A.D.3d 1170, 998 N.Y.S.2d 244 (3d Dept. 2014); Matter of James v. Chairman of N.Y. State Bd. of Parole, 106 A.D.3d 1300, 965 N.Y.S.2d 235 (3d Dept. 2013); Matter of Ramos v. New York State Div. of Parole, 300 A.D.2d 852, 853, 752 N.Y.S.2d 159 (3d Dept. 2002). Consequently, her guilty plea forecloses this challenge. See Matter of Steele, 123 A.D.3d 1170, 998 N.Y.S.2d 244; Matter of Gonzalez v. Artus, 107 A.D.3d 1568, 1569, 966 N.Y.S.2d 710, 711 (4th Dept. 2013).

Per 9 N.Y.C.R.R. 8005.16(c), DOCCS may be represented at the final parole revocation hearing by an “adversary officer”-which is what a parole revocation specialist is. There is no provision in the Constitution that requires a parole revocation hearing to be prosecuted by a parole officer.

Counsel “is presumed to have been competent and the burden is on the accused to demonstrate upon the record the absence of meaningful adversarial representation.” Matter of Jeffrey V., 82 N.Y.2d 121, 126, 603 N.Y.S.2d 800, 803 (1993); see also People v. Hall, 224 A.D.2d 710, 638 N.Y.S.2d 732 (2d Dept. 1996). “[T]here is nothing to substantiate petitioner’s contention that she was denied the effective assistance of counsel as the record discloses that she received meaningful representation”. Matter of James v. Chairman of New York State Bd. of Parole, 106 A.D.3d 1300, 1300-1301, 965 N.Y.S.2d 235, 237 (3d Dept. 2013); accord Matter of Partee v. Stanford, 159 A.D.3d 1294, 74 N.Y.S.3d 114 (3d Dept. 2018); Matter of Rosa v. Fischer, 108 A.D.3d 1227, 969 N.Y.S.2d 706 (4th Dept.), lv. denied, 22 N.Y.3d 855, 979 N.Y.S.2d 561 (2013). When viewed in totality, if the inmate received meaningful representation, then she received effective assistance of counsel. Bond v Stanford, 171 A.D.3d 1320, 97 N.Y.S.3d 807 (3<sup>rd</sup> Dept. 2019).

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Counsel's failure to investigate something, if it had no effect on the outcome, is not significant. Bond v Stanford, 171 A.D.3d 1320, 97 N.Y.S.3d 807 (3<sup>rd</sup> Dept. 2019). It will be noted that nothing can be gleaned from the record to indicate her counsel was ineffective. However, even if she was, by the appellant's plea of guilty, it would not warrant a different result. Hunter v New York State Board of Parole, 167 A.D.2d 611, 563 N.Y.S.2d 234(3d Dept 1990). A parolee's being dissatisfied with the counsel's services does not constitute ineffective assistance of counsel in a parole revocation hearing. People ex rel. Campolito v Portuondo, 248 A.D.2d 768, 669 N.Y.S.2d 726, 727 (3d Dept 1998).

Appellant was sentenced by the criminal court per CPL 410.91 to be executed as a sentence of parole supervision. Thus, per 9 N.Y.C.R.R. 8005.20(d), appellant falls outside of the guidelines. As such, appellant is not a category three.

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 (1<sup>st</sup> Dept 1995); Garner v Jones, 529 U.S. 244, 120 S.Ct. 1362, 1371, 146 L.Ed.2d 236 (2000). 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 1997); Issac v. New York State Division of Parole, 222 A.D.2d 913, 635 N.Y.S.2d 756 (3d Dept. 1995). Administrative Law Judge can consider the nature of the underlying charge, the nature of the violations, and the ongoing nature of the inmate's drug use. Washington v Annucci, 144 A.D.3d 1541, 41 N.Y.S.3d 808 (4<sup>th</sup> Dept. 2016); Youngblood v Stanford, 170 A.D.3d 456, 93 N.Y.S.3d 837 (1<sup>st</sup> Dept. 2019). 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).

**Recommendation:** Affirm.