

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Knapp, Justin

DIN: 16-B-3279

Facility: Greene CF

AC No.: 10-009-18 R

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Appellant challenges the September 19, 2018 determination of the administrative law judge (“ALJ”), revoking release and imposing a 24-month time assessment. Appellant is on parole for possessing drugs in a jail. While on parole, appellant had absconded, and when located led the police on a 20 minute high speed car chase, until he crashed the car he was driving, which also contained passengers, and then fleeing by foot. Appellant also has a prior conviction for fleeing from police via a high speed car chase. Appellant raises the following claims: 1) the ALJ was biased as during the off the record plea negotiations, he repeatedly cursed at and insulted and threatened appellant. 2) the 24 month hold is excessive, [REDACTED] which are diseases, and for which he needs treatment, not more prison. 3) to punish a man for his diseases violates the 8th amendment to the constitution.

Plea negotiations are not required to be recorded. Gonzalez v New York State Division of Parole, 100 A.D.3d 1323, 955 N.Y.S.2d 257 (3d Dept. 2012). There is a presumption of honesty and integrity that attaches to Judges and administrative fact-finders. People ex.rel. Johnson v New York State Board of Parole, 180 A.D.2d 914, 580 N.Y.S.2d 957, 959 (3d Dept 1992); Withrow v Larkin, 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed2d 712 (1975). A Judge explaining the consequences could be more severe if you don’t take this plea offer doesn’t make the plea involuntary. People v Harrison, 70 A.D.3d 1257, 896 N.Y.S.2d 224 (3d Dept. 2010) lv.den. 15 N.Y.3d 774, 907 N.Y.S.2d 463. There is simply no support in the record for appellant’s claim that the administrative law judge was prejudiced or biased against him. Matter of Hampton v. Kirkpatrick, 82 A.D.3d 1639, 919 N.Y.S.2d 422 (4th Dept. 2011); People ex rel. Brazeau v. McLaughlin, 233 A.D.2d 724, 725, 650 N.Y.S.2d 361 (3d Dept. 1996), lv. denied, 89 N.Y.2d 810, 656 N.Y.S.2d 738 (1997). The inmate has failed to show that the findings in the case by the ALJ flowed from any alleged bias. Ciccarelli v New York State Division of Parole, 11A.D32d 843, 784 N.Y.S.2d 173, 175 (3d Dept. 2004); Donahue v Fischer, 98 A.D.3d 784, 948 N.Y.S.2d 778 (3d Dept. 2012); Lafferty v Annucci, 148 A.D.3d 1628, 50 N.Y.S.3d 221 (4th Dept. 2017); Leno v Stanford, 165 A.D.3d 1334, 84 N.Y.S.3d 603 (3d Dept. 2018).

The Board 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”

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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).

The Board may consider the violent nature of the conduct giving rise to the violation or in the criminal history. See, e.g., Matter of Lafferty v. Annucci, 148 A.D.3d 1628, 50 N.Y.S.3d 221 (4th Dept. 2017) (no impropriety in 48-month time assessment in view of violent criminal history and disregard for parole conditions); D.L. Riley v. Alexander, 139 A.D.3d 1206, 1207, 31 N.Y.S.3d 318, 320 (3d Dept. 2016) (36-month delinquent time assessment where releasee, convicted of burglary for breaking into ex-girlfriend's apartment and stabbing her, violated parole by verbally/physically threatening and stalking another girlfriend); Matter of Rosa v. Fischer, 108 A.D.3d 1227, 1228, 969 N.Y.S.2d 706, 707 (4th Dept.) (72-month time assessment permissible given violent criminal history and recurrent disregard for conditions of parole), lv. denied, 22 N.Y.3d 855, 979 N.Y.S.2d 561 (2013).

Incarceration pursuant to a parole revocation decision does not constitute an Eighth Amendment cruel and unusual punishment violation. Gill v Stella, 845 F.Supp. 94, 102 (E.D.N.Y. 1994).

Recommendation: Affirm.