

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Parker, Arabian

DIN: 10-B-1972

Facility: Oneida County Jail

AC No.: 05-113-19 R

Findings: (Page 1 of 2)

Appellant challenges the April 29, 2019 determination of the administrative law judge (“ALJ”), revoking release and imposing a 12 month/DOCCS alternate 90 day drug treatment program time assessment. Appellant’s instant offense involved him breaking into the house of an elderly man, and into the business of an elderly man, displaying a weapon and forcibly stealing money and a car. The current parole revocation charges involved failure to make office reports, curfew violations, and failing drug tests. At the final parole revocation hearing, a plea bargain was entered into. Appellant pled guilty to use of cocaine, [REDACTED]

[REDACTED] Appellant raises the following issues: 1) he was denied his right to a Preliminary Violation Hearing. 2) the time assessment imposed was excessive. 3) the reason he violated parole was that his parole officer pushed him into the wrong programs.

Appellant’s parole was revoked at the hearing upon his unconditional plea of guilty.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 he understood and there is nothing to indicate he 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, his 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).

Petitioner signed the Notice of Violation in the box that he waived the Preliminary Violation Hearing.

Appellant has already served the time assessment, and been released. Claims that the time assessment hold imposed is excessive are rendered moot when the inmate is subsequently released onto parole during the course of the litigation. Adams v New York State Division of Parole, 89 A.D.3d 1267, 932 N.Y.S.2d 388 (3d Dept. 2011); Horton v Travis, 18 A.D.3d 922, 793 N.Y.S.2d 778 (3d Dept. 2005); Gray v Travis, 239 A.D.2d 631, 657 N.Y.S.2d 118, 119 (3d Dept 1997); Darnell v David, 300 A.D.2d 766, 750 N.Y.S.2d 802 (3d Dept 2002); Gainey v Stanford, 157 A.D.3d 1176, 70 N.Y.S.3d 589 (3d Dept. 2018). As such, this part of the appeal is dismissed as being moot.

The inmate’s assertion of an innocent excuse creates a credibility issue for the Administrative Law Judge to resolve, and does not negate the fact that the behavior violated the condition of parole. Bolton v Dennison, 38 A.D.3d 1077, 832 N.Y.S.2d 118 (3d Dept. 2007). The excuse is unavailing when the condition of parole prohibited the conduct. Carney v New York State Division of Parole, 244 A.D.2d 746, 665 N.Y.S.2d 687 (3d Dept. 1997).

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Recommendation: Affirm.