

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Sansaurus, Shakeem

DIN: 18-B-0026

Facility: Gowanda CF

AC No.: 05-121-19 R

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Appellant challenges the April 24, 2019 determination of the administrative law judge (“ALJ”), revoking release and imposing a 32-month time assessment. Appellant’s underlying instant offense involved appellant possessing nine bundles of heroin. The current parole revocation charges included absconding, failure to make his office reports, cutting off his ankle bracelet, use and possession of marijuana, and changing his residence. At the final parole revocation hearing, a plea bargain was entered into. Appellant pled guilty to failing to report, and to changing his residence, and was given a 32 month time assessment. Appellant raises only one issue on appeal. Appellant claims the time assessment imposed is excessive. Appellant would be better served with addiction treatment.

Appellant’s parole was revoked at the hearing upon his unconditional plea of guilty.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).

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).

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); 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). While the conduct giving rise to the violation did not constitute a new crime, the ALJ acted within his discretion to impose 32 month time assessment pursuant to 9 N.Y.C.R.R. § 8005.20(c) and the assessment was not excessive under the circumstances. See Matter of Bolden v. Dennison, 28 A.D.3d 1234, 814 N.Y.S.2d 477 (4th Dept.) (36-month assessment for curfew violation), lv. den. 7 N.Y.3d 705, 819 N.Y.S.2d 872 (2006); Matter of Smith v. Travis, 253 A.D.2d 955, 955, 678 N.Y.S.2d 917, (Mem)-918 (3d Dept. 1998) (36 month assessment was not excessive, notwithstanding that this was first parole violation 41 months after release, where releasee failed to report to parole officer); Matter of Folks v. Alexander, 58 A.D.3d 1038, 1039, 871 N.Y.S.2d 779, 780 (3d Dept. 2009) (24 month assessment by Board for

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failure to report 5 months after release); Matter of Ramirez v. New York State Board of Parole, 625 N.Y.S.2d 505 (1st Dept. 1995) (18 month assessment for moving to another state and not reporting to parole officer for three months).

Recommendation: Affirm.