

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Balkum, Walter

DIN: 04-B-0527

Facility: Released

AC No.: 05-127-19 R

Findings: (Page 1 of 1)

Appellant challenges the May 9, 2019 determination of the administrative law judge (“ALJ”), revoking release and restoring Appellant to parole supervision. Appellant was incarcerated for five separate instant offenses. In one, Appellant drove the getaway car after an accomplice entered a hotel and demanded money from the clerk at gunpoint. In the second, Appellant entered a credit union with a gun and forced the teller to hand over \$9,000. In the third, Appellant entered a video store and displayed a handgun before forcibly stealing approximately \$4,000. In the fourth, Appellant entered another credit union and forcibly stole approximately \$27,000. In the fifth, Appellant entered a residence with a revolver, ordered the victim to the floor and demanded drugs before fleeing on foot. The parole revocation charges included failing to successfully complete his residential treatment program, failing to notify his parole officer of his change in residence, violating his curfew by being outside of his approved residence on two consecutive nights, testing positive for marijuana, and failing to comply with the directions of the residential treatment program staff. Following a contested hearing, the ALJ issued a written decision concluding that Appellant was to be revoked and restored to parole supervision. In the “Analysis” section of the decision, the ALJ made a typographical error, mistakenly writing that he did not find that Appellant violated one or more of his conditions of release in an important respect. The ALJ later issued an amended decision correcting the error, explaining that Appellant did in fact violate the conditions of his release in an important respect but mitigating circumstances led to the revoke and restore to parole supervision. Appellant raises the following issues: 1) the ALJ’s reversal of his original decision was affected by an error of law, was arbitrary and capricious, and should be reversed; and 2) the ALJ’s reversal of his finding that Appellant did not violate any conditions of his release in an important respect was legally impermissible. These arguments are without merit.

There is a presumption of honesty and integrity that attaches to Judges and administrative fact-finders. See People ex rel. Carlo v. Bednosky, 294 A.D.2d 382, 383, 741 N.Y.S.2d 703 (2d Dept. 2002); People ex. rel. Johnson v. New York State Bd. of Parole, 180 A.D.2d 914, 916, 580 N.Y.S.2d 957, 959 (3d Dept. 1992). The ALJ is presumed to understand his authority to revoke and restore to parole supervision upon finding a violation of a condition of release in an important respect, and an apparent typographical error that was corrected in the amended version does not provide a basis to disturb the decision.

We nonetheless note that the “Findings and Conclusions” section of the amended decision indicates that Charge 6 was sustained, while the “Analysis” section confirms that it was dismissed as there was no testimony that Appellant did not follow the rules and regulations of the residential treatment program. This error requires modification.

Recommendation: Modify sustained charges only and, as so modified, affirm.