

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Hendrickson, Brian

**DIN:** 12-A-3830

**Facility:** Riverview CF

**AC No.:** 03-174-19 R

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

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Appellant challenges the March 4, 2019 determination of the administrative law judge (“ALJ”), revoking release and imposing a hold to ME date time assessment. Appellant’s underlying instant offense is for breaking into a house and stealing property. The current parole revocation charges stem from a criminal arrest with appellant engaging in sexual intercourse with a 14 year old female, and then lying about the incident to his parole officer. Appellant was convicted of a misdemeanor of Attempted Rape 3<sup>rd</sup> Degree. At the final parole revocation hearing, a plea bargain was entered into. Appellant pled guilty to a charge of acting in a manner injurious to a child, and had his delinquency date favorably amended. The ALJ imposed a time assessment of hold to ME date. Appellant raises the following issues: 1) the plea was not knowingly entered into as no allocution took place. 2) the ALJ never said on the record it was a violation in an important respect. 3) the time assessment imposed is harsh and excessive.

Appellant’s parole was revoked at the hearing upon his unconditional plea of guilty.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

In contrast to criminal proceedings, there is no requirement of an allocution in parole revocation proceedings. A parole revocation proceeding does not have the full panoply of rights that a criminal proceeding has. U.S. v Carlton, 442 F.3d 802 (2d Cir. 2006).

A guilty plea standing alone is sufficient to support a finding of guilt and it is not required the inmate admit it was a violation in an important respect, in that they bespeak a serious threat to public safety. Matter of Horace v. Annucci, 133 A.D.3d 1263, 20 N.Y.S.3d 492 (4th Dept. 2015). A knowing and voluntary guilty plea establishes that the parolee violated parole in an important respect and precludes a subsequent challenge to the sufficiency of the evidence. Matter of Harris v. Evans, 121 A.D.3d 1151, 993 N.Y.S.2d 790 (3d Dept. 2014); 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 Taylor v. NYS Division of Parole, 108 A.D.3d 953, 968 N.Y.S.2d 808, 809 (3d Dept. 2013); Matter of Holdip v. Travis, 9 A.D.3d 825, 779 N.Y.S.2d 382 (4th Dept. 2004); Matter of Fuller v. Goord, 299 A.D.2d 849, 849, 749 N.Y.S.2d 628, 629 (4th Dept. 2002), lv. denied, 100 N.Y.2d 531, 761 N.Y.S.2d 592 (2003).

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A hold to the maximum expiration date is permissible. See Matter of Abreu v. Stanford, 153 A.D.3d 1455, 61 N.Y.S.3d 706 (3d Dept. 2017); Matter of Rodriguez v. New York State Dep't of Corr. & Cmty. Supervision, 141 A.D.3d 903, 904, 35 N.Y.S.3d 569, 570–71 (3d Dept. 2016); Matter Davis v. N.Y. State Bd. of Parole, 81 A.D.3d 1020, 1021, 915 N.Y.S.2d 771 (3d Dept. 2011); Matter of Swinson v. Warden, 75 A.D.3d 433, 434, 903 N.Y.S.2d 235 (1st Dept. 2010).

**Recommendation:** Affirm.