

29TH OCTOBER 2016

KATHLEEN M. WIELY
COUNSEL TO THE BOARD OF PAROLE
DEPARTMENT OF CORRECTIONS
AND COMMUNITY SUPERVISION
THE W. AVERILL HARRIMAN STATE CAMPUS, BLDG. 2
1220 WASHINGTON AVENUE
ALBANY, NEW YORK 12226-2050

DWIGHT JAMES, #84-A-7255
CAYUGA CORRECTIONAL FACILITY
POST OFFICE BOX 1186
MORAVIA, NEW YORK 13118

RE: PROPOSED REGULATION CHANGES TO
NYCRR 8002.1 - 8002.3

DEAR MS. KILEY:

PLEASE BE ADVISED, PURSUANT TO THE ABOVE-REFERENCED AND FOREGOING, UPON RECEIPT OF THIS COMMUNICATION, YOUR ATTENTION IS DIRECTED TO THE FOLLOWING, POST, VIZ:

YOUR UNDERSIGNED, A 58 YEAR OLD OFFENDER, INCARCERATED FOR THE PAST 33 CONSECUTIVE YEARS, HAS APPLIED UNSUCCESSFULLY FOR PAROLE RELEASE CONSIDERATION 5 TIMES (MOST RECENTLY SEPTEMBER 2016). AWARE OF THE EVAN'S 2011 MEMORANDUM AND THE NUMEROUS COUNTY COURT DECISIONS REGARDING THE INTERPRETATION OF SAID, THE BOARD, IN WAKE OF ITS PROPOSED REGULATION CHANGES, STILL RENDER RELEASE DECISIONS IN AN INCONSISTENT MANNER. IT IS AXIOMATIC THAT PAROLE BOARD DECISIONS ARE SUI GENERIS. HOWEVER, IT IS PERPLEXING WHEN ONE OFFENDER WITH AN EGREGIOUS CRIME IS RELEASED OVER ANOTHER, WHEN IN FACT THE RELEASED OFFENDER HAS ACCOMPLISHED LESS WITH RESPECT TO REHABILITATION. THIS PRAXIS CALLS INTO **QUESTION THE CRITERIA** THE BOARD USES TO DETERMINE WHO GOES HOME AND WHO REMAINS IN PRISON. CASES IS POINT:

MAY 2014 APPEARANCE: JOSHUA ROSNER, 25 TO LIFE, RELEASED 1ST BOARD. CRIME: KIDNAP AND MURDER (VICTIM WAS DROWNED AND THEN CASTRATED).

MAY 2014 REAPPEARANCE: VERNAN NINHAM, 25 TO LIFE, RELEASED 2ND BOARD, CRIME: (VICTIM STABBED 43 TIMES ON AN INDIAN RESERVATION).

MAY 2014 REAPPEARANCE: VICTOR NAVARRO, 25 TO LIFE, RELEASED 3RD BOARD, CRIME: 2 COUNTS OF MURDER 2ND (APPLICANT'S DISCIPLINARY HISTORY, INCLUDING RECENT, WAS TROUBLING).

JUNE 2014 APPEARANCE: ANDRE CAGE, 25 TO LIFE, 1ST BOARD

NOVEMBER 2014 APPEARANCE: RASHAWN SULLIVAN, 17 TO LIFE, RELEASED 1ST BOARD. CRIME: MURDER 2ND (DRIVE-BY GANG SHOOTING).

FEBRUARY 2015 APPEARANCE: MR. TUCKER, 25 TO LIFE, RELEASED 1ST BOARD,

MURDER 2ND.

MARCH 2015 REAPPEARANCE: JOSE CHARON, 25 TO LIFE, RELEASED 2ND BOARD, CRIME: MURDER 2ND (VICTIM DECAPITATED. APPLICANT REFUSED ALL MANDATORY PROGRAMS).

APRIL 2015 REAPPEARANCE: CHARLES HORN, 25 TO LIFE, RELEASED 4TH BOARD, CRIME: MURDER 2ND (FEMALE VICTIM GAGGED, BOUND AND SHOT IN THE BACK OF THE HEAD).

JUNE 2015 REAPPEARANCE: SYLVESTER WEST, 25 TO LIFE, RELEASED 8TH BOARD, CRIME: 4 COUNTS OF MURDER 2ND (4 STATE WITNESSES EXECUTED, 2 DECAPITATED).

JUNE 2015 APPEARANCE: JOEL THORN, 20-40 PLEA ALLOCATION, 1ST BOARD, CRIME: MURDER 2ND, ASSAULT 1ST (WIFE'S BOYFRIEND KILLED AND WIFE BEAT SEVERELY WITH SHOTGUN). MR. THORN'S RELEASE DATE WAS SUBSEQUENTLY RESCINDED DUE TO VICTIM IMPACT STATEMENTS.

NOVEMBER 2015 APPEARANCE: EARNEST CULVER, 25 TO LIFE, RELEASED 1ST BOARD, CRIME: MURDER 2ND (VICTIM STABBED 22 TIMES).

JANUARY 2016 REAPPEARANCE: ANGELO GERRERRO, 15 TO LIFE, RELEASED 5TH BOARD, CRIME: MURDER 2ND (FEMALE VICTIM SHOT TWICE, ONCE IN GENITAL AREA. MR. GUURRERRO HAD NUMEROUS POSITIVE URINALYSIS DURING INCARCERATION, AND, OPPOSITION FROM THE OFFICE OF THE DISTRICT ATTORNEY OF ORIGIN).

JANUARY 2016 REAPPEARANCE: FRANK HEID, 19 TO LIFE, RELEASED 7TH BOARD, CRIME: MURDER 2ND (VICTIM, 85 YEAR OLD GRANDMOTHER, RAPED, STABBED AND MUTILATED. OFFENDER CLAIMED TO BE HIGH DURING THE COMMISSION OF THE CRIME. MR. HEID HAD SEVERAL POSITIVE URINALYSIS DURING HIS INCARCERATION).

JANUARY 2016 REAPPEARANCE: TERRY LOSICCO, 25 TO LIFE, RELEASED 6TH BOARD, CRIME: MURDER 2ND, ASSAULT 1ST (67 YEAR OLD GRANDMOTHER [RETIRED EDITOR OF READER'S DIGEST] WAS BLUDGEONED, STRANGLER AND RAPED. HER INVALID HUSBAND WAS BEAT AND LEFT FOR DEAD UPSTAIRS IN A BEDROOM). OPPOSITION FROM A STATE SENATOR, SENTENCING JUDGE AND 1,205 SIGNATURES ON A PETITION OPPOSING MR. LOSICCO'S RELEASE (N.Y. POST 2/21/16).

MAY 2016 APPEARANCE: ERNEST LOTT, 25 TO LIFE, RELEASED 1ST BOARD, CRIME: MURDER 2ND, KIDNAP 1ST (DRUG RELATED RETALIATION).

MAY 2016 REAPPEARANCE: THOMAS KENNEDY, 25 TO LIFE, RELEASED 3RD BOARD, CRIME: MURDER 2ND (MR. KENNEDY, AT AGE 21, LURED A 9 YEARS OLD GIRL INTO PLAYING HIDE & SEEK. HE SECLUDED HER, RAPED AND SODOMIZED HER, AND WHEN THE CHILD SCREAMED OUT DURING THE ASSAULT, HE STABBED HER 6 TIMES AND CUT HER THROAT. OPPOSITION FROM COMMUNITY AND JUDICIAL SYSTEM)-(BUFFALO NEWS 5/27/16).

AUGUST 2016 REAPPEARANCE: CARY BATTEN, 25 TO LIFE, RELEASED 3RD BOARD, CRIME 2 COUNTS MURDER 2ND, CRIME: (IN THE COURSE OF BURGLARIZING A HOME, MR. BATTEN ENTERED THE ROOM OF A SLEEPING COUPLE WHO SURPRISED HIM.

MR. BATTEN SHOT AND KILLED BOTH VICTIMS).

SEPTEMBER 2016 APPEARANCE: KENNETH AUGUSTINE, 25 TO LIFE, RELEASED 1ST BOARD, CRIME: MURDER 2ND (OVER A \$20.00 GAMBLING DEBT MR. AUGUSTINE SHOT HIS VICTIM IN THE NECK). *

OF THE AFOREMENTIONED OFFENDERS, 15 OF 18 WERE INTERVIEWED AT AND RELEASED FROM CAYUGA CORRECTIONAL FACILITY. THIS GIVEN LIST OF OFFENDERS ALSO CALLS INTO QUESTION WHETHER OR NOT THERE WAS ANY SPOTLIGHT OR CONCERN ON HOW THE BOARD WAS CONDUCTING ITS BUSINESS WITH RESPECT TO COMPAS, TAP/CASE PLAN INDICATED IN THE EVAN'S MEMORANDUM; OR WHETHER A "FACTUALLY INDIVIDUALIZED" REASON WAS PROVIDED FOR A DENIAL DECISION, AS INDICATED IN THE NEWLY PROPOSED REGULATIONS.

ENCLOSED, YOUR COMMENTATOR'S COMPAS SCORES INDICATES THAT HE IS NOT A "RISK" TO SOCIETY. IN ADDITION TO HAVING 450+ HOURS OUTSIDE CLEARANCE, HE IS PROGRAM COMPLETE, INCLUDING NUMEROUS NON-MANDATORY THERAPEUTIC PARTICIPATION THROUGHOUT INCARCERATION. THERE IS NO QUESTION THAT YOUR UNDERSIGNED HAS MUCH TO OFFER UPON RELEASE. HE HAS CHANGED THE ONLY THING THAT HE CAN, HIMSELF. TO CONTINUE TO DENY RELEASE TO PAROLE SUPERVISION, BASED ESSENTIALLY UPON IMMUTABLE FACTORS (INSTANT OFFENSE AND PRE-CONFINEMENT BEHAVIOR), OR MENIAL FACTORS THAT WERE NEVER MENTIONED AT 4 PREVIOUS BOARD APPEARANCES, CONTRAVENES THE CONCEPT THAT PEOPLE CONFINED CAN CHANGE FOR THE BETTER, DESERVING OF REENTERY TO SOCIETY, AND BECOMING A PRODUCTIVE CITIZEN.

A STUDY BY THE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION (DOCCS) PROVIDED THAT RECIDIVISM RATES FOR INDIVIDUALS THAT SERVED LONG SENTENCES FOR THE MOST SERIOUS CRIMES, ARE EXTREMELY LOW (1%) FOR NEW CONVICTIONS, AND 5.5% NEW COMMITMENTS FOR INDIVIDUALS RELEASED AT 50 AND OLDER FOR ANY CRIME.

HOW THE BOARD INTENDS TO APPLY THE NEWLY PROPOSED CHANGES TO THE REGULATIONS IS BEYOND YOUR UNDERSIGNED. I SHALL NOT GIVE UP HOPE AND BECOME DESPERATE. YOUR UNDERSIGNED IS APPROACHING 9 YEARS BEYOND HIS MINIMUM SENTENCE. ALBEIT, I SHALL CONTINUE TO PURSUE MEANINGFUL OPPORTUNITIES WHILE CONFINED.

THANK YOU FOR YOUR INDULGENCE. SHOULD YOU REQUIRE ANYTHING FURTHER REGARDING YOUR REQUEST FOR MY COMMENTARY, PLEASE DO NOT HESITATE CONTACTING ME AT MY LAST KNOWN FACILITY.

VERY TRULY YOURS,


DWIGHT JAMES

W/ENCLOSURES

* ALTHOUGH RELEASE RATES HAVE CLIMBED SLIGHTLY, MANY DESERVING, REHABILITATED OFFENDERS REMAIN INCARCERATED BEYOND THE MINIMUM SENTENCE.