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March 30, 2018

BY: OVERNIGHT MAIL

Tina M. Stanford, Esq.
Chairwoman
New York State Board of Parole
Building 2
1220 Washington Avenue
Albany, New York 12226-1799

Re: Request for Rescission of Parole and New Parole Hearing:
Inmate: Herman Bell
DIN: 79C0262
Earliest Release Date: April 17, 2018

Dear Ms. Stanford:

By letters dated March 21, 2018 and March 26, 2018, respectively, we requested that the release of inmate Herman Bell to parole supervision be immediately suspended because of the failure of the Board of Parole ("Board") to follow the procedures required by law. Specifically, the Board failed to consider the sentencing minutes, in violation of Executive Law section 259-i. Since the Board failed to do so, the remedy is clear and non-discretionary. The matter must be remanded to the Board for a new hearing before a new Board. See *Matter of Lovell v New York State Div. of Parole*, 40 AD3d 1166, 1167 (3rd Dept. 2007).

Pursuant to Executive Law section 259-i(2)(c)(A)(vii), the Board was required to obtain and consider the minutes of Bell's sentencing, containing the comments and recommendations of the sentencing court and district attorney, prior to making its determination. The Board's decision granting Bell's release to parole supervision stated, however, that the file they considered did not contain a copy of the sentencing minutes, in clear violation of the law.

An article in the New York Daily News dated March 28, 2018 reports that unnamed "state officials" claim that "[w]hile reviewing Bell's case, the board did read a letter from the sentencing judge and further states that "since ordering Bell freed, the board has read over the minutes, but the document didn't change their position." The article is silent, however, regarding the circumstances leading to their convention, if there is a transcript or other record of the

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meeting or if it is the same Board that made the determination without the minutes in the first instance.

Even if the information reported in the newspaper article is accurate, the Board's initial determination is not remedied by an unnamed state official's statement to a news reporter that the Board "read the minutes over" after "ordering Bell free." The case law is quite clear in this regard. The Board must give fair consideration to each of the applicable statutory factors before, not after, making its decision. Where, as here, the record "convincingly demonstrates" that the Board failed to consider the proper standards, the decision cannot stand. See, *Matter of King v. New York State Div. of Parole*, 190 AD2d 423, 431 (1st Dept 1993), affd 83 NY2d 788 (1994).

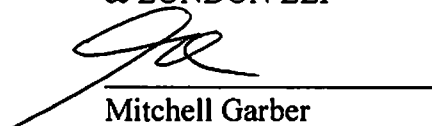
Here, it has been "convincingly demonstrated" that the Board did not have the sentencing minutes before making their determination, in direct contravention of Executive Law section 259-i. When determining that a parole board proceeding is improper, the courts have consistently ruled that a new proceeding before a new board is required to avoid merely "rubber stamping" the flawed conduct. See *Matter of Quartararo v New York Stat Div. of Parole*, 224 AD2d 266 (1st Dept 1996); *King* 190 AD2d at 434-435.

To date, neither of the families of Police Officer Piagentini or Jones or the undersigned has received any response to these letters. It is unconscionable that these families received the news of the Board's reported action from a newspaper article, citing unnamed "state officials" rather than by notification by Board of Parole or DOCCS, Office of Victim Assistance, as required by Jenna's Law. This failure, combined by the irregularities previously brought to your attention, taints the Board's decision to release Bell as a matter of law, necessitating a new hearing before a new Board.

Unequivocally, since the Board failed to consider this significant information, suspension and rescission is mandatory under Section 8002.5 of the Board's rules. Accordingly, Bell's release date must be immediately rescinded and the matter must be remanded to the Board for a new hearing before a new Board.

Respectfully submitted,

WORTH, LONGWORTH
& LONDON LLP


Mitchell Garber