FILED, Clerk of the Appellate Division, August 30, 2024, **A-002404-23**, **AMENDED**

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

ROBERT RELDAN,	: Superior Court of New Jersey:
	: Appellate Division
Petitioner-Appellant,	: Docket No.: A-002404-23
v.	: Civil Action
NEW JERSEY STATE PAROLE BOARD,	: On appeal from the Final Decision of the New Jersey State Parole Board
Respondent.	

BRIEF AND APPENDICES ON BEHALF OF APPELLANT ROBERT RELDAN

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PRELIMINARY STATEMENT

Over the last several years, this court and the New Jersey Supreme Court have published numerous decisions instructing the New Jersey State Parole Board (Board) to conduct its parole hearings and render its decisions in accordance with its unambiguous statutory responsibilities. Despite those clear instructions, the Board continues to ignore its legal obligations to conduct fair and unbiased parole hearings based on the full record before it. This appeal demonstrates that the Board failed to consider material facts, ignored mitigating evidence, and failed to meet its burden to overcome the presumption of release. These failures are particularly disturbing because the Board has repeatedly ignored this Court's rulings concerning Mr. Reldan.

As this Court and our Supreme Court have observed, the Board frequently limits its consideration of evidence to that which supports its own preordained denial of parole. This appeal presents yet another example of the Board's failure to abide by the laws under which it is governed. Mr. Reldan appeals from the Board's February 28, 2024, Final Agency Decision denying him parole pursuant to N.J.A.C. 10A:71-4.1 and establishing a future eligibility date (FET) of thirty-six months.

Mr. Reldan is 84 years old and has been a New Jersey State Prison inmate since his convictions and sentences were imposed in 1979. If the currently imposed

36-month FET is affirmed, Mr. Reldan will have served nearly 50 years in State Prison. Despite the serious nature of Mr. Reldan's convictions, he – like all New Jersey inmates – enjoys constitutionally guaranteed rights to due process and fundamental fairness in connection with his consideration for parole. Under the Parole Act of 1979, which applies to Mr. Reldan's convictions, he is entitled to a statutory presumption of release, which the Board was required to rebut by establishing a "substantial likelihood of reoffending" by a preponderance of the evidence. It failed to do so.

Mr. Reldan has successfully appealed several prior errant Board decisions, resulting in a series of reversals and remands to the Board with instructions to reconsider mitigation evidence that it initially chose to ignore. During his last parole appeals in 2012 and 2015, this court clearly and unambiguously noted that the Board "failed to take [the court's] remand instructions seriously," and directed the Board to support its decision with "clear and specific articulation of reasons with a factual basis grounded in the record." The Board's February 28, 2024, Final Decision wholly failed to abide by the repeated admonitions of this Court.

Mr. Reldan appeals from the Board's Final Decision for two reasons. First, the Board failed to establish, by a preponderance of the evidence, that Mr. Reldan presents a substantial likelihood of re-offending if released on parole. The Board hinged its determination on Mr. Reldan's decades-old criminal record and a vague

allegation that Mr. Reldan "does not accurately understand" the motives for his offenses. In reaching that decision, the Board failed to fairly consider Mr. Reldan's positive clinical risk assessments, including one conducted by its own psychologist, who concluded that because of Mr. Reldan's age and other mitigating factors, he is of "low to moderate" risk for future criminal conduct.

Second, the Board failed to consider material facts when it placed little to no weight on Mr. Reldan's significant mitigation evidence, without any meaningful explanation. The Board ignored Mr. Reldan's participation in institutional programs, thousands of hours of therapy, and many of the letters of support submitted on his behalf. While the Board considered a single letter in support of parole from Mr. Reldan's sister, it failed to address seven other letters written by upstanding citizens in Mr. Reldan's life. The Board's Final Decision did not provide any insight into its analysis of Mr. Reldan's mitigating factors: simply repeating Mr. Reldan's contentions and rejecting them without explanation.

For the reasons below, Mr. Reldan respectfully urges this Court to reverse the February 28, 2024 Final Decision by the Board and grant him parole or, alternatively, remand the matter to the Board to reconsider its decision based upon the *full* record, with a direction to support any asserted basis for denial with a clear and specific articulation of reasons.

FILED, Clerk of the Appellate Division, August 30, 2024, **A-002404-23**, **AMENDED**

PROCEDURAL HISTORY AND STATEMENT OF FACTS[4]

The facts relevant to this appeal concern Mr. Reldan's most recent parole hearing, and the Board's February 28, 2024 Final Decision denying Mr. Reldan parole and imposing a thirty-six 3 month FET. A brief factual background as to Mr. Reldan's prior parole appeals is included to provide additional context.

A. Factual Background and Prior Appeals

Mr. Reldan was convicted of two counts of homicide in the Superior Court of New Jersey, Bergen Vicinage, in August 1979: one count of first-degree murder, and one count of second-degree murder. (Pa55-57). He was later sentenced to a mandatory term of life imprisonment on the first-degree conviction, and a consecutive thirty-year term of imprisonment on the second-degree conviction. (Pa55-56). His convictions and sentence were initially reversed on appeal, but after re-trial he was again convicted and sentenced for the same offenses in March 1986. (Pa60). As detailed by this court in its prior decisions, Mr. Reldan was also convicted of other offenses, including conspiracy to commit murder, weapons offenses, and conspiracy to commit escape. (Pa57-59). The most recent conviction for which Mr. Reldan was sentenced occurred in 1982. Ibid.

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[4] Since the facts relevant to this appeal largely consist of procedural issues, the Statement of Facts and Procedural History have been combined as they are inextricably intertwined.

As noted by this Court in its prior decisions, Mr. Reldan became statutorily eligible for parole in July 2008, after nearly thirty years in prison. (Pa115-121). In April 2009, Mr. Reldan was denied parole by a two-member panel, who recommended a 240-month FET. Ibid. In October 2010, Mr. Reldan was denied parole by a three-member panel, who established the 240-month FET. Ibid. Then, in June 2011, the Full Board denied Mr. Reldan's administrative appeal and affirmed the FET of 240 months. Ibid.

Mr. Reldan filed a timely appeal and, in July 2012, the Appellate Division reversed and remanded Mr. Reldan's matter to the Board, holding that the 240-month FET was arbitrary and not supported by the record or law. Reldan v. N.J. State Parole Bd., No. A-6039-10 (App. Div. July 9, 2012). On remand in March 2013, the Board issued a revised decision, reducing the FET from 240 to 228 months. (Pa115). In reducing the FET by a mere twelve months, the Board ignored the clear directives of this Court.

In April 2015, the Appellate Division again reversed and remanded Mr. Reldan's parole case to the Board because the 228-month FET was not supported by fact or law. This court directed: "The Board shall determine whether [Mr.] Reldan is now eligible for parole or whether another FET date should be established, and it shall do so in accordance with the legal requirements we have outlined in this opinion, including clear and specific articulation of reasons with a factual basis

grounded in the record." Reldan v. N.J. State Parole Bd., No. A-1786-13 (App. Div. Apr. 24, 2015) (slip op. at 8).

In 2017 and 2018, respectively, a two-member panel and three-member panel denied Mr. Reldan parole and imposed a FET of 120-months in its Initial Notice of Decision. (Pa115). The three-member panel's denial was largely based on Mr. Reldan's alleged failure to understand "[his] motivations for [his] anti-social conduct," as demonstrated by his "denial of parts of offenses and minimization of others." Reldan v. N.J. State Parole Bd., No. A-0265-18 (App. Div. Dec. 4, 2019) (slip op. at 4-9).[5] Mr. Reldan again filed a timely appeal from the Board's Final Decision denying parole and imposing the 120-month FET. In December 2019, that parole denial and FET were affirmed by the Appellate Division. Ibid.

B. Relevant Clinical Risk Assessments

When Mr. Reldan first became eligible for parole in 2008, he participated in several pre-parole risk assessments, which were conducted primarily by the State's own experts (with the exception of one psychologist who Mr. Reldan retained to conduct an independent risk assessment in 2018). (Pa352). Although the initial

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[5] This court has since clarified that even the maintenance of absolute innocence can no longer form the basis of a parole denial, without showing a related increased likelihood of future criminal conduct. Berta v. N.J. State Parole Bd., 473 N.J. Super. 284, 318-19 (App. Div. 2022). Thus, the Board's criticism of Mr. Reldan's alleged "denial and/or minimization" of his offenses does not, in itself, establish an increased likelihood of future criminal conduct.

assessments indicated a more substantial risk of reoffense for Mr. Reldan, his scores have steadily decreased over time, such that both his own expert, as well as the State's expert, agree that he presents a "low to moderate" risk for reoffense. Ibid.; (Pa359). The two clinical risk assessments relevant to this appeal are summarized below.

In May 2018, Dr. Catherine M. Barber, Ph.D., conducted a thorough psychological evaluation and risk assessment of Mr. Reldan. Dr. Barber conducted her clinical assessment over three sessions with Mr. Reldan, spanning approximately eight hours. Dr. Barber's assessment included Mr. Reldan's offense history, personal circumstances, and insight into his criminal conduct, among other relevant criteria. (Pa306-319). In concluding, to a reasonable degree of psychological certainty, Mr. Reldan presented a "low to moderate" risk for reoffense if released, Dr. Barber made several critical findings that supported Mr. Reldan's release on parole. Dr. Barber noted that

> The factors underlying his moderate level of risk are almost exclusively historical factors, which will not change no matter how long Mr. Reldan remains incarcerated. Factors associated with a lower estimate of risk included his present age – recidivism base rates for both violence and sexual violence tend to go down with increasing age – as well [as] a number of protective factors: absence of major mental disorder; absence of substance abuse; presence of insight; presence of psychological support; feasible plans for potential release to the community; and resources to secure housing.

[Pa319 (emphasis added).]

Dr. Barber's well-supported analysis was ignored by the Board, and it is not clear that it placed any weight on this report whatsoever.

Years later, on November 30, 2022, Mr. Reldan was assessed by the Board's own psychologist. (Pa350-364). That particular Board psychologist had conducted at least two prior clinical risk assessments of Mr. Reldan. (Pa352). The Board psychologist noted at the outset that he agreed to review Dr. Barber's 2018 assessment in connection with his final report in this matter but did not directly address her opinion in his report. (Pa350). Despite claiming that Mr. Reldan "appeared to offer statements that were self-serving," the Board's own psychologist ultimately agreed with Dr. Barber's conclusion that Mr. Reldan presented a "low to moderate" risk of reoffense if released. (Pa355). The Board psychologist found:

> Risk for violence is reduced by lack of violence for four decades and current age where violence is noted to decrease with older age. Based on information obtained during the course of this evaluation, clinical (non-empirical) estimates indicate <u>this inmate appears to be a low to moderate risk for future violence</u> . . . .
>
> [Pa359 (emphasis added).]

He then concluded that "[t]he likelihood of this inmate successfully completing a projected term of parole is fair due to constellation of risks and strengths as previously discussed." <u>Ibid.</u> The Board psychologist's evaluation and conclusions

were not included in the Board's Final Decision. (Pa1-7).

C. Parole Board Decision on Appeal

In May 2023, Mr. Reldan appeared before a panel for his parole hearing. Following the hearing, the panel issued one-page Notice of Decision on May 15, 2023, denying parole and imposing a thirty-six-month FET. (Pa158-161). To justify its decision, the panel checked off boxes and provided a two-sentence explanation that Mr. Reldan has failed to "understand the thought process that motivate him to criminal behavior." (Pa7; Pa162). Once again, the panel failed to consider material evidence, ignored its obligation to articulate its reasons for denial with a factual basis grounded in the record, and failed to properly apply the controlling law. Ibid.

Mr. Reldan subsequently filed an administrative appeal to the Full Board on October 4, 2023, which was accepted as timely on October 18, 2023. (Pa164-65). In his administrative appeal, Mr. Reldan asserted that the panel failed to consider his significant mitigation evidence, including his extensive participation in programs and services and several letters of support submitted on his behalf, and that the panel failed to meet its burden to establish a "substantial likelihood" of future criminal conduct, especially in light of the findings of Dr. Barber and the Board psychologist, both of whom concluded that Mr. Reldan presented only a "low to moderate" risk of reoffense. (Pa166-79).

In its Final Decision, the Board summarily rejected Mr. Reldan's arguments

and asserted that the panel did not fail to consider material facts that supported Mr. Reldan's release on parole. (Pa6). In that regard, the Board claimed that it considered the Alternative to Violence program that Mr. Reldan completed, as well as the fact that he advanced in the program to "Lead Facilitator." The Board also claimed that it "considered" the mitigation evidence concerning Mr. Reldan's: (1) participation in poetry classes, art therapy, and creative writing projects; (2) extensive one-on-one counseling with Sister Elizabeth Gnam; (3) thousands of hours of other relevant therapy and counseling throughout his incarceration; (4) critical role in spearheading the Special Needs Unit for inmates with psychological issues; and (5) authoring and publishing of several books to help at-risk youths. (Pa3). The Board provided no explanation as to how this evidence was considered or weighed in reaching its decision to deny parole. Ibid.

The Board also claimed that it considered Mr. Reldan's advanced age and reduced risk of recidivism but stated that despite the considerable decrease in his risk for reoffense, "an offender's age is not dispositive of whether the offender is suitable for parole release." (Pa3-4). Notably, the Board did not offer any explanation or analysis as to how this scientifically proven evidence failed to support Mr. Reldan's release, especially in light of the statutory presumption, and Mr. Reldan's positive clinical risk assessments. (Pa1-6). Instead, it simply rejected each basis for Mr. Reldan's administrative appeal, claiming that since the

mitigation evidence was "part of the record" and "available for review," it was therefore sufficiently "considered." (Pa1-6).

With regard to the serious medical conditions from which Mr. Reldan continues to suffer, the Board again merely listed the medical evidence submitted on Mr. Reldan's behalf but failed to offer any analysis as to why this evidence did not lend further support to Mr. Reldan's release. (Pa5). The Board claimed that it "considered" the fact that Mr. Reldan is blind in one eye; suffers from a hyperplasia prostate condition; and will have financial support for life, to cover medical expenses and any other financial obligations he may incur, from a trust that was established for his benefit. The Board also stated that it considered the unwavering support of Mr. Reldan's sister, with whom he can live once released. Ibid. Again, however, it failed to explain why this evidence was insufficient to support Mr. Reldan's presumption of release on parole. Instead, the Board simply rejected these arguments, simply stating that "Mr. Reldan specifically discussed his ailing health as well as his inheritance at length with the Board." Ibid.

Addressing Mr. Reldan's argument that the Board failed to appropriately weigh several compelling letters of support that were submitted on his behalf, the Board again summarily claimed that the letters were "considered" because they were "on file," and "available for review." (Pa6). It offered no explanation as to why the other letters of support were not considered in mitigation, and instead

disposed of Mr. Reldan's argument as "without merit." Ibid. Notably, only one letter of support, from Mr. Reldan's sister, is reflected in the Board's Statement of Items Comprising the Record. The other seven letters submitted on Mr. Reldan's behalf are not included and were ignored in the Board's Final Decision. (Pa19-24; Pa1-6).

Finally, the Board rejected Mr. Reldan's arguments that it failed to meet its burden that he presents a "substantial risk of reoffense," based, in part, upon the risk assessments and clinical findings by Dr. Barber and the Board psychologist, who found that he presented a mere "low to moderate" risk for reoffending. (Pa4). According to the Board, it appropriately considered the doctors' conclusions as an aggravating factor (as opposed to a mitigating factor) at the time of the hearing because, in its sole discretion, it deemed those assessments to confirm Mr. Reldan's "moderate" risk of reoffense. (Pa2; Pa4-5). The Board offered no explanation or legal authority to unilaterally read "low risk" out of Mr. Reldan's clinical risk assessments. Ibid.[6]

The Board also relied on its oft-cited justification for denying parole,

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[6] In an April 10, 2023 letter from the Board, a representative advised Mr. Reldan that the risk assessment had been removed as a mitigating factor and added as an aggravating factor. In a follow up letter, the Board again claimed that Mr. Reldan's assessment was regarded as an aggravating factor because it confirmed a "moderate" risk of reoffense. Once again, the Board completely ignored the "low to moderate" risk assessment reached by both experts in this case. (Pa138; Pa147-48).

claiming that the circumstances of Mr. Reldan's offenses and his insistence that his crimes were motivated by monetary gain demonstrate "insufficient problem resolution . . . [and] that [he] lacks insight into his criminal behavior and [ ] minimizes his conduct." (Pa2). The Board therefore determined that the lack of insight into his criminal behavior "contradicts Mr. Reldan's assertion of sufficient rehabilitation." (Pa4).

The Board ultimately concluded, without any meaningful explanation or analysis, that parole should be denied because the aggregate of all relevant factors established, by a preponderance of the evidence, that Mr. Reldan presented a "substantial likelihood" that he will commit another crime if released. (Pa6). On April 10, 2024, Mr. Reldan filed a timely notice of appeal from the Board's Final Decision. (Pa8). The notice of appeal was amended on April 18, 2024, to correct the category of the case filing from "other" to "State Parole Board." (Pa11).

LEGAL ARGUMENT

The Board's February 28, 2024, Final Decision must be reversed because it failed to: (1) consider material evidence directly related to the required analysis under N.J.A.C. 10A:71-3.11; and (2) meet its burden in establishing a "substantial likelihood" of reoffense based upon the two risk assessments of record, which conclude Mr. Reldan merely presents a "low to moderate" risk. In light of the Board's substantial errors in this matter, and its history of arbitrary denials of parole

to Mr. Reldan, it is respectfully requested that this Court reverse the Board's Final Decision and grant Mr. Reldan parole.

POINT I

STANDARD OF REVIEW

It is well-settled that reviewing courts do not blindly adhere to Board Decisions. Berta v. N.J. State Parole Bd., 473 N.J. Super. 284, 303 (App. Div. 2022). In Berta, the appellate panel emphasized that its review of the Board's decision "is not 'perfunctory,' nor is it '[the Court's] function . . . merely [to] rubberstamp an agency's decision." Ibid. (omission and second alteration in original). Importantly, reviewing courts require that the Board "explain its reasoning" with "[a] sufficient statement of reasons." Ibid. Without sufficient reasoning from the Board, reviewing courts are unable to ascertain whether the Board's decision is justified or arbitrary and capricious. Ibid.

While Board decisions are entitled to some level of deference, the "discretionary power exercised by the . . . Board . . . is not unlimited or absolute." Acoli v. N.J. State Parole Bd., 250 N.J. 431, 455 (2022). Indeed, as noted by Justice Albin in Acoli:

> A government agency, such as the . . . Board, may not wield its discretionary power arbitrarily. Like all agency decisions, those rendered by the . . . Board are subject to judicial review. However deferential the standard of review may be, our courts are the ultimate arbiters of whether the Board has acted within the bounds of the law.

[Ibid. (internal citations omitted).]

A "Board decision that either violates legislative policy, is not supported by 'substantial evidence' in the record, or 'could not reasonably have been made on a showing of the relevant factors' cannot be sustained." Acoli, 250 N.J. at 455 (quoting Trantino v. N.J. State Parole Bd. (Trantino IV), 154 N.J. 19, 24-25 (1998)).

Under appropriate circumstances, reviewing courts have the inherent power to reverse the Board and grant an inmate's application for parole without a remand. Trantino v. N.J. State Parole Bd. (Trantino VI), 166 N.J. 113, 173 (2001); see also id. at 121 (ordering the Board to "grant Trantino parole subject to the pre-release condition of satisfactory completion of a twelve-month halfway house placement and such other pre- and post-release conditions that it may impose"); Acoli, 250 N.J. at 438 ("[W]e are compelled to . . . grant Acoli parole, consistent with his established release plan."); Kosmin v. N.J. State Parole Bd., 363 N.J. Super. 28, 44 (App. Div. 2003) (reversing the final decision denying parole and "direct[ing] that Kosmin be released on parole forthwith"); N.J. State Parole Bd. v. Cestari, 224 N.J. Super. 534, 551 (App. Div. 1988) ("revers[ing] the decision denying Cestari parole and direct[ing] that he be released on parole forthwith").

This standard of review requires reversal here. Deference to Board decisions that are not grounded in facts of record, and defy well-established legal standards, is not permitted under our jurisprudence.

POINT II

APPLICABLE LAW UNDER THE PAROLE ACT OF 1979

An inmate has a "federally-protected liberty interest" in being granted parole. Trantino VI, 166 N.J. at 197. By the time an inmate's parole eligibility date is reached, the punitive aspect of his sentence has been satisfied. Kosmin, 363 N.J. Super. at 40-41. In determining whether an inmate should be granted parole, the dispositive question is whether the rehabilitative aspect of their sentence has been satisfied. Id. at 41.

Mr. Reldan's application for parole and his appeal are governed by the Parole Act of 1979 (the Act), because the crimes for which he was convicted and sentenced occurred long before the 1997 amendment. See Kosmin, 363 N.J. Super. at 41 n.2; see also Trantino v. N.J. State Parole Bd., 331 N.J. Super. 577, 604 (App. Div. 2000) aff'd in part, modified in part, and remanded, 166 N.J. 113 (2001), judgment modified, 167 N.J. 619 (2001). Under the applicable version of the Act, the Board must consider twenty-four factors, and "any other factors deemed relevant." N.J.A.C. 10A:71-3.11. Despite having these twenty-four enumerated factors, the Board often denies parole in reliance on non-Code factors, commonly: (a) lack of insight and/or remorse; (b) insufficient problem resolution; and (c) incarceration on multiple offenses. See, e.g., Acoli v. N.J. State Parole Bd., 462 N.J. Super. 39 (App. Div. 2019), on remand from 224 N.J. 213 (2016); see also McGowan v. N.J. State

Parole Bd., 347 N.J. Super. 544 (App. Div. 2002).

Critically, under the Act, inmates are entitled to a presumption of release unless the Board establishes, by a preponderance of the evidence, that the inmate presents a "substantial likelihood of reoffense" if released. Acoli, 250 N.J. at 456 ("The language of the . . . Act 'creates a protected expectation of parole in inmates who are eligible for parole.'" (quoting N.J. State Parole Bd. v. Byrne, 93 N.J. 192, 206 (1983))); See also N.J.S.A. 30:4-123.53(a); Byrne, 93 N.J. at 205. Thus, under the Act, Mr. Reldan was entitled to a presumption of release, unless the Board could establish, by a preponderance of the evidence, that there is a "substantial likelihood that [Mr. Reldan] will commit another crime if released on parole." Kosmin, 363 N.J. Super. at 41.

Further, the Supreme Court of New Jersey has emphasized that "the punitive elements of retribution and general deterrence cannot, under the law, be the determinative factors" in discerning an inmate's parole eligibility. Trantino IV, 154 N.J. at 43-44. The Board must grant parole to an inmate where the law dictates, regardless of how incomprehensible it may be to the public to parole an individual who was convicted of two widely publicized homicides. See Trantino VI, 166 N.J. at 196.

With regard to administrative appeals from a panel's initial parole decision, the Board is required to determine whether the three-member panel sufficiently

considered the factors enumerated in N.J.A.C. 10A:71-3.11(b), which include: the facts and circumstances of the offense; aggravating and mitigating factors concerning the offense; the inmate's mental and emotional health; statements of the inmate reflecting on whether there is a likelihood he will commit another crime; participation in institutional programs; and statements or evidence presented by a prosecutor or other criminal justice agency.

The failure to properly consider mitigating factors, such as the various programs in which the inmate participated, letters of support, age and lack of institutional infractions, and recommendations or letters of support received from numerous sources, constitute grounds for reversal and remand to the Board. See, e.g., Hyson v. N.J. State Parole Bd., No. A-2693-07 (App. Div. Apr. 21, 2009) (slip op. at 11-16) (citing Trantino VI, 166 N.J. at 189). Indeed, our Courts have reversed and remanded Final Decisions if the Board places too much weight on select evidence in the record and not enough to other relevant evidence. See, e.g., Trantino VI, 166 N.J. at 189-92; Hyson, No. A-2693-07 (slip op. at 18-19).

In Trantino VI and Hyson, the respective Courts found that the Board placed too much weight on certain aggravating evidence, and not enough weight on other mitigating evidence. In Trantino VI, for example, our Supreme Court criticized the Board for its failure to address "substantial evidence in the record, spanning many years of infraction-free incarceration and favorable psychological evaluations, that

demonstrated Trantino's likelihood of success on parole" and its reliance on one negative psychological report among several others. 166 N.J. at 189. Likewise, in Hyson, the Appellate Division acknowledged that "[c]ertainly it cannot be denied that the record contains a laundry list of Hyson's many crimes and negative psychological evaluations and risk assessments." Hyson, No. A-2693-07 (slip op. at 13). Despite the nature of Hyson's offenses and evaluations, however, the Appellate Division found that "the record as a whole consists of more," including Hyson's infraction-free record and involvement in the community. Ibid.

In sum, the Board has very clear statutory and regulatory obligations in deciding whether to grant or deny parole. When the Board acts arbitrarily or fails to support or explain the reasons for denial, reversal is required.

POINT III

THE BOARD FAILED TO ESTABLISH THAT MR. RELDAN PRESENTS A SUBSTANTIAL LIKELIHOOD OF REOFFENSE IF RELEASED. (Pa1-6).

Mr. Reldan should have been released on parole because the Board failed to overcome the presumption of release by establishing, by a preponderance of the evidence, that he presents a substantial likelihood of re-offending if granted parole. The Board largely based its determination on the circumstances of Mr. Reldan's forty-five-year-old criminal record, and its vague conclusion that Mr. Reldan "does not accurately understand" his motives for criminal behavior. In doing so, the

Board weighed Mr. Reldan's clinical risk assessments as aggravating factors, despite the fact that the assessments conducted by the Board's own psychologist, and an independent psychologist hired by Mr. Reldan, both found that Mr. Reldan presents a "low to moderate" risk for future acts of criminal conduct and has a fair likelihood of success if released on parole. (Pa319; Pa359).

The Board is not at liberty to ignore evidence that supports an inmate's release on parole, simply because it disagrees. In Berta, the Appellate Division held that, under the Act, the Board must tie its reasons for denial of parole to a "substantial likelihood" of reoffense and must explain how its decision reduces "the likelihood of future criminal behavior." 473 N.J. Super. at 304, 323. The court explained:

> "Likelihood" is defined as a "probability," or "the appearance of probable success," and "substantial" is defined as "considerable in amount" or "being that specified to a large degree." Webster's Third International Dictionary 1310, 2280 (1981). Requiring that the Board show that there is a substantial "probability" that an inmate will reoffend is a fairly high predictive bar that must be vaulted—even though such assessment will defy scientific rigor and involves a certain degree of subjectivity.
>
> This much we can say about the term "substantial likelihood." Assessing the risk that a parole-eligible candidate will reoffend requires a finding that is more than a mere probability and considerably less than a certainty. To be sure, the mere "potential" that an inmate if released may reoffend is not sufficient. Only when the risk of reoffending rises to "a substantial likelihood" may a parole-eligible inmate be denied parole.
>
> [Id. at 304 (quoting Acoli, 250 N.J. at 455-56) (citations

omitted) (emphasis added).]

Although this court's holding and reasoning in Berta was unambiguous, the Board continues to ignore the directives of this court and our Supreme Court by arbitrarily denying parole for inmates they deem "bad guys" or otherwise incapable of rehabilitation based upon decades-old conduct that no longer reflects the inmate's character or current risk to the public.

Here, the Board claimed in its Final Decision that the clinical risk assessments were properly considered as an aggravating factor militating against parole. This conclusion was reached by the Board by completely reading out the "low" end of Mr. Reldan's risk assessments. In its decision, the Board stated that:

> With regard to your contention that Mr. Reldan's risk assessment evaluation was not properly considered by the Board, be advised that pursuant to N.J.A.C. 1 0A: 71-3.11, the LSI-R Assessment is one of the factors that the Board considers in determining an inmate's suitability for release on parole supervision. The LSI-R Assessment is prepared prior to an inmate's parole release hearing and utilizes various risk factors, such as an individual's prior criminal record, educational and employment histories and substance abuse history to produce the final score. Additionally, the Board notes that the psychological report prepared by Catherine M. Barber, Ph.D. on May 17, 2018 was part of the record established at Mr. Reldan's full Board hearing, was on file, available for review and was considered by the Board. Notwithstanding the psychological report prepared by Catherine M. Barber, the Board finds that Mr. Reldan's LSI-R score of seventeen (17), which indicates a moderate risk of recidivism, was appropriately utilized by the Board in his case.

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[Pa4 (emphasis added)].

As reflected in its Final Decision, the Board unilaterally blue penciled the risk assessments to eliminate the psychologists' unrebutted conclusions that Mr. Reldan presents a "low to moderate" risk of reoffense. The Board also failed to address the fact that Dr. Barber explained "[t]he factors underlying [Mr. Reldan's] moderate level of risk are almost exclusively historical factors, which will not change no matter how long Mr. Reldan remains incarcerated." (Pa319). The Board made no mention of the Board psychologist's same conclusion regarding Mr. Reldan's "low to moderate" risk for reoffense. (Pa1-6).

Both Dr. Barber's and the Board psychologist's conclusions after assessing Mr. Reldan support the determination that he is unlikely to reoffend if released on parole. To be sure, a "low to moderate" risk neither establishes a "probability" nor a "substantial likelihood" that Mr. Reldan would reoffend. As the Berta court stated, the Board's mere determination that Mr. Reldan will reoffend, without sufficiently explaining its reasoning, is not enough to meet Berta's high bar. While the Board may have not found Dr. Barber's conclusions compelling, it offered no explanation whatsoever for disregarding the conclusions of its own psychologist. The Board's disregard of Mr. Reldan's low risk assessments as mitigation, and its decision instead to treat those risk assessments as aggravating circumstances, evince the Board's results-oriented approach to justify a preordained denial of parole.

Throughout its Final Decision, the Board spends an inordinate amount of time rehashing Mr. Reldan's offense history, and clearly places the greatest weight on the circumstances of the crimes for which he was convicted and sentenced nearly 45 years ago. (Pa3). As noted above, by the time an inmate becomes eligible for parole, the punitive aspect of his sentence has been completed. Kosmin, 363 N.J. Super. at 40-41. Critical to this appeal is Dr. Barber's astute observation that the clinical assessment that resulted in Mr. Reldan's "moderate" risk for reoffense is based upon historical events (Mr. Reldan's criminal conduct) that cannot be changed no matter how long he remains incarcerated.

Mr. Reldan cannot change the past. On multiple occasions, he has expressed to the Board that he deeply regrets the crimes that he committed, as well as the pain and suffering that he caused his victims and their families. Mr. Reldan conveyed that same remorse during his interviews with Dr. Barber and the Board psychologist, as reflected in their respective reports. In fact, as described by Dr. Barber in her 2018 report, Mr. Reldan feels that the word "remorse" could never fully express the guilt and shame he feels about the homicides and other criminal offenses that he committed as a young man. But Mr. Reldan is also not the same man he was in 1979, nor is he the man he was in 2001, 2011, or 2015. He has used his time in prison to better himself, his fellow inmates, and the prison system as a whole, and wants nothing more than to once again contribute to society. He has taken courses,

engaged in extensive therapy to gain insight into the personality traits that contributed to his criminal conduct, written books and poetry, spearheaded important mental health services within our prisons, and has remained infraction free for decades. Given all of Mr. Reldan's extensive participation in programs and services, and his unrebutted "low to moderate" risk assessments, there is nothing more Mr. Reldan can possibly do to appease the Board and convince it that he is ready to reintegrate into society.

Mr. Reldan has spent his entire period of incarceration participating in programs and services to rehabilitate himself. The Board's rejection of competent mitigating evidence, and its disproportionate reliance on Mr. Reldan' s conduct and alleged "inability to understand" why he committed his crimes, confirms that the Board has not fairly evaluated Mr. Reldan as the man he is today. Instead, the Board's decision demonstrates that it intends to punish Mr. Reldan for the rest of his life. Because the Board's Final Decision lacked any explanation as to how it overcame the presumption of release, and lacked record support for its assertion that Mr. Reldan presents a substantial risk of reoffense, it is respectfully submitted that the February 28, 2024 Final Decision must be reversed.

POINT IV

THE BOARD FAILED TO PROPERLY CONSIDER MATERIAL FACTS INCLUDING PETITIONER'S SIGNIFICANT MITIGATION EVIDENCE. (Pa1-6).

In denying Mr. Reldan's application for parole, the Board failed to properly weigh and consider a number of important mitigating factors, including: his advanced age, extensive participation in institutional programs and therapy, numerous letters from friends and loved ones willing to offer him support if released, and his substantial rehabilitative efforts while incarcerated. The Board's unexplained decision to place undue weight on the alleged aggravating factors elicited at Mr. Reldan's parole hearing, such as the circumstances of his decades-old offenses and his "inability to understand" the motivations for his criminal conduct, while ignoring or placing little weight on equally relevant mitigating factors, requires reversal.

As reflected in its February 28, 2024 Final Decision, the Board overlooked or undervalued several mitigating factors such as Mr. Reldan's participation in institutional programs. The Board failed to fairly weigh the rehabilitation that Mr. Reldan achieved through his three-year participation in the Alternative to Violence program. Through this program, Mr. Reldan quickly advanced from the beginner course to acting as a Lead Facilitator. As Lead Facilitator, Mr. Reldan was entrusted with managing his own group sessions and imparting the course's

philosophy of non-violence to other participating inmates. Mr. Reldan also took the initiative to form an inmate poetry group, which assisted other inmates to express their emotions and frustrations through the art of poetry. Mr. Reldan's formation of, and participation in, this poetry group supplemented the Alternative to Violence program because of the poetry group's emphasis on non-violence. In addition to the above courses and groups, the Board failed to acknowledge that Mr. Reldan also participated in computer programming, art therapy, and creative writing during his incarceration.

Further, the Board failed to consider Mr. Reldan's job as a paralegal. Mr. Reldan has assisted other inmates with legal research and writing for the past fourteen years. In the midst of the COVID-19 pandemic, Mr. Reldan assisted in applications for the compassionate release of two elderly inmates who were at high risk of death if they contracted the virus. The Board undervalued Mr. Reldan's participation in these institutional programs, and the leadership roles that he took on in connection with advocating for non-violence, falling short of its statutory and regulatory obligations.

Critically, while the Board claims that it considered all of the letters of support submitted on Mr. Reldan's behalf, the record does not support that contention. The Final Decision specifically addresses *one* letter in support of parole from Mr. Reldan's sister, dated September 23, 2022. It offered no analysis of the

content of the other compelling letters submitted by other upstanding citizens in Mr. Reldan's life. These individuals included a retired Captain of the Bayonne Police Department; a college professor of religious studies; a physician who has been in practice for over forty years; an ex-high school principal; a retired insurance executive; and a Dominican Nun, with thirty-five years of counseling and therapy at New Jersey State Prison, who has worked one-on-one with Mr. Reldan for more than thirty years. All of these individuals have known Mr. Reldan for an extensive period of time and offered the Board a different view of Mr. Reldan – as a man, not an inmate. Not one of the letters detailed above are included in the Board's Statement of Items Comprising the Record, which confirms that they were not appropriately considered at the time the Board issued its Final Decision. The Board's failure to even acknowledge the content of these other letters of support was arbitrary and capricious, and its failure to explain – in any way – why it only considered his sister's September 23, 2022 letter in mitigation, requires reversal.

Based upon the extensive mitigation evidence that the Board failed to fairly consider and weigh, including the numerous letters of support submitted on behalf of Mr. Reldan, and the Board's failure to adequately explain any of its reasons for doing so, it is respectfully submitted that this court must reverse the Board's February 28, 2024 Final Decision.

CONCLUSION

After over fifteen years of parole hearings, unexplained rejection of mitigating evidence, denials of parole on contrived grounds, imposition of excessive FETs, administrative appeals, reversals, and remands, it is abundantly clear that the Board does not ever intend to release Mr. Reldan on parole despite his eligibility. It is respectfully submitted that this Court should not countenance the Board's consistent defiance of judicial commands, its refusal to consider critical mitigating evidence submitted on Mr. Reldan' behalf, and its failure to offer any meaningful explanation or analysis of its reasons for doing do.

No matter how heinous the Board may consider Mr. Reldan's prior conduct, that cannot serve as the basis for denying parole. As our Supreme Court has eloquently summarized:

> From the standpoint of retribution, perhaps no prison sentence, whatever its length, is sufficiently severe. Nevertheless, the punitive elements of retribution and general deterrence cannot, under the law, be the determinative factors in resolving [a] prisoner's eligibility for parole release.
>
> [Trantino IV, 154 N.J. at 43-44.]

The Board continues to punish Mr. Reldan for his crimes, despite his significant rehabilitation which is demonstrated by the overwhelming mitigation evidence and the clinical risk assessments in this matter. At every turn, the Board places the greatest amount of weight on the nature and circumstances of Mr. Reldan's offenses

– historical facts that cannot be changed no matter how long Mr. Reldan may serve in prison – and simultaneously fails to give due consideration to the mitigation evidence of record.

For the foregoing reasons, and based upon the authorities cited, it is respectfully requested that this Court reverse the Board's February 28, 2024 Final Decision, and exercise its authority to grant Mr. Reldan's application for parole. In the alternative, Mr. Reldan respectfully submits that the matter must, at a minimum, be reversed and remanded to the Board for a reevaluation of the significant mitigating evidence that was ignored in its Final Decision.

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Dated: August 30, 2024

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October 15, 2024

Via eCourts and Regular Mail
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Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex
P.O. Box 006
Trenton, New Jersey 08625

Re: Robert Reldan v. New Jersey State Parole Board
Docket No. A-2404-23T2

Civil Action: On Appeal from a Final Agency Decision of the New Jersey State Parole Board

Letter Brief on Behalf of Respondent New Jersey State Parole Board Addressing the Merits of the Appeal

Dear Mr. Orlando,

Please accept this letter brief on the merits of the appeal on behalf of Respondent, State Parole Board.

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THE BOARD'S DECISION TO DENY PAROLE AND ESTABLISH A THIRTY-SIX-MONTH FET SHOULD BE AFFIRMED BECAUSE SUFFICIENT, CREDIBLE EVIDENCE SUPPORTS IT. [RESPONDING TO APPELLANT'S POINTS III and IV] 13

CONCLUSION 20

PROCEDURAL HISTORY AND STATEMENT OF FACTS[1]

Appellant, Robert Reldan, is currently incarcerated at New Jersey State Prison serving an aggregate term of life imprisonment for convictions of murder (two counts), conspiracy to commit murder, advocate homicidal death (four counts), escape (two counts), possession of an implement of escape, aggravated assault on a police officer, robbery, theft, conspiracy to commit escape, and possession of a weapon for an unlawful purpose. (Pa25; Pa149-Pa151).[2] Reldan is appealing the State Parole Board's denial of parole and imposition of a thirty-

[1] Because the procedural and factual histories are closely related, they are presented together for the convenience of the court.

[2] "Pa" refers to appellant's appendix, and "Pb" refers to Reldan's brief.

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six-month future eligibility term (FET). (Pa8-Pa14).

A. The Circumstances of Reldan's Crime

In October 1975, Reldan was a habitual criminal on parole for a 1967 rape conviction. (Pa151). During that month, he brutally murdered two women by garroting them. (Pa126; Pa330-Pa338). In addition, Reldan conspired to murder his wealthy relative, assaulted a sheriff's officer with tear gas, escaped from custody while undergoing trial, committed a robbery, stole a car, and attempted a second armed escape. (Pa126). The details of those crimes follow.

On October 6, 1975, a woman, "S.H.," disappeared from her home, with evidence suggesting she had been abducted by force from her garage. (Pa220). On October 27, 1975, her nude body was discovered in a wooded area of Valley Cottage, New York, hidden beneath branches, leaves, and sticks. Ibid. Her pantyhose had been tied tightly around her neck, and an autopsy revealed that she died from asphyxiation due to strangulation. Ibid. A stick tied to the pantyhose had been used as a garrot, fracturing S.H.'s thyroid cartilage and hyoid bone in the neck. Ibid. Due to the condition of her body, it was impossible to determine if S.H. had been raped, but the facts surrounding her abduction suggested the primary motive was neither robbery nor ransom. Ibid.

On October 14, 1975, another woman, "S.R.," disappeared after last being

seen walking home, approximately two miles from the previous victim S.H.'s home. (Pa220). On October 28, 1975, S.R.'s body was found in a wooded area in New York, covered with swamp reeds, in close proximity to the area where S.H.'s body had been found. Ibid. Like S.H., S.R. had been strangled with her pantyhose and suffered a fracture of the hyoid bone in the neck. Ibid. An investigation revealed that a person fitting Reldan's description was seen operating a red station wagon in the area where both victims were abducted and observed by several witnesses talking to S.R. before her disappearance. Ibid. Vacuum sweepings taken from Reldan's station wagon revealed hair samples that matched the hair of both S.H. and S.R. Ibid.

Reldan was charged with the murders of S.H. and S.R. (Ra11). On October 17, 1979, a jury convicted Reldan of both murders. Ibid. His convictions were overturned on appeal, but at a retrial, a jury again convicted him for both murders. (Pa149). He was sentenced to thirty years in prison on one count and to a consecutive life sentence on the other. (Pa150).

On February 18, 1977, investigators from the Bergen County Prosecutor's Office interviewed "C.W.," an inmate at Rahway State Prison. (Pa212). C.W. worked with Reldan in the officers' dining room and told investigators that Reldan had spoken on several occasions about raping and killing two women,

and, on one occasion, Reldan had lamented his decision to transport the bodies to New York. Ibid. Reldan also had asked C.W. if C.W. could arrange to have someone rob and murder his wealthy aunt, "L.B." Ibid. Reldan told C.W. that L.B. had an extensive jewelry collection, that whomever C.W. hired to rob the house and kill L.B. could keep the jewelry and other valuables, and that he would pay them in cash once he received his share of the inheritance. (Pa213).

On February 22, 1977, C.W. again met with investigators from the Bergen County Prosecutor's Office and informed them of another occasion when Reldan again told him about murdering the two women and transporting their bodies to New York State. (Pa214). C.W. also indicated Reldan told him that murdering his aunt would be simple and all that the perpetrator had to do was knock on her door and impersonate a police officer. Ibid. Reldan explained his aunt would not be suspicious of the police because they had been to her home on many occasions to inquire about him. Ibid. Finally, Reldan told C.W. that his aunt lived on a heavily wooded street and that her house was well concealed. Ibid.

After an investigation revealed that Reldan had conspired with another person to effectuate the robbery, Reldan was charged with four counts of advocating homicidal death and one count of conspiracy to commit murder. (Pa211; Pa217; Pa232). After being found guilty, on June 26, 1978, Reldan was

sentenced to concurrent twenty- to twenty-five-year terms on each count, to run consecutive to the term he was serving at that time. (Pa55; Pa139-Pa140).

On October 15, 1979, Reldan was on trial at the Bergen County Courthouse. (Pa234). While Reldan was in an "anteroom" adjacent to the courtroom, he sprayed a Bergen County Sheriff's Officer with tear gas and fled out of a second-story window, jumping down to the street below. (Pa263). He ran to a nearby parking lot and approached a 58-year-old man, "C.G.," who had just exited his 1977 Cadillac. Ibid. Reldan sprayed C.G. in the face with tear gas, causing C.G. to fall to the ground, and fled in C.G.'s car. (Pa264). After he drove away, Reldan – driving on the wrong side of the road – reached out of the car and snatched a woman's purse and drove off. (Pa265). Reldan then drove the stolen Cadillac on Route 17 in Ramsey and struck a vehicle from behind, causing major damage to the rear bumper. (Pa266).

Reldan continued driving northbound on Route 17 and proceeded into New York, where a high-speed chase ensued, which ended when Reldan crashed. (Pa266-Pa267). Reldan was apprehended and found in possession of a tear gas canister, P.G.'s purse, and additional property. Ibid. Police also found a handcuff key concealed in a band-aid taped to Reldan's chest. Ibid. Reldan was charged with escape, possession of an implement of escape, aggravated

assault on a police officer, robbery, and theft. (Pa58). Reldan was convicted, on January 23, 1981, and sentenced to an aggregate term of twenty-two years, to run consecutive to the term he was serving at that time. (Pa26; Pa58).

On April 19, 1981, while incarcerated at New Jersey State Prison, Reldan was transported to St. Francis Hospital after complaining of an injury to his stomach. (Pa297). While checking the hospital lobby for suspicious persons, a corrections sergeant recognized Reldan's girlfriend sitting in the lobby area. Ibid. An officer approached her and asked her to follow him to an adjoining room for questioning, in the process discovering that a shopping bag in the girlfriend's possession contained a 20-gauge shotgun with a sawed-off barrel and a stock loaded with one live 20-gauge shell, as well as a box with twenty-two live 20-gauge shotgun shells. Ibid. As a result, Reldan was ultimately sentenced on July 24, 1987, to a term of fifteen years, with a mandatory-minimum term of seven years and six months. (Pa68; Pa116).

B. Prior Criminal History

Reldan has an extensive prior criminal record involving similar crimes. (Pa26-Pa27). As an adult, Reldan has ten prior convictions for petit larceny, impersonating a police officer, breaking and entering, carrying a concealed weapon, assault with an offensive weapon, robbery, rape, assault with intent to

rob, entering without breaking, and attempted breaking and entering. (Pa151; Pa350).

The rape conviction involved an April 27, 1967 incident in which Reldan rang the doorbell of a forty-year-old woman, claiming he had a package for someone and asking if he could use her telephone. (Pa284-Pa286). Once in the home, Reldan grabbed her by the neck from behind and raped her. Ibid.

As an adult, Reldan has had five prior opportunities on parole and one prior opportunity on probation. (Pa151). He has also had seven prior terms of incarceration. Ibid. Reldan also has a juvenile record, which the Board will not discuss in detail due to the confidential nature of a juvenile history. (Pa151; Pa350, Pa223-Pa225).

C. Prison Disciplinary History

During his incarceration, Reldan has been found guilty of committing twenty-two institutional disciplinary infractions, including eight asterisk (serious) offenses. (Pa35-Pa38; Pa152). His most recent infractions, refusing to work or to accept a program or housing unit assignment and tattooing or self-mutilation, occurred on July 13, 2009. (Pa38).

D. Reldan's Parole Review

Reldan became eligible for parole again around February 2023. (Pa149).

On January 25, 2023, Reldan received an initial hearing with a hearing officer, who referred the matter to the Board. (Ibid.; Pa155).

On May 15, 2023, the Board denied parole and established a thirty-six-month FET. (Pa7). The Board based its decision on the following factors: facts and circumstances of the offense; prior offense record is extensive; offense record is repetitive; prior offense record noted; nature of criminal record increasingly more serious; committed to incarceration for multiple offenses; prior opportunity on probation and parole and incarceration failed to deter criminal behavior; and commission of current offense while incarcerated. Ibid. An objective risk assessment determined that Reldan presented a low to moderate risk of recidivism. Ibid.

Most significantly, the Board concluded that Reldan had insufficient problem resolution, specifically observing that Reldan appeared "content in maintaining all his crimes were for monetary gain" and that Reldan believed the murders "were accidental . . . and not in his control." (Pa7). The Board was concerned Reldan did not "understand the thought process that motivate[d]" his criminal behavior. Ibid.

The Board found the following mitigating factors: infraction-free since last panel hearing; participation in institutional programs; participation in

programs specific to behavior; institutional reports reflect a favorable institutional adjustment; attempted participation in programs for which he was not admitted; commutation time restored; and correspondence in support of parole. (Pa7).

Reldan appealed the Board's decision, and on February 28, 2024, the Board affirmed its prior denial of parole and imposition of a thirty-six-month FET. (Pa1-Pa6; Pa164-Pa179). In its final agency decision, the Board reiterated the reasons given in its prior decision for denying parole and noted that Reldan's "responses to questions posed by the Board at the time of the hearing" showed Reldan "lacks insight into his criminal behavior and that Mr. Reldan minimizes his conduct." (Pa2). The Board also took account of Reldan's prior criminal history, which included "repetitive assault and property offenses" as well as his "repeated violations" of parole and probation. (Pa3). The Board then recounted the seriousness of the facts underlying Reldan's murder conviction, in which he strangled a victim during a home burglary, among other crimes. Ibid.

The Board noted all the factors it considered in mitigation, including the letter of support from Reldan's sister. (Pa2).

The Board rejected Reldan's argument that it had not considered his institutional programming, extensive counseling, and social work. It confirmed

that it had considered all factors Reldan had relied on in arguing for parole, and that the Board, in fact, during the hearing "commended" Reldan's program participation during his Board hearing. (Pa2-Pa3). The Board rejected Reldan's argument that his age, eighty-three, should have been given more weight, noting that age is not "dispositive of whether [Reldan] is suitable for parole." (Pa3-Pa4). The Board likewise rejected the contention that it had failed to consider that Reldan was legally blind in one eye, suffers from hyperplasia prostate, has arthritis in his knees, and has a $50,000 guaranteed income, noting that it had considered them and that Reldan's medical conditions and finances were specifically discussed at the hearing. (Pa5).

As to Reldan's argument that, in light of Reldan's LIS-R score, seventeen, the Board had failed to document by a preponderance of the evidence there was a substantial likelihood Reldan would commit a crime if released, the Board observed that score was just one the factors in their decision, in addition to the psychological report, and that the totality of factors required a denial, particularly Reldan's lack of problem resolution, noting that "Reldan's repeated expressions of deep regret for his actions . . . does not equate to a change in his behavior." (Pa4).

Moreover, in response to Reldan's argument the Board's decision violated

policy, the Board noted Reldan had failed to identify which policy was supposedly violated by the Board's decision. (Pa4).

As to Reldan's argument that Board had impermissibly shifted the burden of proof to him in contravention of the presumption in favor of parole and that the thirty-six-month FET was punitive, the Board noted that: "the punitive aspects of a sentence is not a component in the parole" decision process; parole is not guaranteed because "it is the responsibility of the [Board] to determine whether [Reldan] is suitable for parole"; and the Board had properly concluded that Reldan was not suitable for parole. (Pa5).

Although Reldan contended that the Board had reused the same "50-year-old, unchangeable, immutable evidence" in denying him parole, the Board noted that the Parole Act of 1979 permits it to consider the entire record at each parole consideration and to cite the same reasons for parole denial at each time of parole consideration. (Pa5).

Last, the Board refuted Reldan's contention that the Board had failed to consider his seven letters of support (based on the fact that the decision had discussed one letter in more detail than others), noting that it had discussed the letters with Reldan at his hearing and considered the various letters, observing that discussion of one letter that "was notably positive should not be interpreted

as a failure to have given due consideration" to the other letters. (Pa6).

Thus, the Board affirmed its decision denying parole and establishing a thirty-six-month FET, and this appeal followed on April 10, 2024. (Pa1-Pa14).

ARGUMENT

THE BOARD'S DENIAL OF PAROLE AND ESTABLISHMENT OF A THIRTY-SIX-MONTH FET SHOULD BE AFFIRMED BECAUSE SUFFICIENT, CREDIBLE EVIDENCE SUPPORTS IT. (RESPONDING TO APPELLANT'S POINTS III and IV)

Reldan argues the Board erred by failing to properly consider his "low to moderate" risk assessment, his institutional programming, and his various letters of support. (Pb22-Pb27). However, the Board considered the entire record and the record supports its finding that there is a substantial likelihood Reldan would commit another crime if released on parole; thus, there is no basis to disturb the Board's decision.

Judicial review of administrative agency determinations is limited to evaluating whether the agency acted arbitrarily or abused its discretion in rendering its decisions. In re AG Law Enf't Directive Nos. 2020-5 & 2020-6, 246 N.J. 462, 489 (2021). In conducting this limited review, courts accord agency actions presumptions of validity and reasonableness, and the burden is on the challenging party to show that the agency's actions were unreasonable.

Ibid. This deferential standard, which "recognizes the 'agency's expertise and superior knowledge of a particular field,'" is consistent with "the strong presumption of reasonableness that an appellate court must accord an administrative agency's exercise of statutorily delegated responsibility." Ibid. (citations omitted).

In applying this standard, "courts do not consider what they might have done in the agency's place or substitute their judgment for the agency's." Ibid. (citing Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992)). This is especially true here where the Legislature has delegated to the Board — a body of individuals "[a]ppointed by the Governor with the advice and consent of the Senate" because of their specialized "expertise in 'law, sociology, criminal justice or related branches of the social sciences'" — the "exceedingly difficult" responsibility of making predictive pronouncements about an individual's likelihood to reoffend. Acoli v. N.J. State Parole Bd., 224 N.J. 213, 222, 226 (2016) (quoting N.J.S.A. 30:4-123.47(a)).

The Board's specialized expertise is critical because it is obligated to make "highly predictive and individualized discretionary appraisals" in assessing an incarcerated person's suitability for parole, which are "inherently imprecise." Acoli, 224 N.J. at 222 (quoting Beckworth v. N.J. State Parole Bd.,

62 N.J. 348, 359 (1973)). Indeed, the Board's "discretionary assessments" turn on "a multiplicity of imponderables." Ibid. (quoting Greenholtz v. Nebraska Penal Inmates, 442 U.S. 1, 10 (1979) (additional citation omitted)). "The parole release decision . . . depends on an amalgam of elements, some of which are factual but many of which are purely subjective appraisals by the Board members based on their experience with the difficult and sensitive task of evaluating the advisability of parole release." Greenholtz, 442 U.S. at 9-10. One of these "imponderables" concerns a prediction about an incarcerated person's future behavior, a highly subjective determination mandating broad discretion in the Board's decision-making process. See Acoli, 224 N.J. at 222.

Precisely because the parole release decision-making process is inherently subjective, the parole release decision must be made by those with experience and expertise in this field. See ibid.; N.J.S.A. 30:4-123.47. Moreover, these determinations, in which the Board hears and sees the evidence and testimony, are entitled to substantial deference because they involve issues of credibility. See Goulding v. N.J. Friendship House, Inc., 245 N.J. 157, 167 (2021) (discussing deference awarded to a workers' compensation court's credibility determinations); H.K. v. State of N.J., 184 N.J. 367, 384 (2005) (discussing deference awarded to an administrative law judge's credibility determinations).

Here, the Board's decision is amply supported by substantial facts in the record and is consistent with the controlling law. Because Reldan's offenses were committed prior to 1997, under N.J.S.A. 30:4-123.53(a), the applicable standard dictates the inmate shall be released on parole unless "by a preponderance of the evidence . . . there is a substantial likelihood that the inmate will commit a crime" if released at this time. See Perry v. N.J. State Parole Bd., 459 N.J. Super. 186, 194 (App. Div. 2019) (indicating parole for offenses committed prior to 1997, involves determining whether "there is a substantial likelihood that the inmate will commit a crime" if paroled).

Under the preponderance standard, a litigant must "establish that a desired inference is more probable than not." Liberty Mut. Ins. Co. v. Land, 186 N.J. 163, 169 (2006) (internal citation omitted). Thus, in making a parole-release decision, the Board need not satisfy the higher and more exacting evidentiary standards of clear-and-convincing evidence or certainty beyond a reasonable doubt. However, the Board must consider the aggregate of all pertinent factors, including those set forth in N.J.A.C. 10A:71-3.11(b). See Beckworth, 62 N.J. at 360 (stating "common sense dictates that [the Board's] prediction as to future conduct . . . be grounded on due consideration of the aggregate of all of the factors which may have any pertinence"). N.J.A.C. 10A:71-3.11(b) contains a

non-exhaustive list of factors the Board may consider in determining parole, including statements by the incarcerated person reflecting the likelihood of re-offense.

Consistent with this regulation, the Board considered all relevant, material factors in Reldan's case before denying parole. (Pa1-Pa7). For example, the record includes various Pre-Sentence Reports, outlining Reldan's double murder, Reldan's attempt to kill his aunt for her money, and Reldan's dangerous escape from a courthouse while undergoing trial. (Pa212-Pa216; Pa220; Pa263).

In addition to noting the seriousness of Reldan's crimes, the Board noted Reldan's insufficient problem resolution, finding that Reldan appeared "content in maintaining all his crimes were for monetary gain" and that Reldan believed the murders "were accidental . . . and not in his control." (Pa7). As a result, the Board was concerned Reldan did not "understand the thought process that motivate[d]" his criminal behavior. Ibid. And the Board was also concerned that Reldan's "responses to questions posed by the Board at the time of the hearing" showed Reldan "lacks insight into his criminal behavior and that Mr. Reldan minimizes his conduct." (Pa2). The Board also took account of Reldan's prior criminal history, which included "repetitive assault and property offenses" as well as his "repeated violations" of parole and probation. (Pa3).

To be sure, in mitigation, the Board considered Reldan's age, eighty-three, but noted age is not "dispositive of whether [Reldan] is suitable for parole." (Pa3-Pa4); see Berta v. N.J. State Parole Bd., 473 N.J. Super. 284, 322 (App. Div. 2022) (directing Board to consider "age, along with all relevant mitigating circumstances," in its analysis). Also, the Board considered, and discussed at the hearing, Reldan's medical conditions, which included being legally blind in one eye, suffering from hyperplasia prostate, having arthritis in his knees, and Reldan's $50,000 guaranteed income. (Pa5).

While Reldan contends that the Board abused its discretion by failing to properly consider various aspects of his parole application, such as the "low to moderate" risk assessment given by the two psychological experts, (Pb21-Pb22), the record belies that contention. The Board specifically noted the expert reports were "on file, available for review and [were] considered by the Board" and were just one the factors in their decision to deny parole. (Pa4). In light of this, the Board still had concerns with Reldan's lack of problem resolution, noting "Reldan's repeated expressions of deep regret for his actions . . . does not equate to a change in his behavior." (Pa4).

Next, Reldan argues the Board failed to properly consider his institutional programming. (Pb25-Pb26). However, the Board confirmed it considered this

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and actually "commended" Reldan's institutional program participation during his hearing. (Pa2-Pa3). Last, contrary to Reldan's argument the Board failed to consider his seven letters of support, (Pb26-Pb27), the Board noted it considered the various letters and discussed them with Reldan at his hearing. (Pa6). And the Board clarified that, just because it had singled out his sister's letter "was notably positive" that did not indicate a failure to give "due consideration" to the other letters. Ibid.

In conclusion, the Board did not abuse its discretion because there is sufficient evidence to support its finding of "a substantial likelihood that [Reldan] will commit a crime" if paroled. N.J.S.A. 30:4-123.53(a).

CONCLUSION

For these reasons, the Board's final agency decision should be affirmed.

Respectfully submitted,

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