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parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0746-15T4

CHRISTOPHER DEMUNGUIA,

Appellant,

v.

NEW JERSEY STATE PAROLE BOARD,

Respondent.

Submitted April 4, 2017 – Decided April 18, 2017

Before Judges Reisner and Koblitz.

On appeal from the New Jersey State Parole Board.

Drinker Biddle & Reath, LLP, attorneys for appellant (Rachel M. Share, on the brief).

Christopher S. Porrino, Attorney General, attorney for respondent (Lisa A. Puglisi, Assistant Attorney General, of counsel; Christopher Josephson, Deputy Attorney General, on the brief).

PER CURIAM

Christopher Demunguia appeals from both the March 11, 2015 decision to revoke his parole as well as the August 26, 2015 final

decision of the New Jersey State Parole Board (Board). Demunguia was found in possession of a knife and "Outlaw Motorcycle Gang clothes and paraphernalia." Based on this "serious" violation, his parole was revoked and he was given a future eligibility term (FET) of fifteen months. He appeals, arguing that the knife he possessed was not a weapon, a gang-related motorcycle vest was improperly seized and that, in any event, any violation was not serious. We reject these arguments and affirm.

Demunguia was on parole based on his guilty plea to two indictments. We related the substance of his crimes in our prior unpublished opinion affirming the denial of post-conviction relief:

According to the plea colloquy and other documents in the record, the first assault took place outside of a pub in Gloucester City on January 17, 2009. After an argument with [the victim], defendant punched him in the face and then kicked [the victim] in the neck while he was on the ground. The blows broke [the victim]'s jaw, which was wired shut at a hospital where [the victim] was admitted for several days. [The victim] was unable to work for about two weeks. . . .

Second, defendant pled guilty in March 2010 to third-degree aggravated assault on a police officer, N.J.S.A. 2C:12-1(b)(5), and third-degree resisting arrest, N.J.S.A. 2C:29-2(a)(3). These offenses occurred on February 15, 2009, when police officers apprehended defendant inside of the same pub. Defendant resisted the arresting officers, head-butting one of them and causing that officer rib injuries.

[State v. Demunquia, No. A-4252-12 (App. Div. Dec. 8, 2014) (slip op. at 1-2).]

While he was initially incarcerated on these charges, we affirmed the imposition of disciplinary sanctions against him in "a February 14, 2012 final administrative decision of the Department of Corrections (DOC) adjudicating him guilty of institutional infractions *.004, fighting with another person; and *.306, conduct which disrupts the orderly running of the institution, N.J.A.C. 10A:4-4.1(a)." DeMunquia¹ v. Dep't of Corr., No. A-4886-11 (App. Div. Oct. 4, 2013) (slip op. at 1). During an earlier incarceration, we affirmed the imposition of disciplinary sanctions, stating:

DeMunquia is currently incarcerated in Northern State Prison serving a five-year term for possession of a weapon for an unlawful purpose, aggravated assault and simple assault. While he was in South Woods State Prison in December 2005, he wrote a letter to another inmate known to be a member of the East Coast Aryan Brotherhood (ECAB), a gang previously designated as a security threat group (STG). The letter was confiscated and reviewed by a senior investigator of the DOC Special Investigations Division with expertise in gangs including the language and codes used by them. He determined that the letter contained many references to the ECAB, using terms and phrases associated with that gang. Accordingly, petitioner was charged with disciplinary infraction *.010, participating in an activity related to a STG in violation of N.J.A.C. 10A:4-4.1.

¹ The "m" in appellant's name is at times capitalized.

[Demunguia v. Dep't of Corr., No. A-2343-05
(App. Div. Aug. 7, 2006) (slip op. at 1-2).]

The evidence produced at the final parole hearing in this matter revealed the following. After being released on parole on June 19, 2014, Demunguia admitted to his parole officer that he had become affiliated with the Pagans Motorcycle Club (Pagans) in 2010. Because of Demunguia's connection to the Pagans, he was specifically ordered to have no contact with the group. He sought permission to carry a knife so he could cut his pant leg free while riding a motorcycle. The parole officer advised Demunguia that he absolutely could not carry a knife and "would have to figure out another way to prevent his pant legs from getting caught in a motorcycle."

In July, the parole officer noticed a new Pagans tattoo² on Demunguia's arm. When Demunguia reported to the parole office on September 15, 2014, he denied having a Pagans "vest and colors" in his home, but admitted having a knife in a pouch hanging from his motorcycle, which he had ridden to the parole office. A "Master USA folding knife" with a four-and-one-half inch blade was found.

Based on the knife and law enforcement observation of him in Pagans regalia, a search was authorized and conducted at

² The new tattoo was a skull containing the number sixteen; P is the sixteenth letter of the alphabet.

Demunguia's parole-approved residence. The search revealed a black sweatshirt with Pagans logo, black motorcycle helmet containing Pagans stickers and decals, one black and one white tee shirt with Pagans logos and a belt with a Pagans symbol on the belt buckle. These items were found downstairs, near the area where Demunguia claimed to be sleeping. Upstairs, looking through an open door into the unoccupied bedroom of a female occupant of the home, the parole officer saw a denim motorcycle vest with various Pagans insignia. The officer testified: "In my training and experience,³ this denim vest was in fact Demunguia's set of colors and could not possibly belong to [the other occupant] as females are not permitted to be members of motorcycle clubs." She also testified that non-members of the Pagans were not allowed to wear Pagans insignia.

On September 15, 2014, Demunguia was charged with violating general condition No.9, possession of a weapon enumerated in N.J.S.A. 2C:39-1(r), and a "Special Condition," possession of paraphernalia related to a gang.

Demunguia testified that he had the knife for safety to cut off his pants leg if it was caught in his motorcycle. He said he did not keep the knife directly on his person because his parole

³ The officer testified to "having been a gang parole officer for over ten years."

officer told him he could not do so. The parole officer responded that Demunguia could have purchased a pair of "paramedic scissors" without sharp points, or driven a different type of motorcycle.

We accord considerable deference to the Board and its expertise in parole matters. The scope of our review of final decisions of administrative agencies is limited. We do not disturb decisions of the Board, like those of other administrative agencies, unless they are "arbitrary, capricious or unreasonable or [are] not supported by substantial credible evidence in the record as a whole." Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980).

Pursuant to N.J.S.A. 30:4-123.60(b), "[a]ny parolee who has seriously or persistently violated the conditions of his parole, may have his parole revoked and may be returned to custody[.]" Unlike most parole actions, which are based on a preponderance of the evidence standard, revocations of parole must be supported by clear and convincing evidence in the record. N.J.S.A. 30:4-123.63(d). The facts surrounding the two violations are not in dispute.

Demunguia argues that the knife found did not fit within the statutory language of "anything readily capable of lethal use or of inflicting serious bodily injury" or a "dangerous knife" as stated in N.J.S.A. 2C:39-1(r)(3) because he possessed the knife

for a lawful purpose and its possession was under circumstances relating to that lawful purpose. He finds support in cases regulating criminal liability. See State v. Blaine, 221 N.J. Super. 66, 69 (App. Div. 1987) (stating that a folding knife's character as a weapon is "contextually defined" and depends on the circumstances of its possession); see also State v. Harris, 384 N.J. Super. 29, 55 (App. Div.), certif. denied, 188 N.J. 357 (2006). Demunguia, however, was specifically advised by his parole officer that he was not permitted to have a knife, regardless of his ostensible purpose. Demunguia has a serious violent criminal record and was therefore reasonably banned from possessing a knife, even if it might be legally possessed by a non-parolee under similar circumstances.

Demunguia also argues that the denim Pagans vest was improperly seized from another occupant's room. He points to N.J.A.C. 10A:72-6.3(b)(3), which states that a parole officer "[m]ay not search any area that is exclusively under the control" of another person absent written consent from the other individual. Demunguia brings no case to our attention that imports the exclusionary rule into parole violations, especially when the alleged constitutional violation is a violation of another individual's rights. See Morrissey v. Brewer, 408 U.S. 471, 489, 92 S. Ct. 2593, 2604, 33 L. Ed. 2d 484, 499 (1972) (stating that

evidence otherwise not admissible in a criminal trial is admissible in a parole revocation hearing). Additionally, the officer testified she looked through an open door into the room, seeing the vest openly displayed in plain view. We see no reason to suppress the evidence of the vest with Pagans insignia, and note that other clothing carrying similar Pagans symbols were located in Demunguia's sleeping area downstairs.

Finally, Demunguia argues that the violations were not serious. In light of Demunguia's history of violence and the brief time he had been released on parole, we conclude the Board's decision to revoke Demunguia's parole and direct he serve a fifteen-month FET was supported by clear and convincing evidence in the record and was neither arbitrary nor capricious.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION