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This opinion shall not "constitute precedent or be binding upon any court."  
Although it is posted on the internet, this opinion is binding only on the  
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-3417-14T3

ROBERT BYRD,

Appellant,

v.

NEW JERSEY STATE  
PAROLE BOARD,

Respondent.

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Submitted October 25, 2016 – Decided April 24, 2017

Before Judges Rothstadt and Sumners.

On appeal from the New Jersey State Parole Board.

Robert Byrd, appellant pro se.

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

PER CURIAM

Appellant Robert Byrd appeals the New Jersey State Parole Board's December 17, 2014 final agency decision denying him parole and imposing a 120-month Future Eligibility Term (FET). We affirm.

On January 18, 1985, a jury found Byrd guilty of conspiracy to commit murder, murder, first-degree robbery, third-degree unlawful possession of a weapon, and second-degree unlawful possession of a weapon, arising from the April 1984, shooting death of a taxi driver. On February 22, 1985, Byrd received a life sentence with an aggregate thirty-year minimum parole eligibility period.

Almost five years later, Byrd pled guilty to robbery and second-degree attempted murder of another taxi driver that was committed the day after he murdered the initial taxi driver. He was sentenced to a twenty-year prison term to be served concurrently with his life sentence.

On March 7, 2014, the first time Byrd was eligible for parole, he appeared before a two-member panel of the Parole Board. The panel denied parole on the basis that there was a serious likelihood that he would commit a new crime if released on parole. The panel noted Byrd's criminal record included increasingly more serious crimes (murder and attempted murder), his numerous disciplinary infractions - the most recent occurring in September 2012, and a lack of insight into his criminal behavior. The panel stated that Byrd's "programming efforts have been good, but relatively recent[,]" and that he is still unable to explain why he committed two serious offenses a day apart. Byrd's case was

referred to a three-member panel to establish a FET because "establishment of a [FET] within the presumptive schedule was clearly inappropriate due to [Byrd's] lack of satisfactory progress in reducing the likelihood of future criminal behavior."

On May 14, 2014, the three-member panel determined that the factors supporting the denial of parole warranted a 120-month FET, which is outside the administrative guidelines. In the panel's Notice of Decision, it explained that Byrd's criminal record became increasingly more serious in nature, his recent institutional infractions revealed that he is unable to adjust maladaptive behaviors, and his lack of insight into his violent behavior is apparent as he is "unable or unwilling to confront the full extent of [his] actions in these events . . . [indicates that he] still remains a substantial risk for further, possibly violent crime[s.]"

Byrd filed an administrative appeal to the full Parole Board contesting only the 120-month FET. He contended that FET was excessive, arbitrary and capricious because the panel failed to document that a preponderance of the evidence indicates that there is a substantial likelihood that he would commit a crime if released on parole. The full Board found no merit to Byrd's appeal, and affirmed the panel's decisions. This appeal followed.

Before us, Byrd reiterates his contention that the Board's decision to impose a 120-month FET is excessive, arbitrary and capricious, and should be set aside. We disagree.

Under our standard of review, we must accord considerable deference to the Board and its expertise in parole matters. Our standard of review of the Board's decisions is limited, and "grounded in strong public policy concerns and practical realities." Trantino v. N.J. State Parole Bd., 166 N.J. 113, 200 (2001) ("Trantino V"). "The decision of a parole board involves 'discretionary assessment[s] of a multiplicity of imponderables[.]'" Id. at 201 (alteration in original) (quoting Greenholtz v. Inmates of Neb. Penal & Corr. Complex, 442 U.S. 1, 10, 99 S. Ct. 2100, 2105, 60 L. Ed. 2d 668, 677 (1979)).

"To a greater degree than is the case with other administrative agencies, the Parole Board's decision-making function involves individualized discretionary appraisals." Ibid. (citing Beckworth v. N.J. State Parole Bd., 62 N.J. 348, 358-59 (1973)). Consequently, our courts "may overturn the Parole Board's decisions only if they are arbitrary and capricious." Ibid. We will not disturb the Board's factual findings if they "could reasonably have been reached on sufficient credible evidence in the whole record." Id. at 172 (quoting Trantino v. N.J. State Parole Bd., 154 N.J. 19, 24 (1998) ("Trantino IV") (quoting N.J.

State Parole Bd. v. Cestari, 224 N.J. Super. 534, 547 (App. Div.), certif. denied, 111 N.J. 649 (1988)); see also McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 563 (App. Div. 2002) (applying that standard).

Guided by these standards and considering the record, including the materials in the confidential appendix, we conclude that Byrd's arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(D). We are satisfied that the 120-month FET imposed by the Board, although lengthy, is neither arbitrary nor capricious. An inmate serving a minimum term in excess of fourteen years is ordinarily assigned a twenty-seven month FET after a denial of parole. See N.J.A.C. 10A:71-3.21(a)(1). However, in cases where an ordinary FET is "clearly inappropriate due to the inmate's lack of satisfactory progress in reducing the likelihood of future criminal behavior," the Board may impose a FET in excess of administrative guidelines. N.J.A.C. 10A:71-3.21(d). As noted above, the Board found that Byrd has thus far been unable to identify the causes of his criminal behavior, and has failed to develop adequate and appropriate insight in how to prevent himself from engaging in future criminal conduct. He also continues to commit numerous serious infractions of prison rules while incarcerated. Under the

totality of these circumstances, the Board appropriately imposed  
a 120-month FET.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION