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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4316-14T2

JESSIE VESSELS,

Appellant,

v.

NEW JERSEY STATE
PAROLE BOARD,

Respondent.

Submitted March 29, 2017 - Decided April 21, 2017

Before Judges Fuentes, Simonelli and Carroll.

On appeal from the New Jersey State Parole Board.

Jessie Vessels, appellant pro se.

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

PER CURIAM

Jessie Vessels, a State prison inmate, appeals from an April 15, 2015 final decision of the New Jersey State Parole Board

(Board), denying him parole and establishing a 240-month future eligibility term (FET). We affirm.

Vessels is serving an aggregate fifty-nine-year prison sentence, with an eighteen-year period of parole ineligibility, for two counts of manslaughter, aggravated sexual assault, and conspiracy to commit aggravated assault. Vessels pled guilty to each of these crimes, the circumstances of which we briefly summarize below.

In October 1995, when Vessels was eighteen years old, he shot and killed two men in an altercation in Camden. During the fight, one of the victims punched his brother in the face. Vessels responded by drawing his gun and shooting the assailant. When the other victim fled, Vessels shot him three times, before returning and shooting the first victim three more times in the chest. Both victims were pronounced dead at a local hospital.

In August 1995, Vessels sexually assaulted L.M., his then-girlfriend's twelve-year-old sister. Without L.M.'s consent, Vessels pushed her onto her mother's bed and removed her clothes. He then put on a condom and sexually penetrated her. When L.M. informed Vessels he hurt her, he said it would be "alright" and told her to not to tell anyone what happened. A second, similar sexual assault occurred during the same timeframe. Vessels again told L.M. not to tell anyone what occurred. In January 1997,

L.M.'s aunt contacted the Camden County Prosecutor's Office (CCPO) after finding two letters Vessels sent to L.M. acknowledging he had sexual intercourse with her when she was twelve. The CCPO then interviewed Vessels, who confessed to the crimes.

In May 1996, while incarcerated at the Camden County Correctional Facility, Vessels conspired with other inmates to assault a corrections officer. The conspiracy led to a melee in which Vessels and numerous other inmates assaulted several corrections officers.

In addition to the above crimes for which he was sentenced in March 1998, Vessels has a significant juvenile history. Also, while incarcerated, Vessels has incurred thirty-one disciplinary infractions, including eleven serious asterisk violations.¹ Vessels committed his most recent infraction in January 2010.

Vessels became eligible for parole for the first time on June 16, 2014. On May 7, 2014, Vessels appeared before a hearing officer who referred the matter to a two-member Board panel for a hearing. On May 19, 2014, the panel denied parole, citing numerous factors, including: (1) extensive and repetitive prior criminal record; (2) nature of criminal record is increasingly more serious;

¹ See N.J.A.C. 10A:4-4.1(a) ("Prohibited acts preceded by an asterisk (*) are considered the most serious and result in the most severe sanctions[.]").

(3) presently incarcerated for a multi-crime conviction; (4) prior opportunities on probation and prior incarceration(s) have failed to deter criminal behavior; (5) prior opportunities on probation have been violated in the past; (6) commission of institutional infractions that are numerous, persistent, and serious in nature and have resulted in loss of commutation time and confinement in detention and administrative segregation; (7) insufficient problem resolution, including a lack of insight into his criminal behavior, minimizing his behavior, and "[t]he violent responses this inmate repeats cause grave concerns [and] his version of the crimes differ[s] significantly from [the] official record[;]" (8) commission of crimes while incarcerated; and (9) the results of a risk assessment evaluation.

The two-member panel further determined that establishing an FET within the Board's presumptive schedule would be inappropriate due to Vessels's lack of satisfactory progress in reducing the likelihood of future criminal behavior. Consequently, it referred the matter to a three-member panel for establishment of an FET in excess of administrative guidelines.

The three-member panel reiterated the findings of the two-member panel as reasons for its denial of parole and set a 240-month FET. In its comprehensive November 5, 2014 written decision,

the panel set forth in detail the basis for imposing such a lengthy FET. It explained:

[(1)] [You have] not gained an understanding [of] the motivations and/or causes of the anti-social decision-making you employed when you committed the present offenses. Specifically, the stance you put forth at the current hearing was to emphasize that you believe the victims in the [a]ggravated [m]anslaughter offenses were a perceived threat against your brother and that you produced a handgun and fired it in an effort to protect him. You also emphasized that contrary to the record, the victim in the [a]ggravated [s]exual [a]ssault offense (a [twelve-]year[-]old female) was a willing participant in consensual liaisons with you. By taking such a stance[,] you demonstrate yourself as being an individual who is unable to recognize the impelling factors that motivated [you] in behaving in the criminal manner that you did; and

[(2)] [You] committed a criminal act while the [a]ggravated [m]anslaughter and [a]ggravated [s]exual [a]ssault offenses were pending adjudication. While housed in the Camden County Jail[,] you took part in an assault on corrections officers that resulted in a wing of the jail being locked down. As a result of your actions[,] you were indicted and then [plead] guilty to the offense of [c]onspiracy to [c]ommit [a]ggravated [a]ssault; and

[(3)] [You] continued your maladaptive behavior by committing numerous infractions[,] some of which were of a serious nature, including the components of violence, weapons[,] and narcotics. The sanctions for the infractions included placement in detention, [a]dministrative [s]egregation[,] and loss of commutation credits; and

[(4)] [You] participated in programs and counseling[,] but there is a clear need on your part for additional programming/counseling to assist you in gaining insight into you[r] anti-social conduct.

For these reasons, the three-member panel concluded that "setting any term less than a [240-month FET] would be wholly inconsistent with the conclusion that you have not shown the requisite amount of rehabilitative progress in reducing the likelihood of future criminal activity." The panel, however, reduced the 240-month FET by 2328 days of commutation credit, and set Vessels's parole eligibility date at January 19, 2028. The panel further permitted Vessels to reduce that date by the application of any work credits he earned after June 4, 2014, which would result in a projected parole eligibility date in October 2025. On April 15, 2015, the full Board affirmed the decisions of the two-member and three-member panels. The present appeal followed.

On appeal, Vessels does not challenge the denial of parole, but only the length of the FET. He argues that the Board's decision to impose an extended FET outside of the administrative guidelines was not supported by the record and violated his due process rights. We disagree.

Judicial review of parole determinations is limited to an evaluation of whether the Parole Board acted arbitrarily or abused its discretion in rendering its decisions. In re Vey, 272 N.J. Super. 199, 205 (App. Div. 1993), aff'd, 135 N.J. 306 (1994). The actions of the Board, as an administrative agency, are presumed valid and reasonable. Alevras v. Delanoy, 245 N.J. Super. 32, 35 (App. Div. 1990), certif. denied, 126 N.J. 330 (1991). Our review is also limited to a determination of whether the agency's findings could reasonably have been reached on the credible evidence in the record. Close v. Kordulak Bros., 44 N.J. 589, 599 (1965); N.J. State Parole Bd. v. Cestari, 224 N.J. Super. 534, 547 (App. Div.), certif. denied, 111 N.J. 649 (1988). We will set aside an agency decision only "if there exists in the reviewing mind a definite conviction that the determination below went so far wide of the mark that a mistake must have been made." Cestari, supra, 224 N.J. Super. at 547 (quoting 613 Corp. v. N.J., Div. of State Lottery, 210 N.J. Super. 485, 495 (App. Div. 1986)).

The Board's decisions are considered "highly 'individualized discretionary appraisals.'" Trantino v. N.J. State Parole Bd., 166 N.J. 113, 173 (2001) (quoting Beckworth v. N.J. State Parole Bd., 62 N.J. 348, 359 (1973)). Consequently, "the Board 'has broad but not unlimited discretionary powers'" in reviewing an inmate's parole record and rendering a release decision. Ibid.

(quoting Monks v. N.J. State Parole Bd., 58 N.J. 238, 242 (1971)); see also Greenholtz v. Nebraska Penal & Corr. Complex Inmates, 442 U.S. 1, 9-10, 99 S. Ct. 2100, 2105, 60 L. Ed. 2d 668, 677 (1979) ("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 upon their experience with the difficult and sensitive task of evaluating the advisability of parole release.").

The Parole Act, as amended in 1979, provides that

[a]n adult inmate shall be released on parole at the time of parole eligibility, unless [the] information supplied [to the Parole Board] or developed or produced at a hearing . . . indicates by a preponderance of the evidence that there is a substantial likelihood that the inmate will commit a crime under the laws of this State if released on parole at such time.

[N.J.S.A. 30:4-123.53(a).]²

² As amended in 1997, L. 1997, c. 213, § 1, the Parole Act now provides that an inmate may be denied parole if the evidence before the Board "indicates by a preponderance of the evidence that the inmate has failed to cooperate in his or her own rehabilitation or that there is a reasonable expectation that the inmate will violate [the] conditions of parole . . . if released on parole at that time." The Board's consideration of Vessels's application for parole was governed by the pre-amendment standard in effect at the time of his offenses in 1995 and 1996. See Kosmin v. N.J. State Parole Bd., 363 N.J. Super. 28, 41 n.2 (App. Div. 2003).

"The [Parole] Act thus posits the likelihood of future criminal conduct as the determinative test for parole eligibility and effectively establishes a presumption in favor of parole." In re Parole Application of Trantino, 89 N.J. 347, 355-56 (1982). Under this test, the burden is on the Board "to prove that the prisoner is a recidivist and should not be released." N.J. State Parole Bd. v. Byrne, 93 N.J. 192, 205 (1983).

"The question whether there is a substantial likelihood an inmate will commit another crime if released, although predictive of future conduct rather than a finding as to past conduct, is essentially factual in nature." Cestari, supra, 224 N.J. Super. 534, 547. Accordingly, a reviewing court "must determine whether the factual finding could reasonably have been reached on sufficient credible evidence in the whole record." Trantino v. N.J. State Parole Bd., 154 N.J. 19, 24 (1998) (quoting Cestari, supra, 224 N.J. Super. at 547).

We are satisfied there is sufficient evidence in the record to support the Board's finding that there is a substantial likelihood Vessels will commit another crime if released on parole at this time. The decision is supported by substantial credible evidence in the record of the number and seriousness of the criminal offenses he committed and the number, frequency, and seriousness of his institutional disciplinary infractions. It is

further supported by the results of a pre-parole psychological evaluation, which indicated that Vessels presents a medium risk for recidivism and a moderate risk for future violence.

We likewise are satisfied that the Board's determination fixing the 240-month FET, although lengthy, is well-grounded on this particular record and within the broad discretion for decision-making that the Board is legislatively charged with exercising. An inmate serving a sentence for manslaughter or aggravated sexual assault 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 an FET in excess of administrative guidelines. N.J.A.C. 10A:71-3.21(d). Here, the Board found that Vessels has failed to develop adequate and appropriate insight in how to avoid engaging in future criminal conduct. Additionally, as the Board correctly acknowledged, Vessels is entitled to receive commutation and work credits, thereby reducing his FET to substantially less than 240 months.

Accordingly, we find that the Board's decision was not arbitrary, capricious or unreasonable on the record presented, and we discern no basis to disturb it. The remainder of Vessels's

arguments lack sufficient merit to warrant discussion in this written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION