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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-4695-15T3

HAFIZ JOSEY,

Appellant,

v.

NEW JERSEY STATE PAROLE BOARD,

Respondent.

Submitted July 11, 2017 – Decided October 12, 2017

Before Judges Nugent and Accurso.

On appeal from the New Jersey State Parole Board.

Hafiz Josey, 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

Plaintiff Hafiz Josey appeals from a May 18, 2016 final
administrative decision of the New Jersey State Parole Board

("Board") revoking his parole and imposing a thirteen-month Future Eligibility Term ("FET"). We affirm.

In 2008, defendant pleaded guilty to first-degree robbery, N.J.S.A. 2C:15-1, and second-degree aggravated assault, N.J.S.A. 2C:12-1(b)(1). A judge sentenced defendant on the robbery offense to a twelve-year custodial term, eighty-five percent to be served without parole as required by the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. The court also imposed a term of five years parole supervision upon defendant's release from prison as required by NERA. For the aggravated assault offense, the judge sentenced defendant to a concurrent six-year term subject to NERA.

When defendant was released from prison he was informed of the conditions of his mandatory five-year period of parole supervision. Among other conditions, defendant was to refrain from possessing a firearm. In addition, he was "to have no contact with any person known by [him] to be a member of the Bloods, without the knowledge and approval of [his] Parole Officer. [He was required] to report any incidental contact with any member of the aforementioned gang(s) to [his] Parole Officer within [twenty-four] hours."

Nine months after defendant began his five-year term of mandatory parole supervision, a police officer stopped a vehicle occupied by defendant and three others, two of whom were known

Bloods. While speaking with defendant at the back car window, the officer noticed the smell of burnt marijuana. During an ensuing search, officers found in the vehicle's trunk a bag containing a revolver, a "neck gaiter" - a garment used to cover the lower half of the face - eight hollow-point rounds of .38 special ammunition, and two rounds of .38 special full metal jacket ammunition. Officers found beneath the front passenger seat a 9mm SCCY handgun loaded with five rounds of ammunition. Defendant had been sitting directly behind the front passenger seat.

The vehicle's occupants were also searched. Defendant had "numerous bundles of cash in several of his pants pockets." Another occupant had a waist pack that contained numerous bundles of cash of different amounts and denominations. The waist pack also contained a smart cellular phone and a flip cellular phone.

The police arrested the vehicle's occupants. Following defendant's arrest, the Board issued an arrest warrant and initiated parole revocation proceedings. A senior parole officer and the municipal police officer who executed the motor vehicle stop testified at the violation hearing. Defendant also testified.

The parole officer recounted defendant's criminal history, provided an overview of the charges and violations, and testified defendant's parole should be revoked due to his serious violations of parole conditions and the risk he presented to the community.

The municipal police officer recounted the circumstances of the motor vehicle stop, the search, and defendant's arrest. During cross-examination by defendant's attorney, the officer said he was unaware of statements allegedly made by the vehicle's driver that the driver was accepting ownership of the firearms the police found during their search of the vehicle and its trunk.

Defendant testified and admitted entering the automobile. He claimed his presence would have been for a short period of time and his purpose was to get a ride to his mother's residence. He said he was unaware of the handgun beneath the front seat. He first became aware of the gun when police recovered it during their search. He also testified he attempted to contact his parole officer the following day to explain the situation.

Defendant's counsel argued the charged violations – possessing a firearm and having contact with members of the Bloods – had not been sustained. Although acknowledging defendant had entered the vehicle with neighborhood associates, counsel asserted defendant had done so solely for the purpose of transportation and no "nefarious activity was afoot."

The hearing officer determined the charged violations had been sustained by clear and convincing evidence. Acknowledging defendant did not physically possess the gun beneath the front passenger seat, the parole officer nonetheless found defendant

constructively possessed the weapon, because the circumstantial evidence "permit[ed] a reasonable inference [defendant] had knowledge of its presence and had the capacity to exercise control over it." The hearing officer also noted defendant did not dispute being in the presence of the other Bloods members. The hearing officer recommended revocation of defendant's parole supervision and a thirteen-month FET.

Defendant filed exceptions to the hearing officer's recommendation. A two-member Board Panel reviewed and affirmed the hearing officer's decision. Defendant filed an administrative appeal. Before the Board issued its decision, the weapons charges pending against defendant as the result of his arrest during the motor vehicle stop were dismissed. On May 18, 2016, the Board issued its final agency decision. The Board upheld the determination defendant had seriously violated the conditions of his parole supervision, affirmed the panel's decision to revoke defendant's parole, and upheld the thirteen-month FET. This appeal followed.

On appeal, defendant argues:

POINT I

THE BOARD['S] DECISION TO REVOKE THE PAROLEE['S] PAROLE FOR VIOLATING CONDITION #8 OF HIS MANDATORY PAROLE SUPERVISION, (TO REFRAIN FROM OWING [SIC] OR POSSESSING A FIREARM) WHICH STEMS FROM HIS ARREST ON JUNE

25, 2015, VIOLATE[S] N.J.S.A. 30:4-123.60 (B) AND THAT SINCE THE CHARGES FOR POSSESSION OF THE WEAPONS HAVE BEEN DISMISSED AGAINST HIM HIS VIOLATION OF PAROLE ON CONDITION #8 MUST BE REINSTATED.

POINT II

THE APPELLANT['S] PAROLE FOR VIOLATING THE CONDITION FOR (GRASP) MUST BE REINSTATED ON THE GROUNDS THAT HE MET THE 24 HOUR NOTICE REQUIREMENT OF THE (GRASP) CONTRACT WHEN HE TEXTED HIS PAROLE COUNSEL TO INFORM HIM ABOUT THE INCIDENTAL CONTRACT [SIC] WITH OTHER GANG MEMBERS.

POINT III

SINCE THE ABOUT [SIC] ERROR PLACES AN UNCONSTITUTIONAL RESTRAINT ON APPELLANT['S] LIBERTY TO BE RETURN [SIC] BACK TO SOCIETY THIS COURT MUST ACT WITH URGENCY TO PREVENT FURTHER HARM TO HIS RIGHTS UNDER DUE PROCESS OF LAW (not raised below).

We affirm, substantially for the reasons expressed by the Board. The Board's final decision is supported by sufficient credible evidence on the record as a whole, and defendant's arguments to the contrary are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(D) & (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