SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4700-15T4

OTTO KRUPP,

Appellant,

v.

NEW JERSEY STATE PAROLE BOARD,

Respondent.

Submitted November 9, 2017 – Decided December 29, 2017

Before Judges Nugent and Currier.

On appeal from the New Jersey State Parole Board.

Otto Krupp, appellant pro se.

Christopher S. Porrino, Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; Gregory R. Bueno, Deputy Attorney General, on the brief).

PER CURIAM

Defendant appeals from a May 4, 2016 final agency decision denying his third petition for parole and establishing a thirty-six month future eligibility term (FET). We affirm.

These are the facts. On June 26, 1978, defendant stabbed his girlfriend, C.M., forty-one times with an ice pick to the "head, neck, trunk and left arm." When police arrived at the scene, they found C.M. "laying on the floor beneath the sink" with an ice pick "protruding from the right side of her head and a rag . . . stuffed in her mouth." C.M. was taken to the hospital and pronounced dead at 5:05 p.m.

On May 10, 1979, a jury convicted defendant of murder and murder while armed, and the court sentenced defendant to a term of life imprisonment plus nine-to-ten years on May 21, 1979. On August 1, 2001, defendant was released on parole, but was returned to custody on September 13, 2010, for a parole violation. Defendant violated parole by (1) failing to report, (2) failing to comply with the Electronic Monitoring (EM) Program, (3) failing to obtain permission for out-of-state travel, and (4) failing to refrain from contact with J.D., which violated a domestic violence restraining order.

Defendant had left New Jersey in May 2010, and gone to Guatemala. He claimed he left after a downward spiral caused by the flight of a woman he had brought to the United States from the Dominican Republic. He also claimed he left after speaking to his parole officer, who "told him to just leave, that no-one would look for him as he wasn't a problem." Defendant blames the parole

board for "changing policy and instead of releasing him from parole, retroactively placing him on lifetime parole," thus preventing "him from retiring to the Dominican Republic."

Authorities apprehended defendant four months after he left and returned him to New Jersey. The Board formally revoked defendant's parole on November 17, 2010, and established a fifteen month FET. On both June 14, 2012, and November 14, 2013, the Board denied defendant's parole relief and imposed thirty-six month FETs.

On December 14, 2015, defendant again applied for parole. On October 21, 2015, a parole hearing officer referred the case to a Board panel for a hearing. The two-member Board panel denied defendant parole on December 17, 2015, and established a thirty-six month FET. Aggravating factors noted were: (1) the serious nature of the underlying offense, (2) his prior offense record, (3) his incarceration for multiple offenses, (4) the prior failure of probation to deter criminal behavior, (5) his prior violations on parole, (6) his lack of insight on his criminal behavior, (6) his minimization of his conduct, and (7) that "[h]e only sees the murder as his crime. He does not see any of his other behavior as criminal acts." Defendant also had a risk assessment score of twenty-six, which indicated a medium risk of recidivism.

The panel did note some mitigating factors. Specifically, (1) while defendant had an offense record, it was minimal, (2) defendant had been infraction free since the last panel, and (3) defendant had participated in institutional programs.

Defendant administratively appealed the two-member Board panel's decision. On May 8, 2016, the panel issued an amended decision to include additional mitigating factors. These factors were that: (1) defendant completed an opportunity on community supervision without violation; (2) defendant participated in programs specific to behavior; and (3) institutional reports reflected favorable institutional adjustment. Notwithstanding the panel's amended decision, after considering all materials in the administrative record, the Board denied defendant parole on May 18, 2016, by issuing its final agency decision and establishing a thirty-six month FET.

Defendant appealed. He argues:

POINT I

THE STANDARD OF REVIEW FOR A 2A CONVICTION FOR PAROLE IS WHETHER THERE IS A SUBSTANTIAL LIKELIHOOD THAT APPELLANT WILL COMMIT A CRIME UNDER THE LAWS OF THIS STATE IF RELEASED ON PAROLE.

POINT II

BOARD'S RULINGS ARE ARBITRARY, CAPRICIOUS AND VIOLATIVE OF FUNAMENTAL FAIRNESS UNDER INTER ALIA DUE PROCESS OF 14TH AMENDMENT.

POINT III

DENYING PAROLE DUE TO MENTAL ILLNESS OR DISABILITY IS DISCRIMINATORY IN VIOLATION OF AMRICANS WITH DISABILITIES ACT (ADA), REHABILITATION ACT (RA) AND THE 8TH AMENDMENT.

POINT IV

THE PAROLE BOARD HAS DEMONSTRATED ITS INABILITY TO FOLLOW AND APPLY THE 2A LAW, THE ADMINISTRATIVE CODE REGULATIONS, 2A POLICIES AS DECISIONS ARE ARBITRARY AND UNCONSTITUTIONAL.

POINT V

APPLICATION OF 2C PAROLE POLICIES TO 2A OFFENDERS RETROACTIVELY, DRAMATICALLY INCREASES PUNISHMENT AND VIOLATES EX POST FACTO LAWS AND U.S. CONSTITUTION.

Our review of the Board's decisions is deferential. That is so because the Board's decisions are "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)), and are presumed to be valid. See In re Vey, 272 N.J. Super. 199, 205 (App. Div. 1993). We will not disturb a Board's determination unless it is arbitrary, capricious, or unreasonable; it is unsupported by sufficient credible evidence on the record; or it violates legislative policies. Trantino v. N.J. State Parole Bd., 154 N.J. 19, 25 (1998). The burden is on the inmate to demonstrate the Board's actions were unreasonable.

See Bowden v. Bayside State Prison, 268 N.J. Super. 301, 304 (App. Div. 1993).

Here, we find no basis on which to conclude the Board's decision was arbitrary, capricious, or unreasonable, that it lacked fair support in the evidence, or that it otherwise violated any policies. Under N.J.S.A. 30:4-123.53(a):

> An adult inmate shall be released on parole at the time of parole eligibility, unless information supplied in the report . . . or developed or produced at a hearing . . . indicates by a preponderance of the evidence . . . that there is a reasonable expectation that the inmate will violate conditions of parole imposed . . . if released on parole at that time.

The Board panel based its decision on a multitude of aggravating factors, most notable of which were defendant's prior violation of parole and the serious nature of his offense. Defendant's lack of recognition that his prior actions while on parole were criminal is also significant. The Board's decision was further supported by defendant's risk assessment score of twenty-six, indicating a medium risk of recidivism.

Although the Board recognized some mitigating factors – such as defendant's participation in programs and absence of infractions since his last panel hearing – it acted well within its bounds in finding by a preponderance of evidence that

defendant, if released on parole, would likely violate conditions of his parole.

Concerning the FET, when an inmate is serving a sentence for murder, upon denial of parole, the inmate shall serve another twenty-seven months before being considered again for parole. N.J.A.C. 10A:71-3.21(a)(1). The Board may increase or decrease the FET by up to nine months when the Board believes based on "the severity of the crime . . . and the prior criminal record or other characteristics of the inmate" that an adjustment is warranted. N.J.A.C. 10A:71-2.21(c). The Board considered all mitigating and aggravating factors when coming to the FET determination, and acted well within its authority in increasing defendant's FET.

Defendant's remaining arguments are without sufficient merit to warrant further discussion. R. 2:11-3(e)(2).

Affirmed.