

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

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-4897-13T4

CALEB BEYAH,
a/k/a GREGORY COLLINS,

Appellant,

v.

NEW JERSEY STATE PAROLE BOARD,

Respondent.

Submitted December 13, 2016 – Decided February 15, 2017

Before Judges Fisher and Leone.

On appeal from the New Jersey State Parole
Board.

Caleb Beyah, 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

Appellant Caleb Beyah appeals the May 27, 2015 final decision
of the New Jersey State Parole Board (the "Board") denying his

request for parole and establishing a 144-month future eligibility term ("FET"). We affirm.

I.

On September 15, 1973, appellant entered the office of a motor lodge in Maple Shade with the intent of robbing it. During the robbery, appellant shot the clerk of the motor lodge in the face, killing him.

Five days later, appellant entered a paint store in Pennsauken and robbed the store's manager and a customer at gunpoint. During the robbery, appellant shot the customer in the face, and shot the store's manager six times, including three shots to the head, killing him. Appellant fled the scene.

On November 29, 1973, appellant was arrested for the Pennsauken shootings. On May 23, 1974, a jury found appellant guilty of murder, atrocious assault and battery, entry without breaking with intent to steal, robbery, armed robbery, assault with a deadly weapon, and carrying a revolver. On June 4, 1976, appellant was sentenced to a life term plus twenty-nine to thirty-two years for the Pennsauken offenses.

Ballistic evidence revealed that the weapon used during the murder and assault at the paint store in Pennsauken was the same weapon used to commit the murder at the motor lodge in Maple Shade.

Additionally, appellant's handwriting matched the last signature in the motor lodge's registration book, albeit under a false name.

Subsequently, a grand jury indicted appellant for murder, robbery, armed robbery, unlawful use of a dangerous weapon, and carrying a deadly weapon for the Maple Shade murder. As part of a plea agreement, appellant entered a guilty plea on the murder charge, and the remaining charges were dismissed. On August 31, 1978, appellant was sentenced to a term of life, to be served consecutively to the sentence for the Pennsauken offenses.

Appellant became eligible for parole on June 25, 2013. On June 28, 2013, a two-member parole panel denied parole and referred appellant to a three-member panel to impose an FET outside of the administrative guidelines. The three-member panel imposed a 144-month FET based on the same aggravating factors relied on by the two-member panel. On April 30, 2014, the Board affirmed the three-member panel's decision, denying appellant parole and imposing the 144-month FET for the same reasons articulated by both the two-member and the three-member panels.

Both the three-member panel's Notice of Decision and the Board's Notice of Final Agency Decision incorrectly indicated appellant had a 1969 conviction for rape.

Appellant appealed. During the appeal, the Board realized that in 1969 appellant was charged with rape, but pled guilty to

corrupting the morals of a minor. The Board moved to remand the 2014 appeal.

On April 28, 2015, this Court granted respondent's motion to remand, and on May 14, 2015 the three-member panel amended its decision to reflect the correct 1969 conviction. On May 27, 2015, the Board similarly amended its Notice of Final Agency Decision. The Board found the amendment did not warrant disturbing the decisions to deny parole and establish a 144-month FET. Appellant then filed this appeal.

In his pro se brief, appellant argues:

THE PAROLE BOARD COMMITTED PROCEDURAL ERROR
IN FAILING TO CONSIDER RELEVANT DOCUMENTS
AND PROPERLY FACTOR MATERIAL EVIDENCE INTO
THE RECORD IN UTILIZING A STANDARD OF PROOF
UNAUTHORIZED BY LAW.

II.

We must hew to our standard of review. "[T]he Parole Board is the 'agency charged with the responsibility of deciding whether an inmate satisfies the criteria for parole release under the Parole Act of 1979.'" Acoli v. N.J. State Parole Bd., 224 N.J. 213, 222 (citation omitted), cert. denied, __ U.S. __, 137 S. Ct. 85, 196 L. Ed. 2d 37 (2016). The Board's discretionary powers are broad. Trantino v. N.J. State Parole Bd., 166 N.J. 113, 173 (2001). We will disturb the Board's decisions only if "'arbitrary, capricious or unreasonable, or [] not supported by substantial

credible evidence in the record as a whole.'" In re Stallworth, 208 N.J. 182, 194 (2011) (citation omitted); see also Acoli, supra, 224 N.J. at 222-23.

Our "limited scope of review is grounded in strong public policy concerns and practical realities." Trantino, supra, 166 N.J. at 200. "[T]he Parole Board makes 'highly predictive and individualized discretionary appraisals'" which "must realistically be recognized to be inherently imprecise, as they are based on 'discretionary assessment[s] of a multiplicity of imponderables.'" Acoli, supra, 224 N.J. at 222 (second alteration in original) (citation omitted).

III.

Prior to 1997, the law required release of an inmate eligible for parole unless there was "a substantial likelihood that the inmate will commit a crime." N.J.S.A. 30:4-123.53(a) (1979). It is undisputed that law is applicable to appellant.

Appellant asserts the Board committed procedural error by using erroneous evidence, namely the mistaken belief that his 1969 conviction was for rape. He complains that despite amending to correct the identity of his 1969 crime, the three-member panel and the Board still reached the same result of denying parole and imposing a 144-month FET. However, the Board's decision was not arbitrary or capricious, given that little mention was made to the

1969 conviction in the original decisions of the three-member panel and the Board.

The three-member panel's original decision briefly mentioned the 1969 conviction when it noted appellant's "prior offense record." The panel cited the 1969 conviction's probationary sentence as a "prior opportunity on community supervision (probation) [which] failed to deter criminal behavior." That remained true whether the conviction was for rape or for corrupting the morals of a minor, as the three-member panel stated in its amended decision correctly identifying his 1969 conviction.¹

The Board's original decision only mentioned the 1969 conviction to note appellant failed to submit documentation that the 1969 conviction was not for rape. The Board's amended decision recounted that the 1969 conviction had been correctly identified as corrupting the morals of a minor, and found the correction did not warrant a change in its conclusions to deny parole and impose a 144-month FET.

Indeed, examination of the original and amended decisions of the three-member panel and the Board shows that those conclusions were overwhelmingly based on appellant's two 1973 murders and

¹ The parole regulations include a list of factors Board panels and the Board shall consider making parole decisions, including "[a]djustment to previous probation." N.J.A.C. 10A:71-3.11(b)(4).

issues related to those murders, with little or no weight being placed on the identity of his 1969 conviction. Instead, the decisions focused on appellant's murders and their aftermath, emphasizing that: the murders represented an increase in the severity of his criminal record; his prior opportunity on probation failed to deter the murders; he was presently incarcerated for multiple crimes arising out of those murders; he lacked insight into his violent behavior during the murders and demonstrated insufficient problem resolution; and he was unable to explain his murderous behavior despite his lengthy incarceration for the murders and prison mental health treatment. The Board also relied on a psychological report, which deemed appellant's prognosis for successfully completing a parole term as "poor."

The Board also considered mitigating factors, including appellant's "average to above average" institutional reports, his favorable institutional adjustment, his lack of disciplinary infractions since 2004, his attempt to enroll in programs, and his reaching a level of minimum custody status in the prison, as well as a letter of mitigation submitted by appellant. The Board found these mitigating factors were outweighed by the aggravating factors. Considering the aggregate of the information under N.J.A.C. 10A:71-3.11, the Board agreed there was a substantial

likelihood that appellant would commit a crime if released on parole.

The Board's amended decision on remand is supported by substantial evidence. Therefore, it was not arbitrary or capricious for the Board, after correctly identifying the nature of appellant's 1969 conviction, to reaffirm its conclusions.

IV.

Appellant next contends the three-member panel erred in departing from the twenty-seven-month presumptive FET for murder and other crimes with sentences in excess of fourteen years. N.J.A.C. 10A:71-3.21(a)(1). However, the panel may set an FET differing from N.J.A.C. 10A:71-3.21(a)-(c) "if the future parole eligibility date which would be established pursuant to such subsections is clearly inappropriate due to the inmate's lack of satisfactory progress in reducing the likelihood of future criminal behavior." N.J.A.C. 10A:71-3.21(d).

Appellant argues the three-member panel erred in finding he did not make satisfactory progress because it ignored eight consecutive annual reviews which found "the progress achieved by the inmate merits a reduction in the future parole eligibility date." N.J.A.C. 10A:71-3.21(f)(2)(iii). However, the standard at an annual review for granting a reduction in FET is not the same as the standard for release or for departing from the

presumptive FET. FET reductions at annual reviews can be based on progress in institutional programs, progress in substantially altering the factors leading to incarceration, or "progress which may indicate that the inmate has reduced the likelihood of future criminal behavior." N.J.A.C. 10A:71-3.21(f)(1) (emphasis added). In contrast, a three-member panel may depart from the presumptive FET if there has not been "satisfactory progress in reducing the likelihood of future criminal behavior." N.J.A.C. 10A:71-3.21(d) (emphasis added). Moreover, the three-member panel must consider "the factors enumerated in N.J.A.C. 10A:71-3.11" for parole decisions. Ibid. Those twenty-three factors go beyond the narrow focus of the three FET-reduction criteria, and include the "[n]ature and pattern of previous convictions," the inmate's "[a]djustment to previous probation, parole and incarceration," the "[f]acts and circumstances of the offense," and the "[a]ggravating and mitigating factors surrounding the offense." N.J.A.C. 10A:71-3.11(b).

As set forth herein, the Board found these and other factors in N.J.A.C. 10A:71-3.11 weighed heavily against appellant's release. Those factors also strongly supported the Board's decision to depart from the presumptive FET and impose a 144-month FET. The Board did not have to ignore those factors because annual

reviews gave appellant FET reductions based on the limited criteria of N.J.A.C. 10A:71-3.21(f)(1).

The Board agreed that the presumptive FET was clearly inappropriate due to appellant's lack of satisfactory progress in reducing his likelihood of future criminal behavior. The Board's decision to uphold the 144-month FET was not arbitrary, capricious, or unreasonable.

V.

Finally, appellant contends that, because he has special needs and a limited IQ, it was inappropriate for the Board to find lack of insight based on his failure to adequately explain his justification of the murders. Appellant argues he accepted responsibility for his crimes, and expressed remorse for his actions.

Among the factors in making a parole decision are "[s]tatements by the inmate reflecting on the likelihood that he . . . will commit another crime" if released on parole. N.J.A.C. 10A:71-3.11(b)(17). During the hearing conducted, appellant was questioned about the details of his murders, as well as about his insight into his murderous behavior.

Responding to these questions, appellant attributed his robberies netting small amounts of cash to his need to support his "extravagant lifestyle" of better clothes, food, and cars. He

said he was carrying a loaded handgun for self-defense. He claimed he shot and killed both victims because he "panicked." He blamed the victim in the motor lodge for making "aggressive gestures," and attributed his panic to the victims attempting to flee. When appellant was asked to explain why he shot in the face one of his victims who did not attempt to flee, appellant answered: "I don't know."

The three-member panel determined appellant provided inadequate explanations, "poor reasoning," and "unsound conclusions" about why he behaved the way he did in his murders. The panel found that appellant's responses lacked insight and failed to show why he would no longer pose a threat of future criminal behavior. The panel also found that he had failed to develop sufficient insight to recognize issues that would return him to future criminal behavior.

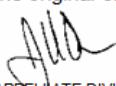
The Board concurred in the conclusions of the three-member panel, noting its finding that appellant lacked insight. The Board was aware of appellant's mental issues, reviewed the electronic recording of the hearing, and found that he "responded fully to all inquiries without any difficulty recalling the details." The Board found no merit to his argument he was unable to express himself at the hearing. Courts are "required to accord deference to the findings of the administrative agency that are

substantially influenced by its opportunity to hear and see the witness[] and to have the 'feel of the case,' an opportunity which a reviewing court cannot enjoy." Trantino, supra, 166 N.J. at 200 (citation omitted). Additionally, the court must give deference to an agency's "'expertise and superior knowledge of a particular field,'" when such expertise, is a pertinent factor. Stallworth, supra, 208 N.J. at 195 (citation omitted).

Accordingly, the Board's decision to deny parole and to set a 144-month FET was not arbitrary, capricious or unreasonable, and were supported by sufficient, credible evidence in the record. Appellant's remaining arguments lack sufficient merit to warrant discussion. R. 2:11-3(e)(2).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION