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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0597-16T1

CHARLES BRENT,

Appellant,

v.

NEW JERSEY STATE PAROLE
BOARD,

Respondent.

Submitted March 12, 2018 – Decided April 2, 2018

Before Judges Ostrer and Rose.

On appeal from the New Jersey State Parole
Board.

Charles Brent, appellant pro se.

Gurbir S. Grewal, Attorney General, attorney
for respondent (Melissa H. Raksa, Assistant
Attorney General, of counsel; Christopher C.
Josephson, Deputy Attorney General, on the
brief).

PER CURIAM

Charles Brent appeals from a July 27, 2016 final Parole Board
decision denying parole and establishing an eighty-four-month
future eligibility term (FET). We affirm.

Brent is serving a life sentence for the 1989 aggravated sexual assault and kidnapping of a thirteen-year-old girl. He is also serving a consecutive five-year sentence for distributing cocaine a few weeks prior. Brent was free on bail on the drug charge when he committed the sexual assault and kidnapping offenses. He committed all three crimes while on parole for robbery. He was twenty-two years old. As a juvenile, Brent was adjudicated delinquent for aggravated assault and robbery.

Brent's aggregate period of parole ineligibility was twenty-seven-and-a-half years. He first became parole eligible on April 22, 2015. Given the nature of his crimes, a parole hearing officer referred Brent's case to a Board Panel as mandated by N.J.A.C. 10A:71-3.15(b). The hearing officer also noted, as reasons for the referral, the nature of Brent's offense, his prior incarceration, the fact that his prior opportunities on community supervision did not deter his criminal behavior, and his numerous, serious and persistent institutional infractions. On the mitigating side, the hearing officer noted a favorable interview, a risk assessment evaluation, participation in institutional programs, and a favorable institutional adjustment, as his last infraction was January 2006.

The two-member panel denied Brent parole, concluding there was a "substantial likelihood . . . that [he] would commit a new

crime if released on parole at this time." Its reasons largely mirrored those the hearing officer noted in referring the case. While adopting many of the same mitigating factors, the panel expressed concern that Brent continued to deny his guilt. That denial contributed to Brent's insufficient problem resolution, and lack of insight into his criminal behavior. The panel relied on its interview of Brent, and documentation in the file, including confidential materials.

Concluding that the presumptive twenty-seven-month FET might be "inappropriate due to his lack of progress in reducing the likelihood of future criminal behavior," the panel voted to refer the case to a third panel member to establish an FET. The third panel member concurred in the prior panel decision. In a July 22, 2015 decision, the expanded panel set an eighty-four-month FET.

Several weeks later, the three-member panel issued a "notice of decision" consisting of a seven-and-a-half-page narrative. The narrative discussed Brent's sexual assault and kidnapping convictions, and the Board's concern that he continued to deny his guilt. Incongruously, the narrative included what appeared to be cut-and-pasted paragraphs from another person's decision. It erroneously stated that Brent was presently incarcerated on charges of aggravated arson, although the narrative elsewhere stated, correctly, that he was presently incarcerated for the

sexual assault, kidnapping, and drug convictions. The narrative erroneously referred to statements Brent supposedly made at the hearing about the role of his heroin addiction – he had none – in his criminal behavior.

Also, the narrative stated it relied on a March 15, 2015, letter Brent supposedly sent, in which he proposed a thirty-six-month FET, and acknowledged he was serving an extended term; his last infraction was 2009; and he was in protective custody. All of that was wrong. The Board did not even advise Brent of his opportunity to submit a letter of mitigation until April 7, 2015. Notably, the Statement of Items Comprising the Record that the Parole Board filed with this appeal identifies a June 30, 2015 letter of mitigation Brent sent. The panel did not address that letter in its decision, nor did the Board include it in the record on appeal.

Brent appealed the three-member panel's decision to the full Board. Citing the erroneous reference to the arson conviction, but not the erroneous reference to the letter of mitigation, he argued the panel relied on incorrect information. He also argued the panel failed to give sufficient weight to mitigating factors, and the evidence did not support a finding that he was likely to reoffend if paroled. He sought a new hearing.

The Board vacated the panel's decision to establish an eighty-four-month FET – but not the decision to deny parole. It referred the matter back to the three-member panel, which, on June 15, 2016, again set an eighty-four-month FET, citing the same reasons it cited earlier. The narrative decision that followed deleted the references to an arson conviction, but retained the erroneous reference to the March 15, 2015 letter.

The full Board thereafter affirmed the decisions to deny parole and set an eighty-four-month FET. Brent did not submit any materials in addition to those he provided before the Board's referral. The Board rejected Brent's contention that the panel failed to document a preponderance of the evidence that he posed a substantial likelihood of reoffending on parole. The Board rejected Brent's contention that there was no DNA evidence to support his conviction, noting that his conviction was res judicata. Rather, the Board echoed the panel's concern about his continued denial of guilt, noting that he had been "unable to adequately and specifically identify and/or understand the causes of [his] criminal behavior or to develop sufficient insight into [his] motivations for criminal and associated violent behavior patterns."

The Board reviewed Brent's participation in various programs; his infraction-free record since 2006; and his post-release plans.

However, the Board concurred in the panel's reasons for parole denial, including its reliance on confidential materials.

The issues you submitted were presented to the Board at its meeting, conducted on July 27, 2016. Having considered your claims, the Board finds that the Board panel noted as reasons for parole denial: offense record is repetitive; prior offense record noted; committed to incarceration for multiple offenses; prior opportunities on probation and parole have failed to deter criminal behavior; prior opportunity on parole terminated for technical violations; prior incarcerations did not deter criminal behavior; and commission of numerous and persistent institutional infractions serious in nature and sanctioned with loss of commutation time, confinement in detention, and Administrative Segregation. Furthermore, based on your responses to questions posed by the Board panel at the time of the hearing, and the documentation in your case file, the Board panel determined that you exhibit insufficient problem resolution, specifically, that you lack insight into your criminal behavior, that you deny your offense, and that you minimize your conduct. The Board panel noted, "Inmate continues to deny the charge and his denial may have played a role in his failure to take programs that are victim oriented. His life on the street included a prior robbery and drug distribution. He has 20 prior institutional infractions. Even though they stopped in 2006, his frequent infractions previously paint the picture of someone similar to the street offender." The Board finds that the Board panel relied on confidential material and, pursuant to N.J.A.C. 10A:71-2.2(c), identified for the record the nature of the confidential information.

The Board acknowledged the erroneous reference to arson in the initial written decision, but rejected Brent's suggestion that a new hearing was required. The Board noted that arson was not mentioned at the hearing itself; the written reference to arson was inadvertent; and the panel did not actually consider it in its decision.

On appeal, Brent again argues he was entitled to a new hearing because of the erroneous reference to an arson conviction.¹ He contends the Board did not give sufficient weight to his mitigating factors, and the evidence did not support the finding of a substantial likelihood of reoffending. We are unpersuaded by these contentions.

Given the date of Brent's offense, he was to be released on parole unless "by a preponderance of the evidence . . . there is a substantial likelihood that the inmate will commit a crime under the law of this State if released on parole at such time." N.J.S.A. 30:4-123.53(a) (1979), L. 1979, c. 441, § 9; N.J.A.C. 10A:71-

¹ Notably, he does not mention the erroneous reference to the March 15, 2015 mitigation letter he did not send; and the omission of any reference to the June 30, 2015 letter he did send. Without condoning the panel's uncorrected error, we shall not address an issue Brent did not raise. Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973).

3.10(a).² The determination is "essentially factual [in] nature." Williams, 336 N.J. Super. at 8. "Parole Board determinations are highly 'individualized discretionary appraisals.'" Trantino v. N.J. State Parole Bd., 154 N.J. 19, 25 (1998) (quoting Beckworth v. N.J. Parole Bd., 62 N.J. 348, 359 (1973)).

In reviewing the Board's denial of parole, we apply the same standard of review that we apply to administrative agency decisions generally:

(1) whether the agency's action violates express or implied legislative policies, i.e., did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[Trantino, 154 N.J. at 24.]

With respect to the prediction that a defendant will reoffend, we must focus on the second test – that is, whether sufficient evidence in the record supports the decision. Ibid.

Applying those standards, we discern no basis to disturb the Board's decision. The panel and the Board considered, and weighed appropriately, all applicable factors, see N.J.A.C. 10A:71-3.11(a)

² The 1997 amendment L. 1997, c. 213, § 1, did not alter the standard applicable to Brent. See Williams v. N.J. Parole Bd., 336 N.J. Super. 1, 7 (App. Div. 2000).

and (b). While we cannot disclose the contents of the confidential psychological evaluation, we note that it supports the Board's decision that Brent is substantially likely to commit another crime if released at this time. The Board recognized the positive aspects of Brent's record. But it noted numerous negative factors, including his refusal to accept guilt for his offenses, which continues to impede his rehabilitation. We shall not second-guess the Board's conclusion that the negative factors outweighed the positive, justifying a denial of parole.

We also shall not disturb the Board's decision affirming the panel's eighty-four-month FET. The FET was significantly longer than the presumptive FET of twenty-seven months under N.J.A.C. 10A:71-3.21(a)(1). However, the Board was authorized to extend the FET where the inmate has not made "satisfactory progress in reducing the likelihood of future criminal behavior." N.J.A.C. 10A:71-3.21(d). We are satisfied that the eighty-four-month FET was neither arbitrary, capricious, nor unreasonable. See McGowan v. N.J. State. Parole Bd., 347 N.J. Super. 544, 565 (App. Div. 2002) (affirming thirty-year FET based on likelihood of recidivism).

We reject Brent's argument that he is entitled to a new hearing because the panel's narrative erroneously referred to a crime Brent did not commit. We do not condone the panel's


oversights, some of which remain uncorrected. However, we are unconvinced those errors impacted the panel's or the Board's decision.

We also do not condone the Board's delays in decision-making. However, Brent did not suffer any prejudice, nor has he persuaded us that the Board's non-compliance justifies his release. See Dougherty v. N.J. State Parole Bd., 325 N.J. Super. 549, 555-56 (App. Div. 1999).

To the extent not addressed, Brent's remaining arguments lack sufficient merit to warrant discussion in a written opinion. 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