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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-1541-16T2

IAN BURTON,

Appellant,

v.

NEW JERSEY PAROLE BOARD,

Respondent.

Submitted March 7, 2018 – Decided March 28, 2018

Before Judges Nugent and Geiger.

On appeal from the New Jersey State Parole Board.

Ian Burton, appellant pro se.

Gurbir S. Grewal, 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 the New Jersey Parole Board's October 3, 2016 final decision denying his petition for recalculation of his aggregate parole eligibility date (PED). We affirm.

On February 27, 1996, and October 29, 1996, juries convicted defendant on Monmouth County Indictment No. 95-02-0213 of multiple

weapons offenses, aggravated assault on a police officer, and resisting arrest. We affirmed his convictions on direct appeal but remanded for resentencing. State v. Burton, Nos. A-1069-96, A-3783-96 (App. Div. Aug. 28, 1998) (slip op. at 2, 7-8). On February 24, 1997, a jury convicted defendant on Monmouth County Indictment No. 95-06-0984 of attempted murder, armed robbery, aggravated assault, and two weapons offenses. We affirmed his convictions on direct appeal but remanded for resentencing. State v. Burton, No. A-6963-96 (App. Div. Jan. 28, 1999).

The trial court resentenced defendant on both indictments on February 11, 1999. The court imposed an aggregate thirteen-year prison term on Indictment No. 95-02-0213 with a three-year period of parole ineligibility. The Judgment of Conviction (JOC) noted 1298 days of jail credit and 253 days of gap time credit. On Indictment No. 95-06-0984, the court imposed an aggregate fifty-eight-year prison term with twenty-five years of parole ineligibility, consecutive to his sentence on the earlier indictment. The JOC noted 1018 days of jail credit and 379 days of gap time credit.

In 2013, defendant appealed the computation of his sentence. The appeal came before us on our sentencing calendar, Rule 2:9-11, on February 11, 2014, and we remanded the matter for determination of proper jail credits on Indictment 95-02-0213. On

July 15, 2014, the trial court ordered two changes to the JOC on indictment 95-02-0213: one to add jail credit for the period from November 15, 1994, the date of defendant's arrest, to April 25, 1996, the original sentencing date; and another to add credit for time served from April 26, 1996 to February 11, 1999. The court amended the judgment of conviction accordingly, with the total time credited to defendant being 1550 days.

Following the recalculation, on December 21, 2015, defendant submitted a series of inmate inquiry and grievance forms to the New Jersey Department of Corrections (NJDOC) regarding the PED calculation he had received from the Parole Board following the October 2014 amendment to his judgment of conviction. The Board referred the matter to the sentencing court on April 25, 2016, with a detailed chronological summary of defendant's indictments and resentencing. Specifically, the Board asked for clarification regarding whether Count 10 was to run concurrent or consecutive to Count 7 in indictment 95-02-0213, which would determine whether defendant's aggregate sentence for that indictment was eighteen or thirteen years. The Board sent defendant a letter on April 13, 2016, informing him of its inquiry with the sentencing court.

On August 18, 2016, the Board wrote to defendant in response to his PED inquiry. In its decision, the Board noted the sentencing court issued a third amended judgment of conviction for

indictment 95-02-0213 on July 26, 2016, in order to clarify the sentence for Count 10 was to be served consecutive to the sentences for Counts 5, 7, and 9. Considering defendant's jail and gap time credits, defendant's PED is three years for Count 5 of Indictment 95-02-0213, twenty months for Count 10 of indictment 95-02-0213, twenty-five years for Count 2 of indictment 95-06-0984, and four years for Count 5 of indictment 95-06-0984, all consecutive to each other. Defendant's PED is set as October 5, 2026.

Defendant appealed. He argues:

POINT I

THE PAROLE BOARD ERRED WHEN IT UNILATERALLY DISREGARD [sic] THE ALLOWANCE OF JAIL CREDITS AND PRIOR SERVICE CREDITS SET FORTH IN APPELLANT'S JUDGMENT OF CONVICTION AND ORDER AUTHORIZED BY THE TRIAL COURT IN VIOLATION OF APPELLANT'S UNITED STATES CONSTITUTION, AMENDMENT 14; AND N.J. CONSTITUTION ART. 6, § 5, ¶2

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, 24-25 (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 on the calculation of defendant's PED was arbitrary, capricious, or unreasonable, that it lacked fair support in the evidence, or that it otherwise violated any policies. Defendant argues he was not awarded the credits authorized by the trial court in the calculation of his PED. However, the Board made a clear calculation of defendant's PED that incorporated defendant's credits. The Board altered defendant's PED on multiple occasions in order to abide by the altered judgments imposed by the sentencing court.

Defendant also argues the sentencing court inaccurately awarded him credits. This argument, however, must be brought before the sentencing court, as the Board may not unilaterally disregard a judgment entered by the Superior Court of New Jersey. Glover v. N.J. State Parole Bd., 271 N.J. Super. 420, 423 (App. Div. 1994). Therefore, the Board is bound by the amount of credits imposed by the sentencing court.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION