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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-1582-16T3

CARMELLO MARTINEZ,

Appellant,

v.

NEW JERSEY STATE PAROLE
BOARD,

Respondent.

Submitted March 13, 2018 – Decided March 28, 2018

Before Judges Fasciale and Summers.

On appeal from the New Jersey State Parole
Board.

Carmello Martinez, appellant pro se.

Gurbir S. Grewal, Attorney General, attorney
for respondent (Melissa Dutton Schaffer,
Assistant Attorney General, of counsel;
Gregory R. Bueno, Deputy Attorney General, on
the brief).

PER CURIAM

Carmello Martinez appeals from a November 23, 2016 final
agency decision by the New Jersey State Parole Board (Board)
denying his request for parole and establishing a sixty-month

future eligibility term (FET). Martinez is serving a life prison sentence for committing murder. We affirm.

On appeal, Martinez argues the following points in his pro se brief:

POINT I

[THE BOARD] FAILED TO CONSIDER MATERIAL FACTS.

A. The Board failed to consider [Martinez's] medical condition.

1) The Board failed to consider a professional report prepared for them by Dr. Woodward, the Chief Medical Officer of the Department of Corrections.

2) The Board failed to consider that [Martinez] is aggressively seeking a kidney transplant.

3) The Board failed to consider how [Martinez's] need for dialysis would [a]ffect his likelihood of committing a crime if released.

B. The Board failed to consider the Judge's sentence.

POINT II

[THE BOARD] FAILED TO DOCUMENT THAT A PREPONDERANCE OF EVIDENCE INDICATES A SUBSTANTIAL LIKELIHOOD THAT [MARTINEZ] WILL COMMIT A CRIME IF RELEASED ON PAROLE.

POINT III

THE BOARD DECISION IS CONTRARY TO WRITTEN BOARD POLICY OR PROCEDURE.

Martinez filed a pro se reply brief and raised the following additional points, which we have re-numbered:

POINT IV
THE [BOARD'S] BRIEF CONTAINED INACCURATE DATA.

POINT V
THE [BOARD'S] BRIEF DISMISSED [MARTINEZ'S]
REFERENCE TO DR. WOODWARD'S BRIEF WITHOUT
CAUSE: THE BOARD FAILED TO CONSIDER THIS
MATERIAL FACT.

We have considered the contentions raised by Martinez and conclude that they are without sufficient merit to warrant discussion in this opinion. R. 2:11-3(e)(1)(E). We affirm substantially for the reasons expressed by the Board. We add the following remarks.

In reviewing a final decision of the Board, we consider: (1) whether the Board's action is consistent with the applicable law; (2) whether there is substantial credible evidence in the record as a whole to support its findings; and (3) whether in applying the law to the facts, the Board erroneously reached a conclusion that could not have been reasonably made based on the relevant facts. Trantino v. N.J. State Parole Bd., 154 N.J. 19, 24 (1998).

The Board's decision to grant or deny parole turns on whether there is a "substantial likelihood" the inmate will commit another crime if released. Williams v. N.J. State Parole Bd., 336 N.J. Super. 1, 7-8 (App. Div. 2000). The Board must consider the enumerated factors in N.J.A.C. 10A:71-3.11(b)(1)-(23) in making its decision. The Board, however, is not required to consider

each and every factor; rather, it should consider those applicable to each case. McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 561 (App. Div. 2002).

Here, the presumptive FET is twenty-seven months. N.J.A.C. 10:71-3.21(a)(1). However, N.J.A.C. 10:71-3.21(d) allows a three-member panel to establish a FET outside of the guidelines if the presumptive twenty-seven-month FET is "clearly inappropriate due to the inmate's lack of satisfactory progress in reducing the likelihood of future criminal behavior."

The Board's action is consistent with the applicable law, there is substantial credible evidence in the record as a whole to support its findings, and the Board reached conclusions that were based on the relevant facts. The Board made extensive findings, which we need not repeat here, demonstrating the basis for its decision to deny Martinez parole. And in its final decision, the Board provided multiple reasons for imposing the sixty-month FET. On this record, we have no reason to second-guess those findings or conclusions. Finally, in rejecting Martinez's medical contentions, we conclude that the Board applied the correct law.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION