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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-1774-16T3

MIKAL ABDUR-RAHMAAN,

Appellant,

v.

NEW JERSEY STATE PAROLE
BOARD,

Respondent.

Submitted February 12, 2018 – Decided March 1, 2018

Before Judges Sabatino and Rose.

On appeal from the New Jersey State Parole
Board.

Mikal Abdur-Rahmaan, 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

Mikal Abdur-Rahmaan appeals from the November 23, 2016 final
agency decision of the New Jersey State Parole Board ("Board")

denying his parole and imposing a ninety-six-month future eligibility term ("FET"). We affirm.

In December 1993, a jury convicted Abdur-Rahmaan of armed robbery, aggravated assault, burglary, criminal restraint, conspiracy and three weapons offenses. On December 23, 1993, Abdur-Rahmaan was sentenced to an aggregate sixty-five-year term of imprisonment with twenty-two-and-a-half years of parole ineligibility.

Abdur-Rahmaan became eligible for parole for the first time on November 28, 2015, after serving twenty-two years and twenty days of imprisonment. Although a two-member panel of the Board found certain mitigating factors,¹ it denied Abdur-Rahmaan parole. The two-member panel also referred his matter to a three-member panel ("panel") to establish an FET outside the presumptive schedule.² The panel determined a ninety-six-month FET was warranted.

¹ Among other mitigating factors, the two-member panel found Abdur-Rahmaan had a minimal offense record, participated in institutional programs, achieved minimum custody status, and had commutation time restored.

² See N.J.A.C. 10A:71-3.21(d) (allowing a three-member panel to "establish a future parole eligibility date which differs from [the standard FET] if . . . [the standard FET would be] clearly inappropriate due to the inmate's lack of satisfactory progress in reducing the likelihood of future criminal behavior.").

In a comprehensive written decision, the panel noted: (1) the serious nature of the present offenses, including armed robbery and weapons offenses, which were committed while Abdur-Rahmaan was released on bail for a previous arrest; (2) Abdur-Rahmaan was previously convicted of aggravated assault, the nature of his prior criminal record is repetitive and increasingly more serious, and the present offenses were committed while on parole status;³ (3) Abdur-Rahmaan is presently incarcerated for a multi-crime conviction; (4) his prior opportunities on community supervision and previous incarceration failed to deter his criminal conduct; (5) during his incarceration for the subject offenses, Abdur-Rahmaan committed eight disciplinary infractions, two of which were of the "asterisk" (i.e., more serious) variety; and (6) insufficient problem resolution, including his lack of insight into his criminal behavior, and minimizing and demonstrating a lack of responsibility for the infractions committed while incarcerated.

Given the above findings, the panel determined an FET of ninety-six months was appropriate. Because Abdur-Rahmaan's

³ According to the Board, while awaiting final disposition of the present offenses, Abdur-Rahmaan was serving a prison term for prior offenses. "He was released from prison on parole on June 1, 1992; his parole was revoked on March 1, 1994 for technical (non-criminal) parole violations."

present offenses were committed prior to August 19, 1997, the panel observed the ninety-six-month FET, which commenced on October 4, 2015, will be reduced by any commutation, work, or minimum custody credits earned. See N.J.S.A. 30:4-140; N.J.S.A. 30:4-92. Accordingly, Abdur-Rahmaan's projected parole eligibility date is April 2020.

Abdur-Rahmaan filed an appeal with the full Board. On November 23, 2016, the Board upheld the recommendation to deny parole and to impose a ninety-six-month FET. This appeal ensued.

On appeal, appellant presents the following arguments for our consideration:

POINT ONE

THE NINETY[-]SIX[-]MONTH FET WAS NOT JUSTIFIED.

POINT TWO

THE NINETY[-]SIX[-]MONTH FET EXCEEDS [ABDUR-RAHMAAN'S] MAXIMUM SENTENCE.

POINT THREE

THE BOARD CANNOT JUSTIFY [ABDUR-RAHMAAN'S] MAXING OUT [HIS] SENTENCE.

POINT FOUR

THE BOARD DID NOT ACCURATELY CONSIDER [ABDUR-RAHMAAN'S] FAILING HEALTH AND [HIS] AGE.

POINT FIVE

THE NINETY[-]SIX[-]MONTH PAROLE INELIGIBILITY (FET) VIOLATED THE PROVISIONS OF [] N.J.S.A. 30:4-123.53(a).

POINT SIX

THE BOARD INAPPROPRIATELY RELIED ON EX-POST FACTO LAW TO GIVE [ABDUR-RAHMAAN] THE FET.

POINT SEVEN

THE BOARD AND PANELS FAILED TO COMPLY WITH THE NEW JERSEY STATE PAROLE BOARD CODE OF PROFESSIONAL CONDUCT.

We have considered these contentions in light of the record and applicable legal principles and conclude they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(D). We affirm substantially for the reasons expressed in the Board's comprehensive written decision. We add only the following comments.

We must accord considerable deference to the Board and its expertise in parole matters. Our review of a Parole Board's decision is limited. Hare v. N.J. State Parole Bd., 368 N.J. Super. 175, 179 (App. Div. 2004). "'Parole Board decisions are highly individualized discretionary appraisals,' and should only be reversed if found to be arbitrary or capricious." Id. at 179-80 (citations omitted) (quoting Trantino v. N.J. State Parole Bd., 166 N.J. 113, 173 (2001) (Trantino VI)). We "must determine

whether the factual finding could reasonably have been reached on sufficient credible evidence in the whole record." Id. at 179 (citing Trantino VI, 166 N.J. at 172). In making this determination, we "may not substitute [our] judgment for that of the agency, and an agency's exercise of its statutorily-delegated responsibilities is accorded a strong presumption of reasonableness." McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 563 (App. Div. 2002) (citation omitted). Accordingly, "[t]he burden of showing that an action was arbitrary, unreasonable or capricious rests upon the appellant." Ibid.

Where, as here, the crime for which an inmate is incarcerated occurred before August 19, 1997, "the Board panel shall determine whether . . . by a preponderance of the evidence . . . there is a substantial likelihood that the inmate will commit a crime under the laws of the State of New Jersey if released on parole." N.J.A.C. 10A:71-3.10(a). Thus, when an inmate becomes eligible for parole, there is a "presumption in favor of parole," In re Trantino, 89 N.J. 347, 356 (1982) (Trantino II), and the burden is on "the State to prove that the prisoner is a recidivist and should not be released." Trantino VI, 166 N.J. at 197 (quoting N.J. State Parole Bd. v. Byrne, 93 N.J. 192, 205 (1983)). This is a "highly predictive" determination, Thompson v. N.J. State Parole Bd., 210 N.J. Super. 107, 115 (App. Div. 1986) (quoting

Beckworth v. N.J. State Parole Bd., 62 N.J. 348, 359 (1973)), which must take into account "the aggregate of all of the factors which may have any pertinence." Beckworth, 62 N.J. at 360.

N.J.A.C. 10A:71-3.11(b)(1) to (23) contains a non-exhaustive list of factors that the Board may consider in determining whether an inmate should be released on parole. Among the pertinent factors are "[s]tatements by the inmate reflecting on the likelihood that he or she will commit another crime; the failure to cooperate in his or her own rehabilitation; or the reasonable expectation that he or she will violate conditions of parole[]" as well as "any other factors deemed relevant[.]" Ibid. "[T]he Board [must] focus its attention squarely on the likelihood of recidivism." McGowan, 347 N.J. Super. at 565.

An inmate serving a minimum term in excess of fourteen years is ordinarily assigned a twenty-seven-month FET⁴ after a denial of parole. See N.J.A.C. 10A:71-3.21(a)(1). However, in cases where an ordinary FET is "clearly inappropriate due to the inmate's lack of satisfactory progress in reducing the likelihood of future criminal behavior[,]" the Board may impose a greater FET. N.J.A.C. 10A:71-3.21(d).

⁴ In its brief, the Board incorrectly states Abdur-Rahmaan was convicted of burglary with a presumptive FET of twenty months.

Here, we discern no basis to disturb the Board's decision. The Board duly considered the relevant factors in N.J.A.C. 10A:71-3.11(b). Its decision is supported by sufficient credible evidence in the record, and well-articulated reasons, and is entitled to our deference. We are satisfied the imposition of a ninety-six-month FET was neither arbitrary, capricious nor unreasonable. See McGowan, 347 N.J. Super. at 565 (affirming the imposition of a thirty-year FET based on appellant's high likelihood of recidivism).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION