SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0894-21

RALPH KIETT,

Appellant,

v.

NEW JERSEY STATE
PAROLE BOARD,

Respondent.

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Argued May 30, 2023 – Decided July 18, 2023

Before Judges Gooden Brown and Mitterhoff.

On appeal from the New Jersey State Parole Board.

Alicia J. Hubbard, Assistant Deputy Public Defender, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Ashley T. Brooks, Assistant Deputy Public Defender, of counsel and on the briefs).

Christopher C. Josephson, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney General, attorney; Donna Arons, Assistant Attorney General, of counsel; Christopher C. Josephson, on the brief).

PER CURIAM

Ralph Kiett, born July 1965, appeals from the October 27, 2021 final agency decision of the New Jersey State Parole Board (Board) denying him parole and establishing a thirty-six-month future eligibility term (FET). The Board found Kiett "exhibit[ed] insufficient problem resolution, specifically, that [Kiett] lack[ed] insight into [his] criminal behavior," indicating a substantial likelihood Kiett would reoffend if released on parole. Because the Board did not adequately support its finding under our Supreme Court's recent decision in Acoli v. New Jersey State Parole Board, 250 N.J. 431 (2022), we reverse and remand for the Board to reconsider its decision.

I.

We recount the pertinent facts and extensive procedural history. In 1983, Kiett was detained and charged as a seventeen-year-old juvenile with first-degree murder stemming from the fatal stabbing of nineteen-year-old Elizabeth Ann Coutee following a house party they both attended. Our Supreme Court described the crime and characterized the evidence supporting guilt as follows:

> Nineteen-year-old Elizabeth Ann Coutee disappeared on the night of February 25, 1982. Six days later, her body, nude except for her socks, was found in a marshy area near Westend Avenue in Atlantic City. She had been stabbed twenty-eight

> times. The evidence that Kiett committed the crime was overwhelming.
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> [State v. Kiett, 121 N.J. 483, 485 (1990).]

Kiett committed the crime while on juvenile probation for aggravated assault.

Jurisdiction was waived to the Law Division, where Kiett was prosecuted as an adult and charged in a seven-count indictment with three counts of murder, two weapons possession offenses, and two counts of aggravated sexual assault. The murder was designated as a capital offense under the death penalty that was then in effect. A second indictment charging two counts of aggravated assault and one count of escape was also returned against Kiett. The second indictment stemmed from Kiett's attempted escape from a juvenile detention facility while in custody on the murder-related charges. During the attempt, Kiett injured two correctional officers.

The Supreme Court reversed Kiett's conviction, entered by way of a 1985 guilty plea to murder and escape, because the plea was entered under the misapprehension that a juvenile offender was subject to the death penalty. Kiett, 121 N.J. at 489-91. The Court remanded the case to allow Kiett to "withdraw his guilty plea." Id. at 499. On remand, in 1991, Kiett entered a retraxit plea of guilty to the same charges and was sentenced to life in prison with a thirty-year parole disqualifier on the murder conviction, and a concurrent ten-year term with

a five-year parole disqualifier on the escape conviction. He was awarded 2,965 days of jail credit. We affirmed the sentence in an unpublished opinion and the Supreme Court denied certification. State v. Kiett, No. A-5087-90 (App. Div. June 1, 1992), certif. denied, 130 N.J. 19 (1992).[1]

During his confinement in the state prison system, Kiett amassed numerous infractions primarily stemming from altercations with other state prisoners in the 1980s and 1990s. Specifically, Kiett committed twenty-seven institutional infractions while incarcerated, five of them constituting asterisk or

[1] Subsequently, Kiett filed three separate petitions for post-conviction relief (PCR) in 2008, 2015, and 2019, and one motion for a new trial in 2014. All three PCR petitions, couched as motions to correct an illegal sentence, were denied by the trial court and affirmed on appeal in unpublished decisions. See State v. Kiett, No. A-5166-09 (App. Div. June 17, 2011); State v. Kiett, No. A-5316-15 (App. Div. Mar. 29, 2017); State v. Kiett, No. A-4363-18 (App. Div. July 7, 2022). The third PCR petition asserted that Kiett's sentence of life imprisonment with thirty years of parole ineligibility contravened the rulings in Miller v. Alabama, 567 U.S. 460 (2012), and State v. Zuber, 227 N.J. 422 (2017). The motion for a new trial, alleging that the case was improperly waived to the Law Division, was also denied by the trial court and affirmed on appeal. State v. Kiett, No. A-2457-14 (App. Div. July 20, 2016), certif. denied, 228 N.J. 432 (2016). Additionally, Kiett filed a petition for a writ of habeas corpus, 28 U.S.C. § 2254, which was rejected by the federal district court in 2017 because the petition was filed "twenty years too late," and Kiett was not entitled to statutory tolling. Kiett v. Bonds, No. 17-2543, 2017 U.S. Dist. LEXIS 80887, at *4 (D.N.J. May 24, 2017).

serious offenses.[2] His sanctions included at least 660 days loss of commutation credit and time served in detention and administrative segregation. Since 1999, Kiett has only had three infractions, none of which were considered serious. His most recent of the latter three infractions occurred in 2017 for being in an unauthorized area.

Kiett completed several educational, vocational, behavioral, and rehabilitative programs while incarcerated. In 2012, he obtained his GED, and in 2014, he completed a paralegal course. He also participated in a variety of anger management, substance abuse, and reentry programs. Kiett also has a positive work history, working currently as a paralegal. In a January 14, 2021 work detail report, it was noted that Kiett's work attendance and ability to work with others were excellent while his need for supervision was minimal. Additionally, Kiett has community and familial support, including promises of employment.

Prior to his initial sentencing in 1985, Kiett had been interviewed at his attorney's request by Katharine Baur, A.C.S.W., to formulate a psychosocial

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[2] "Under the Department of Correction's regulations on inmate discipline, N.J.A.C. 10A:4-4.1, '[a]sterisk offenses' are prohibited acts considered to be the most serious violations, resulting in the most severe sanctions." Berta v. N.J. State Parole Bd., 473 N.J. Super. 284, 293 n.5 (App. Div. 2022) (alteration in original).

assessment of Kiett. The interview revealed that Kiett's father, who was an alcoholic, had been physically abusive to the family, which consisted of Kiett, his mother, and his brother. Kiett's mother ultimately divorced his father, but neglected Kiett during his upbringing. Kiett was suspended from school when he was sixteen years old and was later assessed as having "borderline intelligence." Kiett started using alcohol and marijuana in his preteen years, and escalated to using heroin, cocaine, LSD, and pills in his teens. Kiett reported consuming a wide variety of illegal substances the night of the murder.

In February 2021, Kiett underwent a psychological evaluation conducted by Dr. Richard Mucowski, Ph.D., to assess Kiett's suitability for parole. Mucowski noted that Kiett's mental health had improved. According to Mucowski, Kiett had been on a "special needs roster" as recently as 2010, but at the time of his evaluation in 2021, "appear[ed] stable regarding his mental health status." Mucowski cautioned, however, that that could change if Kiett was reintroduced to "drinking, drugs, or other stressors."

Mucowski assessed Kiett's "[p]rognosis for [r]e-[o]ffending" as "[m]edium to [h]igh," citing his history of violence, "impaired behavioral controls," substance abuse issues, prior mental health issues, and "[l]imited job skills and work history in the community." In Kiett's favor, among other things,

Mucowski reported that Kiett had not committed a violent act since 1999; had obtained his GED; had shown "[a]bove average adjustment to incarceration"; had "[s]ome family support in the community"; and had "[e]xpresse[d] motivation to make changes in lifestyle and behavior."

Mucowski also evaluated Kiett under two testing rubrics: the Millon Clinical Multiaxial Inventory-III test (MCMI III), which is a personality assessment, and the Level Service Inventory-Revised test (LSI-R), which is designed to test the likelihood of recidivism. The MCMI III indicated that "there [was] no severe psychopathology within" Kiett. As for the LSI-R, Kiett scored a twenty-six, which indicated a twenty-eight percent chance that Kiett would be rearrested and a twenty-one percent chance that he would be reconvicted "within two years of [his] release." Mucowski noted that in "[t]wo prior psychological evaluations" conducted in 2012 and 2019, Kiett's LSI-R "scores suggested that . . . Kiett was still a [high] risk for recidivism," as contrasted with Mucowski's assessment of "a medium risk for recidivism" and "a medium risk for future violence."

Although Mucowski opined that Kiett was "marginally suitable for parole at this time," he explained that "[t]he likelihood of [Kiett] successfully completing . . . parole [was] questionable due to the constellations of risks and

strengths." According to Mucowski, if Kiett were paroled, he would benefit from a "half way back" setting that would allow Kiett to slowly integrate into the community while supported with substance abuse and mental health treatment.

Kiett first became eligible for parole in 2012. His first parole hearing was conducted on November 16, 2012. After he was denied parole and referred to a three-member Board panel, the three-member panel issued a Notice of Decision imposing an FET of 144 months. Following a second parole hearing on October 23, 2019, the full Board denied Kiett parole and imposed a thirty-six-month FET. On March 12, 2021, Kiett had an initial hearing on his third parole application, which is the subject of this appeal. The hearing officer referred Kiett for a Board panel hearing. On April 16, 2021, the panel referred Kiett for a full Board hearing. On June 22, 2021, Kiett, who was then almost fifty-six years old, appeared for his hearing via video conference.

During the hearing, Kiett responded to Board members' questions about the details of the murder, his attempted escape, his upbringing, his drug use, his school record, his prior juvenile history, his institutional infractions, his participation in numerous programs, his physical and mental condition, his reunification with family members, and his re-entry plan. As he had in prior

Board hearings, Kiett cited his excessive drug use and turbulent upbringing as influencing the violent outburst that led him to murder the victim. He explained that he was committed to maintaining his sobriety because drug use was "what got [him] in [prison]."

In response to Board members' questions, Kiett repeatedly took full responsibility for the murder, recanted a prior claim that a co-conspirator had been involved, expressed remorse, and stated there was "no justification" for his actions. Kiett acknowledged that he had previously been denied parole because he "could[not] recall several accounts of what took place on th[e] day [of the murder]," and maintained that his memory of the incident itself was still incomplete because of his drug use. However, for the first time during a parole hearing, Kiett attributed his motive for the crime to retribution.

In that regard, Kiett explained to Board members that he believed the victim was associated with two people who had killed his dog three days before the murder by bludgeoning the dog with a hammer. Kiett stated he disrobed the victim and left her in the marsh "[t]he way [the victim's associates had] demeaned [his] dog and left him . . . in the marsh area." Kiett acknowledged that he had not raised the death of his dog as a motivation during his last full

Board hearing in 2019. Nonetheless, Kiett reiterated that "[t]here[was] no justification for what [he] ha[d] done."[3]

A Board member who had participated in his 2012 parole hearing commented on the change in Kiett's story and asked Kiett to further explain. Kiett stated that during his first hearing, he "did[not] understand how accountability really goes." He explained that "[he] was ashamed to even . . . say that . . . these [were] the reasons why [he had] murdered [the victim]" because "that reason . . . was just unjustifiable in anybody's mind that you would just react over something . . . like that."

The Board member commented that Kiett's new disclosure "seem[ed] contrived" because over the years, Kiett had "said a whole lot of different things as to how [the victim] was killed, and now . . . [,] in 2021[, Kiett] ha[d] this completely different story that . . . literally c[ame] out of nowhere."[4] The Board member asked Kiett, "Do you feel like that helps your presentation today?" Kiett answered in the negative, explaining that he had "been asked . . . on

[3] During his psychological evaluation with Mucowski, Kiett had attributed the "murder to his belief that [the victim] had killed his dog," among other things.

[4] Specifically, the Board member recounted that Kiett had claimed that he was "insane," that he had "watched somebody else do it," and that he "[was not] even there."

numerous occasions" to recall exactly what had happened, and he was "tryin[g] to do [his] best to try to recall what compelled [him] or what catapulted [him] to do what [he] did." Kiett also stated that since his first parole denial, he had "tried to do [his] best to make substantial progress" and to show that he had matured and was not the "same cold[-]minded . . . individual" he was "[forty] years ago."

Following the hearing, the Board orally denied parole and later issued a Notice of Decision memorializing the denial and imposing a thirty-six-month FET. In the Notice of Decision, the mitigating factors listed were: (1) "[m]inimal offense record"; (2) "[i]nfraction[-]free since last panel"; (3) participation in behavioral and institutional programs; (4) "[a]ttempt[s] made to enroll and participate in program[s] but . . . not admitted"; (5) "[i]nstitutional reports reflect[ing] favorable institutional adjustment"; and (6) achievement and maintenance of minimum custody status.

The reasons for denial of parole were listed as follows: (1) "[f]acts and circumstances of [underlying] offense[]"; (2) "[p]rior offense record"; (3) "[n]ature of criminal record increasingly more serious"; (4) "[c]ommitted to incarceration for multiple offenses"; (5) "[c]ommitted new offense[]" while on "probation"; (6) "[p]rior opportunity[] on community supervision . . . failed to

deter criminal behavior"; (7) "numerous," "persistent," and "serious" institutional infractions resulting in "loss of commutation time, confinement in detention, and . . . [a]dministrative [s]egregation"; (8) "[i]nsufficient problem[] resolution," specifically, "lack of insight into criminal behavior"; (9) "[c]ommission of current offense[] while incarcerated"; and (10) "[r]isk assessment evaluation."

In explaining Kiett's "lack of insight into [his] criminal behavior," the decision noted:

> At the current hearing, [Kiett] provided a version of the murder, including a motive, that he ha[d] not previously offered, ever. [Kiett] assert[ed] he stripped the victim naked and stabbed her [twenty-eight] times to demean her. That was in retribution for the victim watching his dog killed by her two friends. [Kiett] needs to develop an understanding [of] why he chose the path of violent criminal thinking to resolve a conflict. In the past, [Kiett] ha[d] cited drug use and familial dysfunction as reasons for his conduct. However, based on [Kiett's] new revelation, it is apparent there are emotional issues that [Kiett] is only now, willing to discuss.

Kiett administratively appealed the June 22, 2021 decision denying parole and asked the Board to reduce the FET to twenty-seven months.[5] In his appeal,

[5] "An inmate serving a murder sentence is presumptively assigned a twenty-seven-month FET after a denial of parole." Berta, 473 N.J. Super. at 306 (citing N.J.A.C. 10A:71-3.21(a)(1)). However, N.J.A.C. 10A:71-3.21(d) authorizes the Board to set a higher FET under certain circumstances.

Kiett challenged the decision on several grounds. On October 27, 2021, the Board issued a final agency decision affirming its prior ruling from the June 22 hearing. In support, the Board reiterated its findings of mitigating and aggravating factors delineated in the Notice of Decision and rejected Kiett's contentions "that the Board's decision was 'arbitrary and capricious,'" that the Board had failed to comply with its own "policy" and "procedure," as well as "the Parole Act of 1979," and "that the Board [had] failed to document that a preponderance of evidence indicate[d] that a substantial likelihood exist[ed] that [Kiett] would commit a new crime if released on parole, pursuant to N.J.A.C. 10A:71-3.11(b)(17)."

The Board explained:

> [T]he Board may consider statements given by an inmate reflecting on the substantial likelihood that he will commit another crime. Based on your responses to questions posed by the Board at the time of the hearing, the Board appropriately determined that you exhibit insufficient problem resolution, specifically, that you lack insight into your criminal behavior. . . .
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> . . . [T]he Board noted on the Notice of Decision its consideration of your newly[-]recognized motive that you provided for your crime at the hearing, that you brutally killed the victim in retribution for her watching her friends kill your dog. The Board notes that while acknowledging the motive for and the serious consequences of your criminal activity are a step towards rehabilitation, they represent only an initial

> effort at rehabilitation. The Board further finds that your recognition of a motive for your commission of the crime and your programming may help you to develop insight into the causes of your criminal behavior, but is only the start of an understanding towards a change in your behavior. Therefore, in assessing your case, the Board concurs with its determination based on the aggregate of all relevant factors, there is a substantial likelihood that you will commit another crime if released on parole at this time.

The Board also rejected Kiett's contention that "[his d]ue [p]rocess rights and the Ex Post Facto Clause of the [United States] Constitution were unreasonably violated" by the Board's reliance "on the same factors to deny parole" as those used in the past "rather than new information." The Board concluded "it did not violate" Kiett's constitutional rights, reasoning:

> The Board carefully and thoroughly reviewed all the reports contained in your file and based its decision on the totality of the information in the administrative record. You were given the opportunity to meet with the Board and to provide information during your hearing. . . . Therefore, the Board finds your appeal based on the contention that your due process[] rights were violated is without merit.
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> Further, the Parole Act of 1979 was amended in 1997 and pursuant to those amendments, the Board is no longer restricted to considering only new information at each time of parole consideration. The Board notes that the Supreme Court of New Jersey ruled . . . that the 1997 amendment eliminating consideration of "new information" with respect to [a] subsequent parole application after denial of parole was

> a procedural modification that did not constitute a substantive change in parole release criteria, and thus, application of the amendment to an inmate who was sentenced prior to 1997 does not violate the [E]x [P]ost [F]acto [C]lause. Therefore, the Board finds that it appropriately considered your entire record, . . . as well as recent information and new developments since your last parole hearing. Therefore, your contention that the Board violated the Ex Post Facto Clause . . . is found to be without merit.

This appeal followed.

On appeal, Kiett raises the following points for our consideration:

> POINT I
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> THE PAROLE DETERMINATION WAS MADE IN VIOLATION OF THE EIGHTH AMENDMENT AND ART. I, PAR. 12 BECAUSE THE PAROLE BOARD DID NOT CONSIDER YOUTH AND ITS ATTENDANT CIRCUMSTANCES OR PROVIDE . . . KIETT WITH A MEANINGFUL AND REALISTIC OPPORTUNITY FOR RELEASE BASED ON MATURITY AND REHABILITATION. (NOT RAISED BELOW).
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> > A. The Parole Determination Was Made [I]n Violation [O]f [T]he Eighth Amendment [A]nd Art. I, Par. 12, [A]s Well [A]s [T]he State [A]nd Federal Due Process Clauses.

B. The Constitutional Protections Identified [I]n Graham,[6] Miller, Montgomery,[7] Zuber,[8] [A]nd Comer Apply [T]o Parole Hearings.

C. The New Jersey Parole Process Does Not Provide Juvenile Offenders [W]ith [A] Meaningful [A]nd Realistic Opportunity [F]or Release Based [O]n Maturity [A]nd Rehabilitation, Nor Does It Provide Juvenile Offenders [W]ith [T]he Due Process Protections [T]o Which They Are Entitled.

D. If [T]he Parole Panel Had Properly Focused [O]n . . . Kiett's Youth [A]nd Attendant Circumstances, [A]nd His Current Rehabilitation [A]nd Maturity, [A]s Constitutionally Required, It Would Have Released Him. Therefore, [T]his Court Should Order His Release.

POINT II

IT WAS AN UNCONSTITUTIONAL EX POST FACTO VIOLATION FOR THE PAROLE BOARD TO CONSIDER ANYTHING OTHER THAN "NEW INFORMATION" WITHIN THE MEANING OF THE APPLICABLE 1979 PAROLE ACT IN DENYING . . . KIETT'S PAROLE.

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6 Graham v. Florida, 560 U.S. 48 (2010).

7 Montgomery v. Louisiana, 577 U.S. 190 (2016).

8 State v. Zuber, 227 N.J. 422 (2017).

POINT III

THE PAROLE BOARD ABUSED ITS DISCRETION IN RELYING ON . . . KIETT'S PURPORTED LACK OF INSIGHT AND INSUFFICIENT PROBLEM SOLVING AS A BASIS FOR ITS DECISION. THE RECORD DOES NOT ESTABLISH . . . KIETT HAS A SUBSTANTIAL LIKELIHOOD OF RECIDIVISM.

A. The Parole Board's [U]se [O]f "[I]nsufficient [P]roblem [R]esolution" [A]nd "[L]ack [O]f [I]nsight" [W]ithout [D]efining [T]hem [A]nd [T]heir [N]exus [T]o [T]he [U]ltimate [S]tatutory [S]tandard [C]onstitutes [A]n [A]buse [O]f [D]iscretion [T]hat [V]iolates [T]he [R]equired [R]ulemaking [P]rocess.

B. . . . Kiett's Inability [T]o Remember [O]r Explain [T]he Details [O]f [O]r [T]he Reasons [F]or The Offense (His Purported "Lack [O]f Insight") Cannot Be Held Against Him [A]nd Is Not Indicative [O]f His Risk [O]f Recidivism.

C. This Court Should Order His Release Because There Is No Substantial Likelihood [O]f Recidivism.

II.

We begin by acknowledging our standard of review and the legal principles governing this appeal. "The scope of our review is narrow." Berta v. N.J. State Parole Bd., 473 N.J. Super. 284, 302 (App. Div. 2022). We will disturb an agency's decision

> only if we determine that the decision is "arbitrary, capricious or unreasonable" or is unsupported "by substantial credible evidence in the record as a whole." In determining whether an agency action is arbitrary, capricious, or unreasonable, we examine:
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> > (1) whether the agency's action violates express or implied legislative policies, that is, 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.
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> [Ibid. (citations omitted) (first quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980); and then quoting In re Carter, 191 N.J. 474, 482 (2007)).]

We are also "deferential to an agency's expertise." Ibid. Parole determinations, in particular, "are entitled to deferential review by our courts," and "[a] mere difference of opinion is not a basis for a court to overturn a parole decision." Acoli v. N.J. State Parole Bd., 250 N.J. 431, 454 (2022). "Although courts are cautioned not to substitute their judgments for that of the Parole Board, when a parole decision is so far wide of the mark or so manifestly mistaken under the governing statutory standard, intervention is required in the interests of justice." Id. at 455.

> With respect to the Parole Board's expertise, we acknowledge that one of its core functions is to evaluate inmates and to make reasoned predictions as to how they will perform if released from prison under the Board's supervision. As our Supreme Court has explained, the Parole Board is "the administrative agency charged with the responsibility of deciding whether an inmate satisfies the criteria for parole release under the Parole Act of 1979 [(Act)]."
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> [Berta, 473 N.J. Super. at 302-303 (quoting In re Hawley, 98 N.J. 108, 112 (1984)).]

Although the Act was revised in 1997, Kiett's parole is governed by the version of the Act in effect when his crime was committed. That version provides that the inmate "shall be released on parole at the time of parole eligibility, unless [it is shown] by a preponderance of the evidence that there is a substantial likelihood that the inmate will commit a crime . . . if released on parole at such time." Id. at 304 (alterations in original) (quoting Acoli, 250 N.J. at 455); see also N.J.S.A. 30:4-123.53 (1979) (amended 1997).[9]

In defining the term "substantial likelihood," the Acoli Court recently explained:

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[9] Today, the Board "may deny parole if it is shown by a preponderance of the evidence that an 'inmate has failed to cooperate in his or her own rehabilitation or that there is a reasonable expectation that the inmate will violate conditions of parole imposed pursuant to [N.J.S.A. 30:4-123.59].'" Acoli, 250 N.J. at 455 n.12 (alteration in original) (quoting N.J.S.A. 30:4-123.53).

> Assessing the risk that a parole-eligible candidate will reoffend requires a finding that is more than a mere probability and considerably less than a certainty. To be sure, the mere "potential" that an inmate if released may reoffend is not sufficient. Only when the risk of reoffending rises to "a substantial likelihood" may a parole-eligible inmate be denied parole.
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> [250 N.J. at 456 (citations omitted) (quoting N.J. State Parole Bd. v. Cestari, 224 N.J. Super. 534, 550 (App. Div. 1988)).]

In making the parole release decision, the Parole Board must assess a number of factors delineated in N.J.A.C. 10A:71-3.11. Under N.J.A.C. 10A:71-3.11(a), "[p]arole decisions shall be based on the aggregate of all pertinent factors." Under N.J.A.C. 10A:71-3.11(b), in addition to "any other factors deemed relevant," the Parole Board shall consider the following twenty-four factors:

> 1. Commission of an offense while incarcerated.
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> 2. Commission of serious disciplinary infractions.
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> 3. Nature and pattern of previous convictions.
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> 4. Adjustment to previous probation, parole and incarceration.
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> 5. Facts and circumstances of the offense.
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> 6. Aggravating and mitigating factors surrounding the offense.

7. Pattern of less serious disciplinary infractions.

8. Participation in institutional programs which could have led to the improvement of problems diagnosed at admission or during incarceration. This includes, but is not limited to, participation in substance abuse programs, academic or vocational education programs, work assignments that provide on-the-job training and individual or group counseling.

9. Statements by institutional staff, with supporting documentation, that the inmate is likely to commit a crime if released; that the inmate has failed to cooperate in his or her own rehabilitation; or that there is a reasonable expectation that the inmate will violate conditions of parole.

10. Documented pattern or relationships with institutional staff or inmates.

11. Documented changes in attitude toward self or others.

12. Documentation reflecting personal goals, personal strengths or motivation for law-abiding behavior.

13. Mental and emotional health.

14. Parole plans and the investigation thereof.

15. Status of family or marital relationships at the time of eligibility.

16. Availability of community resources or support services for inmates who have a demonstrated need for same.

> 17. Statements 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.
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> 18. History of employment, education and military service.
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> 19. Family and marital history.
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> 20. Statement by the court reflecting the reasons for the sentence imposed.
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> 21. Statements or evidence presented by the appropriate prosecutor's office, the Office of the Attorney General, or any other criminal justice agency.
>
> 22. Statement or testimony of any victim or the nearest relative(s) of a murder/manslaughter victim.
>
> 23. The results of the objective risk assessment instrument.
>
> 24. Subsequent growth and increased maturity of the inmate during incarceration.

"The weight to be assigned to any one factor will depend on the unique history, background, and characteristics of the individual and the institutional record developed during years of incarceration." Acoli, 250 N.J. at 457. Still, "[u]nder the governing statutory and regulatory framework, once a defendant becomes eligible for parole, he or she is entitled to 'a presumption in favor of parole.'" Berta, 473 N.J. Super. at 304 (quoting In re Trantino (Trantino II), 89

N.J. 347, 356 (1982)). Thus, "the burden is on 'the State to prove that the prisoner is a recidivist and should not be released.'" Id. at 304-05 (quoting Trantino v. N.J. State Parole Bd. (Trantino VI), 166 N.J. 113, 197 (2001)). "Overcoming the presumption of parole is a 'highly predictive' determination which must take into account 'the aggregate of all of the factors which may have any pertinence.'" Id. at 305-06 (citation omitted) (first quoting Thompson v. N.J. State Parole Bd., 210 N.J. Super. 107, 115 (App. Div. 1986); and then quoting Beckworth v. N.J. State Parole Bd., 62 N.J. 348, 360 (1973)).

In Berta, we pointed out that "the parole release decision is fundamentally different from the decision made by a trial court when imposing the initial sentence." Id. at 305. Although the Parole Board may consider the "'[f]acts and circumstances of the offense' as a relevant factor" under N.J.A.C. 10A:71-3.11(b)(5), "'the gravity of the crime' cannot serve as 'an independent reason for continuing punishment and denying parole' under the 1979 Act." Ibid. (alteration in original) (quoting Trantino II, 89 N.J. at 373-74). "That is because the punitive aspects of the sentence have been satisfied by the time an inmate is eligible for parole." Acoli, 250 N.J. at 457.

III.

In Point I, Kiett argues that New Jersey's system of parole violates the Eighth Amendment of the United States Constitution, Article I, Paragraph 12 of the New Jersey Constitution, and the federal and state due process clauses because it does not provide juvenile offenders serving lengthy prison sentences like Kiett with "a meaningful and realistic opportunity for release based on maturity and rehabilitation." In support, Kiett relies on Miller v. Alabama, 567 U.S. 460 (2012), Graham v. Florida, 560 U.S. 48 (2010), Montgomery v. Louisiana, 577 U.S. 190 (2016), State v. Zuber, 227 N.J. 422 (2017), and State v. Comer, 249 N.J. 359 (2022). Kiett asserts that our parole system has not properly incorporated these precedents by considering the significance of "a juvenile offender's youth and attendant circumstances" at the time of the crime before making a parole determination, and urges us to release Kiett on parole based on the present record, rather than remanding to the Board for further proceedings.

The United States Supreme Court has established through a series of landmark decisions that juveniles are developmentally different from adults and individualized consideration of these differences is necessary prior to imposing the harshest punishments available under the law. See, e.g., Roper v. Simmons, 543 U.S. 551, 578 (2005) (holding that imposing the death penalty on defendants

convicted as juveniles violates the Eighth Amendment). In Graham, the Supreme Court held that imposing life terms without parole on juvenile offenders convicted of non-homicide offenses is unconstitutional. 460 U.S. at 75. In Miller, the Supreme Court extended Graham's holding to homicide cases. Miller, 567 U.S. at 479. The Supreme Court confirmed in Montgomery that "Miller announced a substantive rule that is retroactive in cases on collateral review." Montgomery, 577 U.S. at 206.

The Supreme Court's holdings in these cases were predicated on "scientific and sociological notions about the unique characteristics of youth and the progressive emotional and behavioral development of juveniles." State ex rel. C.K., 233 N.J. 44, 68 (2018). These notions acknowledge that "[j]uveniles are more capable of change than are adults, and their actions are less likely to be evidence of 'irretrievably depraved character.'" Graham, 560 U.S. at 68 (quoting Roper, 543 U.S. at 570). In Miller, the Supreme Court identified five factors that distinguish juveniles from adults. 567 U.S. at 477-78. Those factors, commonly referred to as "the Miller factors," are a "defendant's 'immaturity, impetuosity, and failure to appreciate risks and consequences'; 'family and home environment'; family and peer pressures; 'inability to deal with police officers or prosecutors' or his own attorney; and 'the possibility of

rehabilitation.'" Zuber, 227 N.J. at 453 (quoting Miller, 567 U.S. at 477-78). Nonetheless, "Miller did not rule out the possibility of life without parole for a juvenile who commits homicide." Comer, 249 N.J. at 387 (citing Miller, 567 U.S. at 479-80). "Instead, it requires judges 'to take into account how children are different . . . .'" Ibid. (quoting Miller, 567 U.S. at 480).

Our Supreme Court adopted these holdings in Zuber and held that "Miller's command that a sentencing judge 'take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison,' applies with equal strength to a sentence that is the practical equivalent of life without parole." Zuber, 227 N.J. at 446-47 (citation omitted) (quoting Miller, 567 U.S. at 480). The Zuber Court instructed that "[t]he focus at a juvenile's sentencing hearing belongs on the real-time consequences of the aggregate sentence," and, "[t]o that end, judges must evaluate the Miller factors when they sentence a juvenile to a lengthy period of parole ineligibility." Id. at 447.

Applying those principles, the Zuber Court concluded that:

> The term-of-years sentences in these appeals—a minimum of [fifty-five] years' imprisonment for Zuber and [sixty-eight] years and three months for Comer—are not officially "life without parole." But we find that the lengthy term-of-years sentences imposed on the juveniles in these cases are sufficient to trigger the

> protections of Miller under the Federal and State Constitutions. Defendants' potential release after five or six decades of incarceration, when they would be in their seventies and eighties, implicates the principles of Graham and Miller.
>
> [Id. at 448 (citation omitted).]

In Comer, the Court applied "the backdrop of the United States Supreme Court's pronouncements" and the Zuber reasoning to hold that the mandatory minimum sentence of thirty years required under N.J.S.A. 2C:11-3(b)(1) was not constitutional as applied to juveniles absent "a later opportunity to show [the defendant had] matured, to present evidence of their rehabilitation, and to try to prove they are fit to reenter society." Comer, 249 N.J. at 401. Facing legislative inaction on the constitutional issue posed by the lengthy parole disqualifier for juvenile offenders, the Court fashioned a judicial remedy. See id. at 369-71. That remedy "permit[s] juvenile offenders convicted under the law to petition for a review of their sentence after they have served two decades in prison," at which point "judges will assess" the Miller factors "which are designed to consider the 'mitigating qualities of youth.'" Id. at 370 (quoting Miller, 567 U.S. at 476-78).

In State v. Bass, 457 N.J. Super. 1, 12-14 (App. Div. 2018), and State v. Tormasi, 466 N.J. Super. 51, 67-68 (App. Div. 2021), we determined that the

opportunity for parole was a sufficient safeguard against cruel and unusual punishment challenges by juvenile offenders. In Bass, although the defendant was convicted as a juvenile and received a life sentence with a thirty-five-year parole disqualifier, we determined that Zuber did not apply to the forty-nine-year-old defendant because enough time had elapsed that the defendant was "eligible for parole." Bass, 457 N.J. Super. at 13-14. In Tormasi, we rejected the defendant's argument that the future opportunity to apply for parole did not satisfy Zuber, noting that "[b]oth federal and [s]tate precedent on cruel and unusual punishment support a finding that the possibility of parole provides a meaningful opportunity for release." Tormasi, 466 N.J. Super. at 67.

Here, Kiett's reliance on a line of cases addressing the constitutional proscriptions against sentencing juveniles to lengthy mandatory sentences is misplaced. Kiett is not challenging his sentence, but rather the Board's parole decision. However, that decision does not implicate the cases addressing the sentencing of juvenile offenders. Kiett also argues that the Board's analysis is flawed because the parole factors under N.J.A.C. 10A:71-3.11 do not mandate the consideration of factors related to an applicant's youth at the time of the offense. However, a review of the non-exhaustive list of factors delineated in N.J.A.C. 10A:71-3.11 belies that claim. In sum, we reject Kiett's request to

grant him parole or impose additional burdens on the Board in making parole decisions for juvenile offenders as not supported by the relevant statutes, regulations, or precedents. See State v. Thomas, 470 N.J. Super. 167, 198 (App. Div. 2022) (criticizing the parole process in relation to the "'heightened review' of the constitutionality of an extremely lengthy incarceration of a juvenile offender who has been a model prisoner" rather than "a generalized finding that the parole process is procedurally deficient or unfair").

In Point II, Kiett argues that "[u]nder the 1979 version of the Parole Act," which applied to Kiett's parole decision, "the Parole Board c[ould] only . . . deny [him] parole if 'new information' added to the record since his last hearing indicated that there [was] a substantial likelihood he would commit another offense." While acknowledging that "the Act was amended in 1997 to remove that limitation so [that] the Board could consider any and all information in its decision," Kiett asserts that "the Ex Post Facto Clause proscribes the application of the 1997 statute to . . . Kiett's parole process." Thus, according to Kiett, the Parole Board "erred in using the 1997 statute, not limiting its consideration to new information, and denying . . . Kiett parole."

In support, Kiett asserts that this court's decision in Trantino v. New Jersey State Parole Board (Trantino V), 331 N.J. Super. 577, 607-11 (App. Div.

2000), was recently overruled by Holmes v. Christie, 14 F.4th 250, 268 (3d Cir. 2021). According to Kiett, Trantino V had held that retroactive application of the pertinent provision of the 1997 statute, the information clause, did not violate ex post facto principles. Presuming that Trantino V is no longer good law, Kiett argues that any application of the 1997 Parole Act amendments to parole applicants sentenced before that amendment was effective, like Kiett, is a violation of the Ex Post Facto Clause.

In Trantino V, we delineated the section of the 1979 Parole Act "govern[ing] determinations of eligibility after the initial eligibility date," which stated that "'[a]n inmate shall be released on parole on the new parole eligibility date unless new information'" indicated that the inmate failed to satisfy the parole release criteria. 331 N.J. Super. at 607. We noted that the "new information" mandate was deleted by the 1997 amendment. Id. at 608-09. Although we acknowledged that "the 1997 amendment does not apply to inmates sentenced before 1997," id. at 605, we determined that the 1997 amendment was a "procedural modification," not a "substantive change in the parole release criteria" or in the "parole eligibility standard" of the 1979 enactment, id. at 610. Thus, we held that the Parole Board could apply the 1997 amendment "to consider all information, old and new," because that would not alter whatever

substantive standard applied, and would "simply allow[] the Board to consider all available evidence relevant to the application of that standard." Id. at 610-11.

We explained that in the absence of a substantive change, there was no violation of the Ex Post Facto Clause because the threshold for such a violation was "'whether the [new] statute realistically produce[d] a sufficient risk of increasing the measure of punishment.'" Id. at 610 (quoting Loftwich v. Fauver, 284 N.J. Super. 530, 536 (App. Div. 1995)). The question of whether "'legislative adjustments to parole and sentencing procedures'" posed such a risk was "'one of degree,'" and we concluded that the 1997 amendment did not pose such a risk. Id. at 610-11 (quoting Loftwich, 284 N.J. Super. at 536).

In Holmes,

> which involve[d] a civil rights claim pursuant to 42 U.S.C. § 1983, the Third Circuit Court of Appeals held that retroactive application of the 1997 amendment would violate the ex post facto clause if discovery were to show "that the Board implemented the all-information provision in a way that created a significant risk of prolonging [the inmate's] incarceration,"—a "fact-sensitive inquiry."
>
> [Berta, 473 N.J. Super. at 316 (second alteration in original) (quoting Holmes, 14 F.4th at 260).]

In Berta, we agreed that an inmate's parole "is governed by the version of the Parole Act of 1979 . . . in effect when his crime was committed." Id. at 304. Likewise, the Acoli Court "appl[ied] the statute governing parole at the time of [the inmate's] conviction." 250 N.J. at 455 n.12. Notably, in addressing the State's parole scheme, the Acoli Court left the Trantino precedents undisturbed without citing Holmes, see Acoli, 250 N.J. at 458-61, notwithstanding the fact that Holmes had been decided eight months earlier, 14 F.4th at 250.

In Berta, we declined to address whether Holmes had overruled Trantino V, opting instead to invoke the "principle of constitutional avoidance." Berta, 473 N.J. Super. at 317 (citing Comm. to Recall Robert Menendez From The Off. of U.S. Senator v. Wells, 204 N.J. 79, 95 (2010)). We avoided the constitutional question by "relying on non-constitutional grounds" to preclude the Board from considering "negative information" about matters that "occurred before the [prior] parole hearing" as the 1997 amendment would otherwise allow. Ibid.

There is nothing in the Holmes decision that expressly overrules Trantino V. Holmes, 14 F.4th at 264-67. Admittedly, the Holmes decision sharply criticizes Trantino V and its formalistic distinction "between substantive rules and procedural ones." Id. at 264. However, the Holmes court

acknowledged "that comity counsels caution before we part ways with New Jersey's Appellate Division," id. at 265, and remanded the case to the District Court "for discovery," id. at 268. In support, the Holmes court explained that because the case was presented to the court "on the pleadings," it was possible that "more information about the Board's decision . . . , and about its practices more generally," might lead "the District Court" to "reach a different result on remand" about whether the application of the 1997 amendments in Holmes's particular case "create[d] a significant risk of prolonging [his] incarceration." Id. at 267-68 (second and third alterations in original) (quoting Garner v. Jones, 529 U.S. 244, 251 (2000)). Thus, the court concluded that its decision only "show[ed] that Holmes's claim [was] seaworthy—not unsinkable." Id. at 267.

The Holmes remand proceedings are still ongoing. Holmes v. Christie, No. 2:16-cv-1434 (D.N.J. May 23, 2023) (LEXIS, CourtLink, U.S. District Court Docket). Thus, currently, Trantino V controls on the dispositive issue—that the information clause of the 1997 amendments to the 1979 Parole Act is procedural, rather than substantive, and thus does not violate the Ex Post Facto Clause. Relying on Trantino V, we therefore reject Kiett's contention that the Parole Board violated ex post facto principles by applying the 1997 statute and considering both old and new information in its decision.

In Point III, Kiett argues that the terms "insufficient problem resolution" and "lack of insight," terms that "are not listed" among the N.J.A.C. 10A:71-3.11 factors, "are undefined" and "conclusory," and "[t]he Parole Board abused its discretion in relying on . . . [those considerations] to justify denying [him] parole." Kiett contends that "[g]iven the passage of time, . . . [his] substance abuse, mental health problems and intellectual disability," his "inability to accurately recall the details of the offense does not demonstrate that he has a substantial likelihood of committing another offense -- the only question at issue." In Kiett's reply brief, submitted after the Acoli and Berta decisions, he argues that "the Parole Board abused its discretion in: (1) myopically focusing on . . . Kiett's purported lack of insight and insufficient problem resolution instead of focusing [on] . . . Kiett's likelihood of recidivism; and (2) in failing to explain[] why . . . Kiett's purported lack of insight presaged a substantial likelihood of recidivism."

In Acoli, the Court considered a challenge to the Board's parole decision regarding Sundiata Acoli, who was convicted of murdering a state trooper and wounding another in 1973. 250 N.J. at 435-36. The Board denied Acoli's parole application "despite 'the significant mitigating evidence in the record,' including Acoli's advanced age, medical history, and 'record of rehabilitative program

participation,'" because it believed "that evidence was outweighed by the aggravating factors, particularly his 'insufficient problem resolution.'" Id. at 453. The Board went on to explain "that there was a substantial likelihood that Acoli would reoffend if paroled based on 'the entire administrative paper record, the new psychological evaluation, and importantly, Acoli's own responses' at his parole hearing." Id. at 454.

The Court overturned the Board's decision and ordered Acoli's release. Id. at 472. The Court's first issue with the Board's denial was that the Board had misapplied the statutory standard. Id. at 455. That standard required the Board to find "that there is a substantial likelihood that the inmate will commit a crime under the laws of this State if released on parole at such time." N.J.S.A. 30:4-123.53(a) (1979) (amended 1997). According to the Court, "'[l]ikelihood' is defined as a 'probability,' or 'the appearance of probable success,' and 'substantial' is defined as 'considerable in amount' or 'being that specified to a large degree.'" Acoli, 250 N.J. at 455-56 (quoting Webster's Third International Dictionary 1310, 2280 (1981)). The Court concluded that the "substantial likelihood" standard set "a fairly high predictive bar" for the Board that had not been met.

The Court next criticized the Board's "hyper-focus on Acoli's recollection of the events and its inherent finding that his account lacked credibility." Id. at 460. The Court found that the Board "ha[d] taken refuge in threadbare findings that Acoli lack[ed] insight into the conduct that led him to his involvement in the crimes he committed in 1973 and that he still refuse[d] to take responsibility for his acts." Ibid. The Court thus "conclude[d] that the Board's finding that there is a substantial likelihood that Acoli will commit a crime if paroled [was] not supported by substantial credible evidence in the record." Id. at 461.

The Court went on to discuss Acoli's full Board hearing in detail. Id. at 461-63. The Court noted with disapproval that, after the Board asked Acoli who killed the state trooper "no less than a dozen times" to no effect, a Board member asked Acoli to speculate who could have shot the state trooper. Id. at 462. Acoli speculated that it could have been friendly fire. Ibid. The Court summarized its view on this exchange as follows:

> The confused conjecture surely did not match the ballistic evidence. But the Parole Board erroneously stated that Acoli had "chosen to speculate who fired the fatal shots." Indeed, the Board demanded that Acoli speculate and then chided him for doing so: "[Y]ou have never before speculated as to who you believed shot and killed the trooper"; "you chose to deviate from your past statements and speculated that the trooper was killed by friendly fire"; and "it is disturbing that you would make such conjecture."

> The Parole Board made no distinction between the consistent accounts that Acoli had given based on his recollection and the speculation that the Board demanded. Acoli did not change his story, as the Board asserts, and as the Appellate Division majority mistakenly maintained. Instead, he acceded to the Board's urging that he speculate. The changed-story canard became a seemingly pivotal basis for denying Acoli parole.
>
> [Ibid. (alteration in original).]

The Court then chided the Board for subjecting a seventy-nine-year-old inmate to "six hours of questioning about events that occurred almost fifty years ago" before opining that "Acoli's eligibility for parole does not depend on his reciting a version of the events that are acceptable by the Parole Board." Id. at 462-63.

In Berta, we "review[ed] the Acoli decision in detail" because we were "convinced that the Supreme Court intended to provide guidance and instruction—to the Parole Board and appellate courts as well—on how to resolve remaining cases in the pipeline that apply the parole standards under the pre-1997 version of the Parole Act." Berta, 473 N.J. Super. at 307. In Berta, the Board found that the inmate's refusal to admit he committed the crime he was convicted of constituted "insufficient problem resolution." Id. at 289. We determined that, in the wake of Acoli, "even accepting that 'insufficient problem resolution' or 'negative thinking' can be a relevant consideration, our principal

concern . . . [was] that the Board ha[d] not explained why Berta's refusal to acknowledge his guilt translate[d] into a substantial likelihood that he would re-offend." Id. at 319.

We criticized "[t]he Board's analysis" as "superficial and conclusory." Ibid. "While we acknowledge[d] the Board's expertise in addressing inherently subjective questions," we pointed out that "we need not defer to what is tantamount to a 'net' opinion, that is, one that does not explain the basis for the conclusion." Ibid. Accordingly, we remanded to the Board to explain "why, considering the totality of relevant circumstances militating in favor of parole, Berta's ongoing protestation of innocence supports the conclusion by a preponderance of the evidence that there is a substantial likelihood that he will reoffend." Id. at 321. We declined to retain jurisdiction in part because Acoli "sent a clear message that the Board will heed going forward." Ibid.

Here, based on the recent decisions in Acoli and Berta, we are compelled to remand to the Parole Board for additional development of the record. We fully recognize that Kiett committed a horrific murder when he was seventeen years old. However, the Board's findings in this case exhibit the same flaws identified in Acoli and Berta and do not "support[] the conclusion by a preponderance of the evidence that there is a substantial likelihood that [Kiett]

will reoffend." Ibid. The brief references in the Board's decision to Kiett's lack of insight primarily relate to Kiett's revelation of an additional motive for the murder and its purported correlation to his readiness to "change . . . [his] behavior." However, other than conclusory statements, the Board does not explain how that premise leads to the conclusion that Kiett lacks insight or exhibits insufficient problem resolution, or how those factors contribute to a substantial likelihood Kiett would reoffend. Our analogy in Berta to a net opinion is apt here as well. Id. at 319; cf. Pomerantz Paper Corp. v. New Cmty. Corp., 207 N.J. 344, 372 (2011) ("[A]n expert's bare opinion that has no support in factual evidence or similar data is a mere net opinion which is not admissible and may not be considered.").

Likewise, as the Court reaffirmed in Acoli, "an inmate's inadequate or inaccurate recollection of the specifics of his crime does not directly bear on whether there is a substantial likelihood that he will reoffend today and cannot form the basis for denying parole." 250 N.J. at 463. Guided by this principle, the Board's decision provides an inadequate basis on which its conclusion can be evaluated. "Instead, the Board has taken refuge in threadbare findings that [Kiett] lacks insight into the conduct that led him to his involvement in the crime[] . . . ." Id. at 460. As in Acoli, by "concentrat[ing] its attention on the

details of the crime to the exclusion of much else, such as his institutional progress," the Board "lost sight that its mission largely was to determine the man [Kiett] had become." Id. at 463.

Additionally, the Board members' questioning of Kiett repeats some of the missteps identified in Acoli. See id. at 462. Specifically, Kiett was asked by a Board member to speculate why he introduced for the first time during his third parole attempt new information about his motivation for the crime. Other members challenged the dog story, asking Kiett to speculate why he did not pursue other means of seeking revenge. The Acoli Court cautioned that such calls for speculation may create confusion, and in that confusion, the Board may fail to distinguish between "consistent accounts that [Kiett] had given based on his recollection and the speculation that the Board demanded." Ibid. The Acoli Court also criticized the Board for the way it conducted Acoli's parole hearing, subjecting a seventy-nine-year-old individual to six hours of questioning with a particular focus on criminal offenses that had occurred over four decades earlier and minimal focus on mitigating factors. Id. at 462-63.

Here, Kiett, almost fifty-six years old, was questioned by nine Board members, seven of whom asked questions about Kiett's recollection, or lack thereof, of the specific details of a crime he committed nearly four decades

earlier. Although the length of the questioning is not apparent in the record, much of the questioning focused on the circumstances of the crime, Kiett's decision to supplement his account to include additional motivation for his actions, and his juvenile and institutional disciplinary record. Missing from the questioning or the written decision was any discussion of Kiett's youth at the time he committed the crime and his subsequent growth and maturity during his incarceration.

Indeed, if the opportunity for and possibility of parole "based on demonstrated maturity and rehabilitation" are a safeguard against cruel and unusual punishment for juvenile offenders serving life sentences, Graham, 560 U.S. at 75, then youth must be considered as a relevant factor in determining whether the Board abused its discretion in denying parole. See N.J.A.C. 10A:71-3.11(b)(24); cf. Acoli, 250 N.J. at 469 (explaining that "advanced age" is a "highly relevant factor in determining whether the Board abused its discretion in denying parole").

> Research reveals that most juveniles desist from crime before 30 years have passed from the time of their offense. Scientists refer to that as the "age-crime curve," which shows "that more than 90% of all juvenile offenders desist from crime by their mid-20s." Laurence Steinberg, The Influence of Neuroscience on U.S. Supreme Court Decisions about Adolescents' Criminal Culpability, 14 Neuroscience 513, 516

> (2013); see also Terrie E. Moffitt, Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy, 100 Psych. Rev. 674, 675 (1993) ("When official rates of crime are plotted against age, the rates for both prevalence and incidence of offending appear highest during adolescence; they peak sharply at about age 17 and drop precipitously in young adulthood."). The "age-crime curve" is at odds with the notion that juveniles, as a category of offenders, must be incapacitated for several decades to protect the public.
>
> [Comer, 249 N.J. at 399-400 (footnote omitted).]

Yet, nothing in the Board's decision suggests that the Board considered in any meaningful way Kiett's youth when he committed the murder and his subsequent growth and maturity during his incarceration. See Thomas, 470 N.J. Super. at 197 (ordering a Comer-type hearing "to provide a 'meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation' achieved while imprisoned" for a defendant "who was sentenced to life in prison without a specified period of parole ineligibility and has been incarcerated for over forty years for crimes committed when a juvenile, has a blemish-free disciplinary record, has received numerous positive psychological evaluations, and has completed rehabilitative programs while incarcerated" (quoting Zuber, 227 N.J. at 452)).

We are satisfied that these issues and omissions compromised the Parole Board's ability to make proper findings giving due consideration to all of the factors which weigh on a parole applicant's likelihood to reoffend. Acoli, 250 N.J. at 463-64. Stated differently, we are convinced the Board's decision was not supported by adequate findings of fact. As such, we instruct the Board to account for and adequately explain all relevant factors in determining whether the preponderance of the evidence establishes a substantial likelihood that Kiett will reoffend. We do not retain jurisdiction because we anticipate that the Board will appropriately address these issues during the remand proceedings. Because "[w]e expect the Board to act in good faith in fulfilling its responsibilities on remand," Berta, 473 N.J. Super. at 321, if the Board determines that the preponderance of the evidence does not establish a substantial likelihood that Kiett will reoffend, we expect "it will grant him parole of its own accord and without the need for further appellate review." Ibid.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.