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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3293-20**

RICHARD REDDEN,

Appellant,

v.

**NEW JERSEY STATE
PAROLE BOARD,**

Respondent.

Submitted May 9, 2023 - Decided June 5, 2023

Before Judges Fisher and Chase.

On appeal from the New Jersey State Parole Board.

Richard Redden, appellant pro se.

Matthew J. Platkin, Attorney General, attorney for respondent (Sookie Bae-Park, Assistant Attorney General, of counsel; Dorothy M. Rodriguez, Deputy Attorney General, on the brief).

PER CURIAM

While on parole, Richard Redden and two others kidnapped a victim at gunpoint and demanded money and drugs. They then handcuffed the victim, drove the victim to his uncle's house and forced him into the home. Redden shot the uncle in the face causing blindness in one eye. Redden then turned his gun on the victim and shot him in the head killing him.

In May of 1987, Redden was convicted of murder, three counts of felony murder, one count of possession of a weapon for unlawful purpose, kidnapping, robbery and receiving stolen property. He was sentenced to an aggregate sentence of life with a thirty-year mandatory minimum. Redden was also ordered to serve this sentence consecutively to an indeterminate sentence of ten years and six months for his parole violation for burglary, theft, and escape.

Redden appeals from a final decision of the New Jersey State Parole Board denying his parole and establishing a 120-month Future Parole Eligibility Term (FET). We affirm.

During his incarceration, Redden has committed thirty-four infractions. These infractions included twenty "asterisk" infractions, which are considered the most serious offenses for inmates to commit in prison. See Mejia v. N.J. Dep't of Corr., 446 N.J. Super. 369, 372 n.3 (App. Div. 2016). Redden's infractions include multiple assaults, fights, threats, drugs, gang affiliations,

possession or introduction of weapons, and setting a fire. His sanctions have included confinement in detention, administrative segregation as well as the loss of 2,675 days of commutation credits.

Redden became eligible for parole for the first time on May 2, 2020, and received an initial hearing on May 12, 2020. The hearing officer then referred the matter to a two-member board panel for a hearing. That panel concluded that Redden demonstrated insufficient problem resolution. Specifically, he had taken no responsibility for his violent criminal thinking and conduct, had minimized his prior and present crimes, had an extensive institutional infraction record, and was insufficient in addressing his substance abuse problem. The panel found that the following aggravating factors applied to Redden: (1) the facts and circumstances of his offenses of murder, robbery and kidnapping; (2) his extensive prior offense record; (3) his repetitive offense record; (4) the increasingly more serious nature of his criminal record; (5) he has been committed to incarceration for multiple offenses; (6) his prior opportunities on community supervision probation had been terminated or revoked for commission of new offenses; (7) his current opportunity on community supervision parole was terminated or revoked for commission of new offenses; (8) he committed new offenses on community supervision probation but his

status was not formally terminated or revoked; (9) he had prior opportunit(ies) on community supervision probation and parole but that has failed to deter his criminal behavior; (10) his prior opportunities on community supervision parole have been violated, terminated, or revoked in the past for technical violation(s); (11) his prior incarceration(s) did not deter his criminal behavior; (12) his commission of numerous, persistent and serious disciplinary infractions, resulting in loss of commutation time and confinement in detention or administrative segregation, with the most recent infraction occurring on June 25, 2010; (13) his insufficient problem resolution; (14) his lack of adequate parole plan to assist in successful reintegration into the community; and (15) the confidential risk assessment evaluation.

The panel found the following mitigating factors: Redden's participation in institutional program(s); his participation in programs specific to his behavior; his attempt to enroll and participate in program(s) but not admitted; and his minimum custody status achieved and maintained. On June 10, 2020, that panel denied parole and referred the matter to a three-member panel to establish an FET outside of the administrative guidelines.

On September 30, 2020, the two-member panel issued an amended case assessment to include Redden's commutation time restored, which was not

reflected in the original case assessment. In addition, the panel amended their reasons for denial indicating that Redden violated his "current opportunity on community supervision" because he committed the murder offense while on parole for his burglary, theft and escape crimes. Likewise, the panel also issued an amended Notice of Decision reflecting the changes made to the amended case assessment, along with its assessment of additional factors, including Redden's participation in programs specific to his behavior and institutional reports reflecting favorable institutional adjustment. Further, the panel replaced the reasons for denial to reflect Redden's current opportunity on community supervision was terminated for the commission of the new offense, as outlined in the amended case assessment. The panel clarified its finding of "insufficient problem resolution," indicating:

[Redden] does not recognize or understand the severity and violence of his criminal behavior, justifies and rationalizes his crimes, inferring he acted in self-defense. Minimizes his numerous serious infractions. Does not understand the triggers and stressors of his drug use . . . [a]s demonstrated by his interview, documentation in case file, and confidential material/professional report.

On October 21, 2020, a three-member panel convened and established a 120-month FET.¹ That panel explained its reasoning in an eleven-page narrative decision and, like the two-member panel, pointed to Redden's insufficient problem resolution. It also considered the same mitigating factors as the two-member panel, as well as two letters of mitigation submitted by Redden.

Redden administratively appealed the respective panels' decisions to the full Board. On April 28, 2021, the full Board affirmed the denial of parole and imposition of a 120-month FET. This appeal followed.

Our scope of review of a Parole Board's decision is limited and deferential. Hare v. N.J. State Parole Bd., 368 N.J. Super. 175, 179-80 (App. Div. 2004). "Appellate review of parole determinations 'focuses upon whether the factual findings made by the Parole Board could reasonably have been reached on sufficient credible evidence in the record.'" Perry v. N.J. State Parole Bd., 459 N.J. Super. 186, 193 (App. Div. 2019) (quoting Trantino v. N.J. State Parole Bd. (Trantino VI), 166 N.J. 113, 199 (2001)). The Board makes more

¹ Because the crime was committed prior to August 19, 1997, his FET is reduced by applicable credits such as commutation, work, and minimum custody credits. Based on the calculation of his current earned credits, Redden's eligibility date is June 9, 2027. This date will be further reduced by the application of any work credits and minimum credits he earns in the future, resulting in a projected eligibility date of July 2026.

"individualized discretionary appraisals" than other state agencies. Ibid. (quoting Trantino VI, 166 N.J. at 173). Therefore, Board decisions may only be reversed if "arbitrary and capricious." Ibid.; see also Acoli v. N.J. State Parole Bd., 224 N.J. 213, 222-23 (2016) ("Judicial review of the Parole Board's decisions is guided by the arbitrary and capricious standard that constrains other administrative action.").

A parole decision is arbitrary and capricious if it is "willful and unreasoning . . . without consideration and in disregard of circumstances." Ibid. (quoting Trantino VI, 166 N.J. at 201). "The burden of showing the agency's action was arbitrary, unreasonable or capricious rests upon the appellant." Bowden v. Bayside State Prison, 268 N.J. Super. 301, 304 (App. Div. 1993). Questions of law are reviewed de novo. See Perry, 459 N.J. Super. at 193-94.

In our review, 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). In particular, "[t]he decision to grant or deny parole has been granted to a legislatively created administrative body comprised of persons having a combined background deemed suitable by the Legislature to make exceedingly

difficult predictive pronouncements about an individual's likelihood to reoffend." Acoli, 224 N.J. at 226. Accordingly, in challenging the Parole Board's decisions, "[t]he burden of showing that an action was arbitrary, unreasonable or capricious rests upon the appellant." McGowan, 347 N.J. Super. at 563.

"The discretionary power exercised by the Parole Board, however, is not unlimited or absolute." Acoli v. N.J. State Parole Bd. (Acoli II), 250 N.J. 431, 455 (2022) (citing Trantino VI, 166 N.J. at 173). "[W]hen 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." Ibid. (citing Trantino VI, 166 N.J. at 192). Thus, a Board decision will not be sustained if it "violates legislative policy, is not supported by 'substantial evidence' in the record, or 'could not reasonably have been made on a showing of the relevant factors.'" Ibid. (quoting Trantino v. N.J. State Parole Bd. (Trantino IV), 154 N.J. 19, 24 (1998)).

Under the Parole Act of 1979, which governs Redden's parole, "[t]he Parole Board must determine by a preponderance of the evidence whether there is a substantial likelihood the inmate will commit another crime if released." Hare, 368 N.J. Super. at 180; see also N.J.S.A. 30:4-123.53(a). "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." Acoli II, 250 N.J. at 456. "The administrative regulations contain a non-exhaustive list of multiple factors the Board may consider in determining whether an inmate should be released on parole." Hare, 368 N.J. Super. at 180 (citing N.J.A.C. 10A:71-3.11(b)).

As the Court in Acoli II explained:

Some of those factors include: facts and circumstances related to the underlying crime; offenses and disciplinary infractions committed while incarcerated; participation in institutional programs and academic or vocational education programs; documentation reflecting personal goals, personal strengths or motivation for law-abiding behavior; mental and emotional health; parole plans; availability of community resources or support services; statements by the inmate reflecting on the likelihood that he [or she] will commit another crime; the failure to rehabilitate; history of employment and education; and statement or testimony of any victim.

[250 N.J. at 457 (citing N.J.A.C. 10A:71-3.11(b)).]

Evidently, "[t]he determination whether there is a substantial likelihood that an inmate will commit another crime if released is largely factual in nature," and "[we] must determine whether the factual finding could reasonably have been

reached on sufficient credible evidence in the whole record." Hare, 368 N.J. Super. at 179-80 (citation omitted).

Having thoroughly reviewed the record pursuant to these principles, we affirm substantially for the same reasons expressed in the Board's final agency decision. We add the following comments to address the assertion that the 120-month FET was arbitrary and capricious.

After denying parole, the Board must establish an FET. N.J.S.A. 10A:71-3.21(a). When a Board panel denies parole to an inmate serving a sentence for murder, under N.J.A.C. 10A:71-3.21(a)(1), the standard FET is twenty-seven months. Pursuant to N.J.A.C. 10A:71-3.21(c), the standard FET "may be increased or decreased by up to nine months when, in the opinion of the Board panel, the severity of the crime for which the inmate was denied parole and the prior criminal record or other characteristics of the inmate warrant such adjustment." However, the Board can exceed the FET guidelines enumerated in N.J.A.C. 10A:71-3.21(a) and (c) if it determines that the presumptive term "is clearly inappropriate due to the inmate's lack of satisfactory progress in reducing the likelihood of future criminal behavior." N.J.A.C. 10A:71-3.21(d). In so doing, the Board shall consider the same non-exhaustive factors enumerated in N.J.A.C. 10A:71-3.11 when determining whether the inmate is suitable for

parole, but the focus must be "squarely on the likelihood of recidivism." McGowan, 347 N.J. Super. at 565.

Applying our deferential standard of review, we are satisfied with the Board's conclusion that there is a substantial risk that Redden will commit another crime if released. This determination is supported by sufficient credible evidence in the record, and we find no basis to disturb the Board's decision. Likewise, the Board's decision to exceed the FET guideline based on Redden's lack of satisfactory progress in reducing the likelihood of future criminal behavior is supported by substantial evidence. See id. at 558, 565 (finding the Parole Board's "decision to impose a thirty-year FET [was] within the Board's discretion and [was] supported by substantial evidence" where the inmate had demonstrated "little progress in addressing the issues that led to the commission of the crime").

The Board "follow[ed] the law" as set forth by N.J.A.C. 10A:71-3.11(b) and N.J.A.C. 10A:71-3.21(d), "bas[ed] its decision on substantial credible evidence," and "appl[ied] the relevant legislative policies to the facts." McGowan, 347 N.J. Super. at 565. As such, we discern no basis to intervene.

We do not address Redden's remaining arguments as they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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

A handwritten signature in black ink, appearing to be 'JWA', written over the printed title.

CLERK OF THE APPELLATE DIVISION