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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0477-22**

JOSEPH URIARTE,

Appellant,

v.

NEW JERSEY STATE
PAROLE BOARD,

Respondent.

Submitted June 5, 2024 – Decided June 19, 2024

Before Judges Vernoia and Walcott-Henderson.

On appeal from the New Jersey State Parole Board.

O'Hagan Meyer, PLLC, attorneys for appellant (John P. Morgenstern and Stephen D. Dargitz, on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondent (Janet Greenberg Cohen, Assistant Attorney General, of counsel; Christopher C. Josephson, Deputy Attorney General, on the brief).

PER CURIAM

Joseph Uriarte appeals from an August 31, 2022 New Jersey State Parole Board (Board) final agency decision revoking his parole and directing that he serve a sixteen-month custodial term for violating the conditions of his special sentence of parole supervision for life (PSL). Unpersuaded by Uriarte's claims the Board based its findings on unreliable evidence, failed to give sufficient weight to relevant factors, and ignored that revocation of his parole did not serve societal interests, we affirm.

In 2013, Uriarte pleaded guilty under separate indictments to third-degree aggravated criminal sexual contact, N.J.S.A. 2C:14-3(a), and fourth-degree endangering the welfare of a child by possessing child pornography, N.J.S.A. 2C:24-4(b)(5)(b).¹ The court sentenced Uriarte to concurrent time-served custodial terms on the convictions and directed that Uriarte comply with the requirements of Megan's Law, N.J.S.A. 2C:7-1 to -23.² The court also imposed the mandatory special sentence of PSL. N.J.S.A. 2C:43-6.4.

¹ Following the date of Uriarte's commission of the offense for which he was convicted under N.J.S.A. 2C:24-4(b)(5)(b), the statute was amended to increase the degree—from fourth-degree to third-degree—of the crime of endangering the welfare of a child by possessing child pornography. L. 2013, c. 51, § 13.

² Uriarte received jail credits of 513 days for time served on the aggravated criminal-sexual-contact conviction and 510 days for time served on the endangering-the-welfare-of-a-child conviction.

Although the record on appeal does not reflect the reasons for the two prior revocations of Uriarte's parole under PSL, the record shows that on June 28, 2021, Uriarte was released following his incarceration based on charges he had again violated the conditions of his parole. The next day, June 29, 2021, Uriarte acknowledged and signed detailed conditions of his release on PSL. The conditions included a requirement that he refrain from using any narcotic drug or controlled dangerous substance except as prescribed by a physician.

Nine days later, a July 7, 2021 urine test showed Uriarte had used cocaine and THC. Uriarte completed a Board form acknowledging that on July 4, 2021, he had used "pot [laced] [with] coke." He also submitted a separate written statement explaining that on July 4, 2021, he and his aunt's neighbor were "smoking" and he later "found out the pot was laced with cocaine" when he took the urine test.

Following the drug test showing Uriarte's cocaine use, parole officers "admonished" him for his "use of illicit substances" and reminded him "he had only just recommenced his PSL supervision" after his then-recent release from incarceration. The parole officers also reported the results of the drug test to the outpatient drug program Uriarte had been directed to attend as a condition of his supervision on PSL following his release from incarceration.

At a subsequent drug test on July 27, 2021, Uriarte tested positive for THC, cocaine, and fentanyl. Uriarte acknowledged he had smoked marijuana and asserted it "must have been laced with coke." A parole officer admonished Uriarte for his ongoing failure to attend the outpatient substance abuse treatment program and his negative discharge from a mental-health counseling program. A parole officer advised Uriarte that any further failures to comply with the PSL conditions would result in his placement in a residential treatment program, "[Stages to Enhance Parolee Success][,] or a PSL warrant."

On August 6, 2021, Uriarte again tested positive for cocaine and THC. He completed a form in which he admitted to smoking a "blunt" that he "indicated may have been laced with cocaine." Parole officers required that Uriarte participate in "a more intense level of counseling to address" his "ongoing substance abuse" and "promote a more positive reintegration into the community." Uriarte was subsequently placed in an inpatient substance abuse treatment program.

On September 9, 2021, parole officers received a report Uriarte had been harassing his ex-girlfriend, Michaela LeGrande. On that date, the Board imposed an additional PSL condition prohibiting Uriarte from having "any contact directly or through a third party by any means, verbal, physical, written

or electronic, with LeGrande unless contact is authorized by the District Parole Supervisor or designated representative."

In a notice of the imposition of the condition, the Board explained that LeGrande had reported to the Board she had "repeatedly asked Uriarte to refrain from contacting her" but he had "continue[d] to mak[e] persistent and harassing phone calls to her." The Board explained that "[b]ased on Uriarte's offense history, lack of insight of the consequences of his actions, and poor impulse control, a prohibition on contact with . . . LeGrande would be in the best interest of her safety and Uriarte's efforts toward rehabilitation and a successful reentry back into the community." On September 9, 2021, Uriarte signed the notice acknowledging imposition of the additional PSL condition prohibiting any contact with LeGrande.

One week later, Uriarte admitted to a parole officer that he had contacted LeGrande by telephone on September 14, 2021, five days after receiving notice of the special no-contact PSL condition. Uriarte also completed a September 16, 2021 written statement acknowledging he had spoken to LeGrande, had told her he was not "allowed to talk to her unless she calls parole and has parole drop the no[-]contact order," and that he had tried to call her back but she had not answered.

On September 21, 2021, the Board placed Uriarte in custody based on his violations of the PSL conditions. The following day, the Board issued a notice advising Uriarte he had been charged with violations of the PSL conditions. More particularly, the notice charged Uriarte with violating the PSL condition that he refrain from the use "of any narcotic drug . . . or controlled dangerous substance" by using cocaine on July 4, 2021, and July 24, 2021. The notice further explained Uriarte had admitted to using cocaine on those dates in the admission-of-use-forms he had completed on July 7, 2021, and July 27, 2021.

The notice also alleged Uriarte had violated the September 9, 2021 PSL special condition that he have no contact with LeGrande. The notice stated Uriarte violated the condition on September 14, 2021, and cited a Chronological Supervision report, which stated that on September 16, 2021, Uriarte had "readily admitted that he spoke with" LeGrande on the telephone "but attempted to place blame" on her. The notice also referred to Uriarte's September 16, 2021 written statement in which he admitted he had spoken to LeGrande over the telephone and had attempted unsuccessfully to "call her back" to speak with her again.

On March 24, 2022, a Board hearing officer conducted a revocation-of-parole hearing on the charges. Following the hearing, the hearing officer issued

a written report summarizing the testimony and evidence presented, the arguments presented by Uriarte's counsel, and a parole officer's testimony recommending revocation of Uriarte's release on parole. The hearing officer found that clear and convincing evidence had established Uriarte twice violated the PSL condition that he refrain from using illicit drugs and he also violated the special PSL condition that he have no contact with LeGrande. The hearing officer concluded Uriarte was not "amenable to [parole] supervision" and recommended revocation of Uriarte's parole and imposition of a sixteen-month term of incarceration.

On April 6, 2022, a Board panel reviewed the hearing officer's findings and recommendation. The panel explained that Uriarte had "commenced supervision on June 11, 2019, representing [his] third opportunity on parole," and that on December 21, 2020, Uriarte had been "returned to custody and afforded the parole revocation process." The panel found that on June 28, 2021, Uriarte's parole status was continued and, as a result, he was released from incarceration.

The Board panel further explained that on July 4, 2021, Uriarte had used cocaine and was referred to substance abuse counseling, and it was later determined that on July 24, 2021, defendant had used cocaine again. The panel

noted Uriarte was then referred for residential drug treatment and, on September 9, 2021, had been advised of an additional special condition of his parole—that he not have any contact with LeGrande because she had complained he had been harassing her. The Board panel found that one week later, Uriarte admitted violating the special condition by contacting LeGrande directly by phone. The panel rejected Uriarte's explanation for contacting LeGrande—that he did so to stop her from harassing him—as "fail[ing] to mitigate the seriousness of" his violation of the special condition that he not contact LeGrande at all.

The Board panel concluded Uriarte's violations of the conditions of his PSL were serious and that revocation of his parole "is desirable." The panel determined Uriarte was not amenable to supervision on parole and recommended revocation of parole and imposition of a sixteen-month term of incarceration.

Uriarte appealed to the Board from the panel's decision. In a detailed and thorough August 31, 2022 decision, the Board summarized the evidence, addressed and rejected Uriarte's arguments, and determined the evidence clearly and convincingly established Uriarte "seriously violated the conditions of his parole supervision for life status and revocation is desirable." The Board affirmed the panel's findings and adopted its recommendation to revoke Uriarte's

release on PSL and directed he serve a sixteen-month term of incarceration. This appeal followed.

"A person who has been sentenced to a term of parole supervision and is on release status in the community pursuant to . . . [N.J.S.A.] 2C:43-7.2" is "subject to the provisions and conditions set by the appropriate board panel." N.J.S.A. 30:4-123.51b(a). The Board has authority "to revoke the person's release status and return the person to custody for the remainder of the term or until it is determined, in accordance with regulations adopted by the board, that the person is again eligible for release consideration" Ibid.

"The Board must exercise its authority to revoke release status 'in accordance with the procedures and standards' codified in N.J.S.A. 30:4–123.59 through N.J.S.A. 30:4–123.65." Hobson v. N.J. State Parole Bd., 435 N.J. Super. 377, 382 (App. Div. 2014) (quoting N.J.S.A. 30:4-123.51b(a)). Revocation of parole is permitted only when clear and convincing evidence shows that the person "has seriously or persistently violated the conditions," of his or her parole, N.J.S.A. 30:4–123.60(b)(1) and N.J.S.A. 30:4-123.63(d), or if they have been "convicted of a crime" while released, N.J.S.A. 30:4-123.60(c). "That standard of proof requires evidence that persuades the fact finder 'that the

truth of the contention is "highly probable.""" Hobson, 435 N.J. Super. at 387 (quoting In re Perskie, 207 N.J. 275, 290 (2011)).

Uriarte appeals from the Board's final agency decision finding his release on PSL must be revoked because he violated the conditions of his release. "Our role in reviewing an administrative agency's decision is limited." Malacow v. N.J. Dep't of Corr., 457 N.J. Super. 87, 93 (App. Div. 2018) (citing Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 9 (2009)). "Our review of the Parole Board's determination is deferential in light of its expertise in the specialized area of parole supervision[.]" J.I. v. N.J. State Parole Bd., 228 N.J. 204, 230 (2017) (citing McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 563 (App. Div. 2002)). We recognize that "[t]o a greater degree than is the case with other administrative agencies, the . . . Board's decision-making function involves individualized discretionary appraisals." Trantino v. N.J. State Parole Bd., 166 N.J. 113, 201 (2001) (citing Beckworth v. N.J. State Parole Bd., 62 N.J. 348, 358-59 (1973)). Such appraisals are presumed valid. McGowan, 347 N.J. Super. at 563. Accordingly, "we will reverse a decision of the Board only if the offender shows that the decision was arbitrary or unreasonable, lacked credible support in the record, or violated legislative policies." K.G. v. N.J. State Parole Bd., 458 N.J. Super. 1, 30 (App. Div. 2019)

(citing Trantino v. N.J. State Parole Bd., 154 N.J. 19, 24-25 (1998)). See also In Re Hawley, 192 N.J. Super. 85, 89 (App. Div. 1983), aff'd, 98 N.J. 108 (1984).

The question for the court is "'whether the findings made could reasonably have been reached on sufficient credible evidence present in the record,' considering 'the proofs as a whole,' with due regard to the opportunity of the one who heard the witnesses to judge of their credibility." Close v. Kordulak Bros., 44 N.J. 589, 599 (1965) (quoting State v. Johnson, 42 N.J. 146, 162 (1964)). Credibility determinations made by those able to hear and see the individual are entitled to substantial deference. See Goulding v. N.J. Friendship House, Inc., 245 N.J. 157, 167 (2021); N.J. Dep't of Env't Prot. v. Huber, 213 N.J. 338, 374 (2013); H.K. v. State of N.J., 184 N.J. 367, 384 (2005); Clowes v. Terminix Int'l Inc., 109 N.J. 575, 587-88 (1988).

"A court may not substitute its judgment for that of the agency, and an agency's exercise of its statutorily-delegated responsibilities is accorded a strong presumption of reasonableness." McGowan, 347 N.J. Super. at 563 (citations omitted). A party challenging an administrative action bears the burden of establishing the action is arbitrary, capricious, or unreasonable. Ibid. Uriarte does not sustain that burden here.

Uriarte does not dispute that he used cocaine on July 4, 2021, and July 24, 2021, or that he telephoned LeGrande on September 14, 2021, following his acknowledgement of the special condition of his parole that he not contact her. Indeed, he completed and signed forms admitting as much and submitted them to the parole officers. As such, the Board's finding Uriarte committed the repeated violations of the conditions of his PSL is supported by sufficient competent evidence the Board found credible. We are therefore bound to accept and defer to those findings, which support the Board's determination Uriarte committed repeated violations of the plainly stated conditions of his parole. See generally K.G., 458 N.J. Super. at 30.

We are not persuaded by Uriarte's claims the Board's findings were in error because he had claimed he did not knowingly use the cocaine but instead had ingested it by smoking marijuana that was "laced" with cocaine. In its assessment of the evidence, the Board was not bound by Uriarte's claim he unknowingly consumed cocaine twice in July 2021, and his testimony to that effect did not establish as fact that is what occurred. For that reason, we find no error in the Board's determination—supported by the drug tests and Uriarte's admissions—that Uriarte twice violated one of the conditions of his release on parole under his PSL by failing to refrain from using any narcotic drug or

controlled dangerous substance unless prescribed by a physician. See Close, 44 N.J. at 599.

Similarly, Uriarte argues the Board erred by basing its revocation-of-parole determination on his admitted violation of the special condition that he not contact LeGrande. He contends the Board failed to consider that LeGrande had harassed him, and that she had invited the contact. In its final decision, the Board explained that on September 14, 2021, Uriarte called LeGrande from an inpatient substance abuse treatment center because she had called and left a message for him. The Board noted it had been Uriarte's responsibility to advise the parole officers if he believed LeGrande "was 'harassing' him," but he instead chose to contact her directly in direct violation of the special condition of his PSL—imposed one week earlier—that he not contact her at all.

Again, we defer to the Board's findings of fact because they are supported by the evidence. See ibid. We therefore reject Uriarte's claim the Board failed to consider his claim LeGrande's conduct excused, justified, or minimized his direct violation of the special condition of his parole. The Board considered the claim, but rejected it based on its findings of fact that are fully supported by the evidence.

Uriarte last argues we should reverse the Board's decision because it does not serve societal interests. The argument is founded on a claim that revoking Uriarte's parole is inconsistent with accommodating the mental health issues he claims rendered him a "disabled person" and is otherwise based on an erroneous assumption that the Board "is somehow exploiting a power dynamic over LeGrande in the same way an offender exploits the inability of an intoxicated person to speak for herself or to provide legal consent." Uriarte further notes the absence of claims he threatened LeGrande or had engaged in "any manipulation or abuse, and any dangerous behavior of any kind."

The argument attempts to make too much out of too little. It ignores that Uriarte was convicted of serious crimes, sentenced to PSL and compliance with the requirements of Megan's Law, and that the Board is vested with the responsibility to monitor and ensure Uriarte's compliance with PSL. N.J.S.A. 2C:43-6.4(b). Ensuring that compliance need not await actual threats, manipulation, abuse, or dangerous behavior. See Acoli v. N.J. State Parole Bd, 250 N.J. 431, 454 (2022) (quoting Trantino, 166 N.J. at 173) (finding that the Board's determination of whether a defendant can comply with his or her parole requires an assessment that is "'necessarily predictive of'" the defendant's "'future behavior'").

In our view, the Board does not offend any societal interests by taking appropriate action based on its expertise to revoke parole and incarcerate a defendant where the credible evidence establishes his parole had been revoked on two prior occasions and he then repeatedly violated the conditions of PSL following the continuation of his parole. See State v. Black, 153 N.J. 438, 448 (1998); N.J.S.A. 30:4-123.51b(c).

Any arguments made on Uriarte's behalf that we have not expressly addressed are without sufficient merit to warrant further discussion. R. 2:11-3(e)(2).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION