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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3075-22**

LARRY R. MILES,

Petitioner-Appellant,

v.

NEW JERSEY STATE
PAROLE BOARD,

Respondent-Respondent.

Submitted May 14, 2024 – Decided June 27, 2024

Before Judges Gooden Brown and Puglisi.

On appeal from the New Jersey State Parole Board.

Phillips & Associates, PLLC, attorneys for appellant
(Jason Stump, on the briefs).

Matthew J. Platkin, Attorney General, attorney for
respondent (Sara M. Gregory, Assistant Attorney
General, of counsel; Christopher C. Josephson, Deputy
Attorney General, on the brief).

PER CURIAM

Appellant Larry R. Miles appeals from the April 26, 2023 decision of the New Jersey State Parole Board (Board) revoking his Parole Supervision for Life¹ (PSL) status and imposing an eighteen-month term of incarceration. We affirm.

On May 19, 2013, Miles was arrested and charged with attempted sexual assault and criminal sexual contact. He was "riding on a bus with mentally challenged individuals[and he] inappropriately touched a female passenger in a sexual manner." Miles pleaded guilty to an amended charge of aggravated criminal sexual contact, N.J.S.A. 2C:14-3(a), and was sentenced to a suspended custodial term of three years and to PSL.

Offenders sentenced to PSL are supervised by the Division of Parole (Division) and are subject to general and special conditions established by a Board panel. N.J.S.A. 30:4-123.51b(c), N.J.A.C. 10A:71-6.12(c). An offender who violates conditions of PSL is subject to revocation and return to custody pursuant to the same procedures that apply to discretionary parolees. N.J.S.A. 30:4-123.51b(c), -123.60 to -123.63.

On March 13, 2022, Miles was released from incarceration to the Division's supervision under PSL for the fourth time, after three prior PSL revocations and terms of incarceration. He received the general and special conditions of his PSL,

¹ N.J.S.A. 2C:43-6.4.

which he acknowledged he understood. Three days after his release, Miles admitted to smoking one "blunt" of marijuana, consuming alcohol, and failing to stay at his approved residence, in violation of his conditions of PSL.

On April 10, 2022, Miles was unsuccessfully discharged from the Shoova Sober Living House and, although he was required to report this information to his parole officer immediately, he did not do so until three days later.

On April 12, 2022, Miles "was dri[nk]ing [a]lcohol and passed out drunk and woke up in the [h]ospital" which he later admitted in a written statement. The next day, the Division referred Miles to the electric monitoring program (EMP), which was approved by a Board panel. The justification for the imposition of EMP was that Miles had been discharged from his approved residence at Shoova "for violating the house's curfew and for being untruthful about his whereabouts during the day." He signed a written admission that he failed to notify the Division of his change in residence and remained homeless for three days. The EMP was "imposed to ensure [he] reside[d] at a viable address and that he complie[d] with all the rules and regulations of PSL."

While on EMP, Miles continued to violate the conditions of PSL. Specifically, on April 27, 2022, he used synthetic marijuana; on May 20 and 24, he

used Suboxone without a prescription; and on May 14, he again did not stay at his approved residence. Miles later signed admissions to each of these violations.

As a result, on May 25, 2022, the Division served Miles with a notice of effectuation of a general condition of PSL, which required him to enroll in, comply with, and successfully complete a residential drug treatment program (RESAP). As explained in the justification for the effectuation, Miles's drug use was "concerning as it show[ed] a possible regression while on [EMP]." The RESAP was intended to "provide a more intense level of counseling to address this issue while in a secured program. This will provide a graduated sanction while promoting a more positive reintegration back into the community." One month into the RESAP, Miles tested positive for Suboxone again and as a result, was unsuccessfully discharged from the program the next day.² The Division issued a parole warrant based on the violations and took Miles into custody.

On July 6, 2022, Miles was served with a notice of probable cause hearing, advising him of his rights and the PSL conditions he was alleged to have violated: failing to reside at a residence approved by the assigned parole officer, failing to obtain permission of the assigned officer prior to any change in residence, failing to

² The RESAP discharge summary indicated Miles tested positive for Suboxone on June 1, 2022 and "was placed on a thirty-day contract for the violation, which he was unable to achieve" by testing positive a second time.

refrain from the use of any narcotic drug or CDS, failing to successfully complete the EMP, and failing to successfully complete the RESAP.

On September 7, 2022, a Board hearing officer commenced the parole violation hearing. Miles, represented by counsel, waived the probable cause hearing. The Division was represented by Senior Parole Officer Michael Sass, who elected to proceed with the scheduled probable cause hearing.

The following alleged violations from the notice of probable cause hearing were read into the record:

PSL Condition #A08 - [Miles] failed to reside at a residence approved by the assigned parole officer. This is evidenced by [his] admission to spending the night at an unapproved location on May [14], 2022.[] On [Miles]'s behalf, [counsel] entered a plea of guilty with an explanation to this violation.

PSL Condition #A09 - [Miles] failed to obtain the permission of the assigned parole officer prior to any change of residence. This is evidenced by [him] being unsuccessfully discharged from Shoova Sober Living House . . . on April 10, 2022 and not disclosing that information until April 13, 2022. On [Miles]'s behalf, [counsel] entered a plea of guilty with an explanation to this violation.

PSL Condition #A13 - [Miles] failed to refrain from the purchase, use, possession, distribution, or administration of any narcotic drug, [CDS], or controlled substance analog as defined in N.J.S.A. 2C:35-2; imitation [CDS] or imitation controlled substance analog as defined in N.J.S.A. 2C:35-11; or any paraphernalia as defined in

N.J.S.A. 2C:36-1 related to such substances, except as prescribed by a physician. This is evidenced by [his] admission to the use of synthetic cannabinoids on April 27, 2022 and the use of Suboxone, which was not prescribed[,] on May 20, 2022, May 24, 2022, and June 30, 2022. On [Miles]'s behalf, [counsel] entered a plea of guilty with an explanation to this violation.

PSL Special Condition- [Miles] failed to successfully complete the [EMP]. This is evidenced by [his] continued CDS use and failure to reside at his approved residence resulting in the necessity for admission into an inpatient program.[] On [Miles]'s behalf, [counsel] entered a plea of guilty with an explanation to this violation.

PSL Special Condition- [Miles] failed to successfully complete the [RESAP] at Volunteers of America (VOA) at Liberty. This is evidenced by [his] unsuccessful discharge on July 1, 2022. On [Miles]'s behalf, [counsel] entered a plea of guilty with an explanation to this violation.

Officer Sass stated "[b]ased on the totality of [Miles]'s case, including [his] seriously and persistently violating the conditions of his supervision, the decision was made to take [him] into custody."

Miles testified "he was going through a lot at that time; that he was experiencing stress as a result of taking care of his grandmother; and that drugs helped with his anxiety and depression." He stated he "was attempting to stop using drugs . . . he completed numerous programs; and that his substance abuse and mental health issues are unresolved and led to the violations."

At the close of the hearing, counsel argued Miles had "unresolved substance abuse issues, which contributed to the violations; that [he] was still engaging with his community sponsor, who ha[d] secured employment for [him]; that [he] has a strong support system and provides care for his grandmother; and that [he] was forthcoming with parole." She also requested Miles be afforded the opportunity to participate in an inpatient treatment program for substance abuse and mental health issues.

Based on the testimony and admissions, the hearing officer found probable cause Miles violated the noted conditions of PSL. Prior to the Board panel's review of the initial hearing, counsel was provided with the hearing officer's summary report, to which she did not have any substantive comments or objections.

On October 5, 2022, a Board panel concurred with the hearing officer's finding of probable cause, found revocation was desirable and ordered Miles remain in custody pending a revocation hearing. He was served with a notice of final revocation hearing the next day.

On December 16, 2022, another Board hearing officer conducted Miles's final revocation hearing, during which Officer Sass again testified and recommended revocation of Miles's PSL status. The hearing officer sustained all violations and

found "the commission of the noted violations is serious, persistent, and revocation is desirable."

On December 28, 2022, a Board panel reviewed the record and hearing officer's decision resulting from the final revocation hearing. The panel concurred with the hearing officer's findings of fact, found by clear and convincing evidence Miles persistently and seriously violated the conditions of his parole, and determined revocation was desirable. The panel imposed an eighteen-month term of incarceration.

On February 7, 2023, Miles appealed the Board panel's decision to the full Board, alleging that the panel failed "to consider material facts or failed to document that clear and convincing evidence indicates that . . . [he] has seriously or persistently violated the conditions of parole" and "failed to demonstrate[] . . . that revocation of parole is desirable."

The full Board issued its final decision on April 26, 2023. The Board found the panel "reviewed and considered all relevant facts pertaining to [Miles's] violations of the conditions of his [PSL] and determined that there was clear and convincing evidence that he violated . . . conditions of his supervision." Regarding Miles's arguments the Board failed to document he seriously or persistently violated parole, the Board reviewed the December 28, 2022 notice of decision and found his

arguments "without merit" noting "the Board panel reviewed the attached summary, concurred with the findings of fact made by the hearing officer and, further, provided the basis for their determination that [Miles] violated his conditions of [PSL] and that the violations were serious and persistent." The Board concurred with the panel's findings that Miles's "conduct, coupled with his extensive history of supervision violations, demonstrates he is not amenable to continued supervision at this time."

Our review of the Board's decision is deferential and is limited to evaluating whether the Board acted arbitrarily or abused its discretion. In re Vey, 272 N.J. Super. 199, 205-06 (App. Div. 1993). "The question for a [reviewing] 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." Hobson v. N.J. State Parole Bd., 435 N.J. Super. 377, 388 (App. Div. 2014) (quoting Close v. Kordulak Bros., 44 N.J. 589, 599 (1965)). The burden is on the challenging party to show the Board's actions were arbitrary, unreasonable, or capricious. Bowden v. Bayside State Prison, 268 N.J. Super. 301, 304 (App. Div. 1993).

Accordingly, "[w]e 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)).

When the Board revokes parole, its decision must be supported by clear and convincing evidence. N.J.A.C. 10A:71-7.12(c)(1). Evidence is clear and convincing when:

[T]he trier of fact can rest "a firm belief or conviction as to the truth of the allegations sought to be established." It must be "so clear, direct and weighty and convincing as to enable either a judge or jury to come to a clear conviction, without hesitancy, of the truth of the precise facts at issue."

[In Re Registrant J.G., 169 N.J. 304, 330-31 (2001) (first quoting In re Purrazzella, 134 N.J. 228, 240 (1993); and then quoting In Re Registrant R.F., 317 N.J. Super. 379, 384 (App. Div. 1998)).]

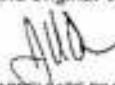
Here, there was clear and convincing evidence Miles violated the conditions of his PSL supervision. Indeed, he admitted to the violations. Nonetheless, absent conviction of a new crime, the Board may only revoke PSL status for serious and persistent violations, where it deems revocation is desirable. N.J.S.A. 30:4-123.63(d).

Miles reprises the same issues for our consideration as he did before the Board. Having considered the record in light of the applicable legal principles, we affirm the revocation of PSL status for the reasons expressed in the Board's decision. Within days of his release from incarceration, Miles used CDS, consumed alcohol, and was subsequently discharged from his residence at a sober living house, which he failed to timely report. After drinking alcohol to the point of unconsciousness, Miles was placed on a higher level of supervision but continued to use CDS and again did not stay at an approved residence. As a result, Miles was ordered to complete a RESAP, but soon after was discharged from that program after continuing to use CDS.

While Miles urged the Board to allow him to continue in programming, nothing about the Board's decision to revoke was arbitrary or unreasonable, especially given his three prior revocations and returns to custody for violating conditions of PSL. Thus, we are convinced the record adequately supports the Board's determination that Miles seriously and persistently violated the general and special conditions of PSL and that revocation is desirable.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION