

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2522-23

RONALD TARAKJI,	:	<u>CIVIL ACTION</u>
Plaintiff-Appellant,	:	On Appeal from a Final Decision of
	:	the New Jersey State Parole Board
v.	:	
NEW JERSEY STATE	:	
PAROLE BOARD,	:	
Defendant-Respondent.	:	

BRIEF ON BEHALF OF PLAINTIFF-APPELLANT

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PRELIMINARY STATEMENT

This is an appeal of a final agency decision revoking plaintiff-appellant, Ron Tarakji's parole, which emanated from two technical violations for allegedly breaching the same special condition of parole. (Pa 25) At the time of the parole violation, and today, Mr. Tarakji is serving a lifetime of parole supervision.

The Parole Board revoked Mr. Tarakji's parole for the technical violation of failing to complete the non-residential and residential Kintock programs. (Pa 25) To be clear, Mr. Tarakji did not voluntarily terminate his participation in the residential program; instead, he was discharged from the program without the ability to effectively and constitutionally challenge the allegation that he threatened a staff member. When Mr. Tarakji learned of this allegation, he promptly denied it and demanded the production of Kintock video surveillance, that he unquestioningly believed would substantiate his assertion that he did not violate parole. The video was in the possession of Kintock, a duly authorized agent of the Parole Board. Indeed, the key witness at the revocation hearing was an employee of Kintock.

Mr. Tarakji promptly made a demand to preserve the Kintock surveillance video directly to his supervising parole officer. Despite this specific demand, documented in the Community Supervision Reports (CSRs), and the obvious evidentiary value of the video, which was the best evidence as to whether Mr. Tarakji violated parole, the surveillance video was destroyed. This destruction deprived Mr. Tarakji of

access to critical evidence which eviscerated his due process rights at his constitutionally mandated revocation hearing.

Plaintiff-appellant is requesting that this Court find that he had a right to access the surveillance video, present the surveillance video at the revocation hearing, and cross-examine the witnesses at the hearing regarding said evidence, consistent with State and Federal due process and fundamental fairness protections delineated in Morrissey v. Brewer, 408 U.S. 471 (1972), Gagnon v. Scarpelli, 411 U.S. 778 (1973), and Doe v. Poritz, 142 N.J. 1 (1995).

The Parole Board has nearly unfettered power to remove parolees from the community, based upon an alleged violation of a technical parole condition. Here, the only obstacle between Mr. Tarakji and continued incarceration was a revocation hearing that required due process, as established decades ago by the United States Supreme Court. This includes the right to counsel, the right to know what evidence will be utilized by Parole, the right of confrontation, and the right to present evidence at a revocation hearing.

Parolees facing a loss liberty at revocation hearings must have access to relevant evidence that can be utilized to disprove an allegation. The destruction of critical evidence prior to a revocation hearing raises significant concerns about the integrity of the revocation process. Such evidence, particularly if it has the potential to

establish that the parolee did not commit a parole violation, as asserted by Mr. Tarakji, is vital for ensuring a fair and unbiased evaluation of the allegations.

When evidence is destroyed, intentionally or negligently, it undermines the parolee's ability to mount an effective defense and challenge the reliability of the proceedings. The conduct of Parole in the case at bar, whether intentional or negligent, necessitates the reversal of the Board decision and a dismissal, with prejudice, of the parole violation. Preserving evidence is not just a procedural nicety, but a constitutional safeguard, ensuring that parolees are afforded a fair and adequate opportunity to effectively present a defense.

Moreover, Mr. Tarakji's due process confrontation rights were infringed upon when the hearing officer permitted Parole Officer Lopez and Emmanuel Ajidahum to testify via audioconferencing. While the hearing officer could observe the witnesses, Mr. Tarakji and counsel were precluded from observing them. Therefore, cross-examination by counsel was not meaningful in derogation of Mr. Tarakji's Federal and State due process rights. The right of confrontation, like the duty to preserve evidence, are important constitutional safeguards in revocation hearings, which were eviscerated in this case.

PROCEDURAL HISTORY AND STATEMENT OF FACTS¹

Mr. Tarakji is serving a term of parole supervision for life.² (Pa 11) Because parole supervision is a continuation of a sentence, Parole can control nearly every aspect of Mr. Tarakji's life and punish him for conduct deemed undesirable, whether or not he has engaged in illegality. N.J.S.A 10A:71–6.4.³ As a condition of parole, Mr. Tarakji was ordered to complete one of the Kintock residential programs.⁴ (Pa 12) Emmanuel Ajidahum, a staff member at Kintock, alleged that “Ron Taraki [sic] with [another resident] later threatened me. . . that they will make sure I am dealt with outside when I get out of the building and all other colleagues (residents) were all yelling at me.” (Pa 3). He asserted that these statements were made around 7:15

¹ The facts and procedural history are inextricably bound together in this matter and are offered in a combined presentation for reader ease.

² “Pa” refers to Plaintiff-Appellant's appendix; “1T” refers to the transcript of the revocation hearing dated July 26, 2023.

³ “This maze of conditions, each coming with the threat of revocation and loss of liberty, takes a heavy toll on those on probation or parole. The entanglements of community supervision have gotten so onerous that people sometimes choose incarceration over probation.” Vincent Schiraldi, Mass Supervision: Probation, Parole, and the Illusion of Safety and Freedom, at 80 (2023).

⁴ Kintock is a private organization that has repeatedly won contracts with the New Jersey State Parole Board to provide programing. Kintock is clearly an agent of Parole. See, Kintock Awarded Contract for Residential Programs in Newark and Bridgeton (Pa 26)

p.m. on February 26, 2023. (Pa 3). However, Kintock staff did not complete an incident report until February 27, 2023, more than 24 hours later. (Pa 3) During this time, Mr. Tarakji remained at Kintock and continued to comply with program rules.

On March 2, 2023, Mr. Tarakji was discharged from Kintock, pursuant to a report submitted to Parole. (Pa 2)⁵ On that same day, Mr. Tarakji had a meeting with Parole Officer Singleton. (Pa 4)⁶ At that meeting, Mr. Tarakji “denie[d] threatening staff and asked that [parole staff] *run the camera back because he did not threaten staff.*” (Pa 4) (Emphasis added) Mr. Tarakji explained that the video footage was exculpatory and would refute the allegations. (Pa 4) Further, he advised Parole Officer Singleton that the camera footage would corroborate that “he did not threaten [Kintock] staff and that he does not know the other parolee that they are saying he was taking up for.” (Pa 4)

⁵ The discharge report states that on February 28, 2023, another Kintock staff member, named Oladejo, had a conversation with Mr. Tarakji who was crying in a hallway and expressing, “how sad he is about the threat issue” and that “he was afraid of going back to jail.” (Pa 2) Nothing in the report indicates he made any admission to threatening Mr. Ajidahum. To the contrary, Mr. Tarakji reported to his parole officer that he was crying in the hallway and told the manager at Kintock “*he was worried about getting in trouble for something he did not do.*” (Pa 4) (Emphasis added)

⁶ Since 2001, parole officers are police academy graduates. See Russo, J., et al., N.J. Office of the Public Defender Parole Project Report, 80-84, (February 2024). This reflects a punitive as opposed to a rehabilitative model of supervision. (Pa 27-32)

Significantly, Mr. Ajidahum's allegations were the sole basis for the discharge from Kintock, the initiation of revocation proceedings, and Mr. Tarakji's reincarceration. (Pa 4, 12) Despite this, Parole did not provide Mr. Tarakji with the video surveillance of the incident, which he requested on the same day he was discharged. (Pa 2, 4) Moreover, despite his contentions that the video surveillance would be exculpatory, there is no evidence whatsoever of any attempts by Parole to review the surveillance video *prior* to the filing of the parole violation.

Subsequently, Mr. Tarakji was taken into custody on the parole warrant and lodged in the Somerset County Jail. (Pa 4) He was assigned a Madden attorney,⁷ on March 17, 2023 (Pa 1).⁸ Between June 8 and June 15, 2023, Madden counsel contacted numerous Parole staff, requesting the video from the incident. (Pa 5-9) Madden counsel demanded a dismissal of the parole violation, and the immediate release of Mr. Tarakji from imprisonment, unless the video surveillance was produced. (Pa 9) Counsel was told that although Kintock had video surveillance

⁷ Madden v. Delran, 126 N.J. 591 (1992).

⁸ Following the Criminal Sentencing and Disposition Commission (CSDC) recommendation to eliminate pro bono Madden assignments in revocation cases, a sea change occurred. See, Criminal Sentencing and Disposition Commission Report, 24-26 (March 2023). (Pa 33-36) With the unanimous support of the Office of the Public Defender (OPD), the Supreme Court Working Group on Attorney Pro Bono Assignments, the New Jersey State Bar Association, the Attorney General, and the Parole Board, S-3772 was passed on June 30, 2023, effective on September 12, 2023. As a result, on October 2, 2023, the OPD commenced representing parolees at revocation hearings for the first time since 1991. See, N.J.S.A. 2A:158A-5.3.

cameras, the video surveillance was no longer available. (Pa 5-6) Noteworthy, Mr. Ajidahum, the person accusing Mr. Tarakji of wrongdoing, and the State's sole witness to the alleged threats, was responsible for "monitoring surveillance cameras within the facility." (Pa 14)

Parole declined to dismiss the parole violation despite its acknowledgment that the evidence previously existed and was not preserved. (Pa 11-15; 1T 61-7 to 63-3). Instead, the Parole Revocation Unit Chief stated that Counsel could raise this issue at the revocation hearing. (Pa 5).

On July 26, 2023, Hearing Officer Cathel conducted a revocation hearing via Zoom. (1T 3-1 to 5) Mr. Ajidahum testified that at the time Mr. Tarakji issued the alleged threat "there were a lot of residents there. . . there were like eight to ten" [] but "it was only Ron Tarakji that intervened." (1T 47-1 to 3; 48-21 to 49-9) Of course, because the video surveillance was not available, Mr. Tarakji was unable to present the best evidence of what occurred. There was no explanation as to why neither Kintock nor Parole preserved the surveillance video that Mr. Tarakji and his Madden counsel requested.

On August 16, 2023, the Board panel affirmed Hearing Officer Cathel's decision to revoke parole and sentenced him to a sixteen-month term of

incarceration. (Pa 15, 19)⁹ The revocation was based upon the Board’s finding that he violated “PSL Condition 14 – Participate in and successfully complete an appropriate community or residential counseling or treatment program as directed by the assigned parole officer.” (Pa 12) The panel determined that the violation was “evidenced by [Mr. Tarakji] being unsuccessfully discharged from the Kintock Newark STEPS Program on 03-02-2023 due to [] threatening a Kintock staff member.” (Pa 12). Mr. Tarakji, through Madden counsel, appealed the finding of revocation on November 14, 2023. (Pa 10) On February 28, 2024, the Parole Board issued a final agency decision affirming the revocation decision and sentence. (Pa 11-15) The Office of the Public Defender filed a notice of appeal on April 19, 2024. (Pa 16-18)

⁹ In Parole Supervision for Life revocation cases, commonly referred to as PSL, future eligibility terms (FET’s) for technical violations are governed by N.J.A.C. 71-6.12(p) 4 and (q), which sets forth the FET schedule. For the first PSL technical violation the potential sentence is 12 months; for the second PSL technical violation the potential sentence is 14 months; for the third PSL technical violation the potential sentence is 16 months; and for fourth and subsequent PSL technical violations, the potential sentence is 18 months.

LEGAL ARGUMENT

POINT I

THE PAROLE BOARD’S REVOCATION DECISION MUST BE REVERSED AND THE PAROLE VIOLATION DISMISSED, WITH PREJUDICE, AS THE BOARD’S DECISION WAS RENDERED IN DEROGATION OF DUE PROCESS AND FUNDAMENTAL FAIRNESS BECAUSE PAROLE FAILED TO PRESERVE A CRITICAL SURVEILLANCE VIDEO OF THE INCIDENT, WHICH WAS THE BASIS FOR THE VIOLATION, AFTER THE VIDEO WAS SPECIFICALLY REQUESTED TO BE PRESERVED. (U.S. CONST. AMEND. XIV; N.J. CONST. (1947) ART. I, PAR. 1) (Raised Below) (1T 61-7 to 63-3; Pa 14)

Over a half century ago, the United States Supreme Court made clear that when parolees are facing revocation of parole¹⁰ and reincarceration, due process rights must be provided. There is incontrovertibly a liberty interest in revocation

¹⁰ Parole is “[t]he conditional release of a prisoner from imprisonment before the full sentence has been served.” Black’s Law Dictionary, (11th ed. 2019). “The essence of parole is release from prison, before the completion of the sentence, on condition that the prisoner abide by certain rules during the balance of the sentence. Parole is not freedom.” 59 Am. Jur. 2d Pardon and Parole § 6 (1987). This bedrock principle was reaffirmed in State v. Hester, 233 N.J. 381, 393 (2018), and again two years ago, when our Supreme Court reiterated that “parole is in legal effect imprisonment and therefore punishment.” State v. Njango, 247 N.J. 533, 547 (2021). Most relevant to this case is the holding in State v. Riley, 219 N.J. 270, 288-289 (2014), where our Supreme Court affirmed that parole supervision for life is an indefinite punishment.

proceedings.¹¹ Indeed, “the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often on others. . . . By whatever name, the liberty is valuable and must be seen as within the protection of the Fourteenth Amendment. Its termination calls for some orderly process . . .” Morrissey v. Brewer, 408 U.S. 471, 482 (1972).

Considering this, the Morrissey Court ruled that at both the probable cause hearing and the final revocation hearing, parolees facing the loss of liberty have certain rights.

They include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a neutral and detached hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.

Id. at 489.

¹¹ Over fifty years ago, the United States Supreme Court stated that parolees have a significant interest in maintaining their conditional liberty. Morrissey v. Brewer, 408 U.S. 471, 482 (1972).

The Supreme Court’s mandate was designed to “assure that the finding of a parole violation will be based on verified facts and that the exercise of discretion will be informed by an accurate knowledge of the parolee's behavior.” Morrissey v. Brewer, 408 U.S. 471, 484, 487 (1972). Clearly, the failure to provide evidence documenting the actual alleged violation that was requested in a timely manner, and to then permit the creator and holder of the evidence to destroy it, prevents the factfinder from rendering a decision informed by accurate knowledge. This results in arbitrary decision-making and unfair deprivations of liberty. That is precisely what occurred in the instant case.

Appellate Courts have the duty to overturn Parole Board decisions when they are “arbitrary, capricious, or unreasonable” or are not “supported by substantial credible evidence in the record as a whole.” Trantino v. New Jersey State Parole Bd., 166 N.J. 113, 192 (2001) (internal citations omitted.) Appellate courts must consider “whether the record contains substantial evidence to support the findings on which the agency based its action.” Trantino v. N.J. State Parole Bd., 154 N.J. 19, 24 (1998). In the instant case, the Board did not have substantial evidence to support its decision. Instead, the evidence relied upon was the assertion of a Kintock employee, who, as indicated, was responsible for “monitoring [the] surveillance cameras” at Kintock. Clearly, the Board and Kintock had access to the best evidence, a video surveillance recording of the incident.

Mr. Tarakji promptly requested the video recording when he first learned of the allegations. He met with his parole officer four days after the alleged incident. He stated that he wanted the evidence to disprove the claims that he violated parole. Madden counsel also demanded the production of the surveillance video. Despite unambiguous demands, Mr. Tarakji never received the video because it was destroyed.

Any finding of a parole violation emanating from such a flawed process must be reversed, because it is the product of arbitrary and unreasonable decision-making. The Parole Board may not wield its discretionary power arbitrarily. See In re Parole Application of Hawley, 98 N.J. 108, 112 (1984). Like all final agency decisions, those rendered by the Board are subject to judicial review. And despite this deferential standard, our courts remain the ultimate arbiters of whether the Parole Board has acted within the bounds of the law. Id. at 112-13.

As noted by this Court in Berta v. New Jersey State Parole Bd., 473 N.J. Super. 284, 303 (App. Div. 2022): “although we owe substantial deference to the Board, we emphasize that our review is not perfunctory, nor is it our function ... merely to rubberstamp an agency's decision. Rather, we are constrained to engage in a careful and principled consideration of the agency record and findings.” (Internal citations omitted)

Moreover, as noted by Justice Albin in the seminal case of Acoli v. New Jersey State Parole Bd., 250 N.J. 431, 437 (2022): “The Parole Board's decision is entitled to deference -- but not blind deference.” As further noted in Acoli:

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. A Parole Board decision that either 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 cannot be sustained.

Id. at 455 (Internal citations omitted)

Here, this Court cannot blindly defer to a Board decision that was premised upon the inability of the hearing officer to review, analyze, and weigh critical surveillance video of the very incident giving rise to the parole violation. Parole should not be rewarded for failing to preserve probative and relevant evidence that is the crux of the instant parole violation.

A. The Parole Board’s decision to revoke must be vacated because it was premised upon a denial of Mr. Tarakji’s right to confront the evidence against him and present a defense, in derogation of his right to due process and fundamental fairness.

Mr. Tarakji, and others facing parole revocation, have a right grounded in due process and fundamental fairness to confront the “evidence against him; [] an opportunity to be heard in person and to present witnesses and documentary evidence; [and] the right to confront and cross-examine adverse witnesses.”

Morrissey, 408 U.S. at 489. Parole trampled on those rights, resulting in Mr. Tarakji's inability to utilize evidence he believed would be exculpatory, and evidence that, at a minimum, may have been utilized to impeach Parole's key witness. After denying Mr. Tarakji these basic rights, the same entity that allowed for the withholding and destruction of evidence, revoked his parole. A decision premised upon such a denial of fundamental constitutional rights must be vacated as it cannot be based upon substantial credible evidence in the record.

The Morrissey Court's deeply rooted holding providing for the fundamental right of confrontation in revocation proceedings is irrefutable. The "opportunity to be heard in person and to present witnesses and documentary evidence [and] the right to confront and cross-examine adverse witnesses" is an indispensable element of this meaningful opportunity "to show, if he can, that he did not violate the conditions, or, if he did, that circumstances in mitigation suggest that the violation does not warrant revocation." Morrissey, at 488-489; See also White v. New Jersey State Parole Bd., 136 N.J. Super. 360, 366 (App. Div. 1975). These rights are grounded in the Fourteenth Amendment of the United States Constitution. Without question, these rights should also be recognized under Art. 1, Paragraph 1 of our State Constitution - - and protected by this Court. The right to confrontation is exercised through cross-examination, which is recognized as the most effective means of testing the State's evidence and ensuring its reliability. Lilly v. Virginia,

527 U.S. 116, 124 (1999); California v. Green, 399 U.S. 149, 158 (1970) (stating that cross-examination is the “greatest legal engine ever invented for the discovery of truth”) (quoting 5 Wigmore § 1367); See, also, Pointer v. Texas, 380 U.S. 400, 404 (1965).

Here, Mr. Tarakji denied that he violated parole. He alerted Parole to the existence of evidence that he believed would demonstrate that he was not guilty of the violation. Mr. Ajidahum offered one version of events and Mr. Tarakji another. In this “he said, she said” revocation hearing, the failure to preserve the only objective piece of evidence resulted in extreme prejudice to Mr. Tarakji that cannot be remedied. This objective non-partisan evidence would have assisted the parties, and the hearing officer, in getting to the truth of what occurred.

Again, despite Mr. Tarakji and Madden counsel’s requests for this objective evidence, without explanation, Parole did not review it, preserve it, or produce it. This directly impinged upon Mr. Tarakji’s ability to present a defense.¹² His

¹² In the Sixth Amendment context, a defendant’s right to present a defense is beyond cavil. As noted in State v. Dimitrov, 325 N.J. Super. 506 (App. Div. 1999), cert. den. 163 N.J. 79 (2000): “The demands of due process are never more seriously tested than when a defendant in a criminal case is . . . for any reason, denied an opportunity to present a witness whose testimony has ostensible exculpatory value. See State v. Sanchez, 143 N.J. 273 (1996) (“Indeed, ‘few rights are more fundamental than that of an accused to present witnesses in his own defense.’”) (quoting Chambers v. Mississippi, 410 U.S. 284 (1973)).” In parole revocation hearings, the right to present a defense is grounded in principles of due process.

immediate request to have Parole review the surveillance video to establish his innocence is, in and of itself, indicia that it was exculpatory. But because the video was not preserved, Mr. Tarakji could not use the video to challenge the allegations, resulting in prejudice which gutted the due process protections guaranteed to parolees decades ago in Morrissey and Gagnon.

Because the video surveillance was not preserved, Mr. Tarakji cannot definitively establish that the relevant surveillance video was exculpatory. However, the video could have been utilized to question the credibility of Mr. Ajidahum, Parole's key witness at the hearing. He initially reported that "all other colleagues (residents) were all yelling at me." (Pa 2-3) However, in his testimony at the revocation hearing, Mr. Ajidahum stated that "it was only Ron Tarakji that intervened." (1T 48-22 to 49-4)

Video of the event would have established whether Mr. Ajidahum's testimony, the sole basis for revocation, was accurate. For example, was Mr. Tarakji near Mr. Ajidahum, and if so, did his behavior appear to be threatening? The relevant surveillance footage would address whether Mr. Tarakji was the only resident who intervened or if there were several residents doing so. And, if the video revealed that several residents were involved, defense counsel could have explored why Mr. Tarakji was singled out for termination from Kintock.

As noted above, the great evidence scholar, John Henry Wigmore, stated that cross-examination is the greatest legal engine ever invented for the discovery of truth. California v. Green, 399 U.S. at 149. Here, Parole's actions and inactions crippled that engine, leaving it inoperable. Id. at 158. Without the engine of confrontation, in the form of cross examination, Mr. Tarakji simply could not and cannot have a fair revocation hearing.

The prejudice is clear. Neither Mr. Tarakji, nor the factfinder can ever have access to the only objective evidence supporting the parole violation. The only remaining evidence against the plaintiff were the bald assertions of one witness who could have been impeached with the surveillance video. Given the insufficiency of the evidence undergirding the revocation finding, and the inability to remedy the prejudice caused by this due process violation, not only must the revocation decision be vacated, but the violation must be dismissed, with prejudice.

B. Giglio protections should be afforded to those facing parole revocation.

In an issue of first impression in New Jersey, we are faced with the question of whether the discovery rights provided in Giglio v. United States, 405 U.S. 150, 154 (1972) should be provided to those facing parole revocation.¹³ In Giglio, the

¹³ Counsel is unaware of any precedential cases in New Jersey where our Courts have addressed extending Giglio protections to parole revocation cases where the State has failed to preserve video surveillance directly relevant to the alleged

Supreme Court held that defendants have a right to evidence related to the “reliability” of a witness. Id. The Court made clear that the issue is not simply whether the evidence can clearly prove that someone did not engage in the alleged conduct, but whether that evidence can be used to challenge the veracity of a witness.

The United States Constitution requires that those facing parole revocation have a right to discovery in the revocation process based upon the Fourteenth Amendment due process clause. See Morrissey, 408 U.S. at 489. The New Jersey Supreme Court has “construed Article 1, Paragraph 1 [of our State Constitution] to provide more due process protections” than those provided by our federal constitution. Jamgochian v. New Jersey State Parole Board, 196 N.J. 222, 239 (2008). “We observe that we have generally been more willing to find State-created interests that invoke the protection of procedural due process than have our federal counterparts.” New Jersey Parole Bd. v. Byrne, 93 N.J. 192, 208 (1983). Due process, and the fundamental fairness inherent in that process, requires that Parole

violation. New Jersey has addressed the related issue of Brady in the post-conviction relief context. State v. Szemple, 247 N.J. 82 (2021). There, our Supreme Court determined that Brady did not apply in PCR cases stating, “that position is understandable since a defendant seeking post-conviction relief in most instances will be fully informed of the documentary source of the errors that he brings to the PCR court's attention.” Id. at 96–97 citing State v. Marshall, 148 N.J. 89, 270 (1997). However, a parolee facing revocation is not fully informed of the errors and is not trying to overturn a previous finding of guilt. Instead, parolees have the right to cross-examine witnesses and to review relevant evidence for the purpose of demonstrating that they did not commit an alleged parole violation.

and its agents, like Kintock, be prevented from withholding relevant discovery from Mr. Tarakji, and those similarly situated. Because of the significant liberty interest at stake in a parole revocation hearing, the constitutional right to evidence concerning the reliability of a witness announced in Giglio should be extended to parolees facing revocation and reincarceration.

The right to confrontation for those facing revocation is based on the right to due process. Morrissey, 408 U.S. at 473, 485. Clearly, “fundamental fairness can be viewed as an integral part of the right to due process.” State v. Abbati, 99 N.J. 418, 429 (1985). Our Supreme Court has “relied on the concept of fundamental fairness to require procedures to protect the rights of defendants at various stages of the criminal justice process even when such procedures were not constitutionally compelled.” Doe v. Poritz, 142 N.J. 1, 108 (1995). Fundamental fairness “may also be considered a penumbral right reasonably extrapolated from other. . . guarantees.” Abbati, 99 N.J. at 430. Fundamental fairness is a cornerstone of New Jersey Constitutional interpretation.

In the case at bar, Parole’s failure to preserve the video surveillance, despite repeated requests, foreclosed the possibility of a revocation process shrouded in the protective shield of due process and fundamental fairness. The key witness claimed that Mr. Tarakji, and others, surrounded him and made threatening statements, and that it was Mr. Tarakji alone who intervened. A review of the video recording would

have allowed Mr. Tarakji to present evidence that Mr. Ajidahum's written account and testimony were not accurate. Indeed, the video surveillance may have disproven that Mr. Tarakji was even present or demonstrated that the recorded body language was not suggestive of threatening behavior. The recording was certainly fodder for cross-examination and a means by which Mr. Tarakji could have challenged the veracity of this critical witness.

Noteworthy, had Mr. Tarakji been charged with a disorderly person's offense for making the alleged threats, and the prosecutor in the criminal prosecution withheld relevant video surveillance, it would clearly be a violation of Giglio. In such a scenario, Giglio would be applicable even though the maximum punishment Mr. Tarakji would face would be six months in jail. See, N.J.S.A. 2C:43-8. In the instant case, Mr. Tarakji was facing at least one year in State prison. N.J.S.A. 10A:71-6.12 (p). With Mr. Tarakji facing a much lengthier deprivation of freedom than a disorderly person's offense, Parole cannot escape consequences for denying him rights a prosecutor never could in the pretrial context.

In response to Madden counsel's request for the video surveillance discovery, Parole was sure to point out that revocations are not criminal prosecutions and, therefore, not subject to the rules of evidence. That may be true. But that fact resides with at least two others: (1) those facing revocation do have a right to a fair process that includes discovery, and (2) courts may create protections regarding discovery

that are unmoored from formal evidence rules and court rules, when due process and fundamental fairness requires it. In explaining the need for the right to discovery for those facing revocation, the Morrissey Court stated:

As we said in another connection in Greene v. McElroy, 360 U.S. 474, 496 - 497: Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment which provides that in all criminal cases the accused shall enjoy the right to be confronted with the witnesses against him. This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases but also in all types of cases where administrative and regulatory actions were under scrutiny.

Morrissey, 408 U.S. at 499, n. 9 (Douglas, J. dissenting in part) (Internal citations and punctuation omitted)

In Marshall, 148 N.J. 89, 269 (1997), our Supreme Court acknowledged that even in post-verdict actions, a court has the inherent power to order discovery, stating:

Nonetheless, our cases have recognized that, even in the absence of authorization in the form of a Court Rule or constitutional mandate, New Jersey courts have “the inherent power to order discovery when justice so requires.” State ex rel. W.C., 85 N.J. 218, 221(1981); see, e.g., State v. Cook, 43 N.J. 560, 569 (1965) (permitting defendant to view State's psychiatric reports on defendant); State v. Moffa, 36 N.J. 219, 222 (1961) (permitting defendant to inspect witness's grand jury testimony); State v. Butler, 27 N.J. 560, 605 (1958) (compelling witness to submit to psychiatric examination by defendant's expert). Courts in other jurisdictions have concluded that a court's inherent discovery power applies in post-conviction proceedings, and we agree fully with that determination. See, e.g., Harris v. Nelson, 394 U.S. 286 (1969) (holding that federal court may authorize taking of interrogatories in support of habeas corpus petition); Gibson v. United States, 566 A.2d 473, 478 (D.C. 1989) (“[C]ourts ... may fashion post-conviction discovery procedures as may be required to give meaning and substance to the objectives of the law.”); State v. Lewis, 656 So.2d 1248, 1249 (Fla.1994) (“[I]t is within the trial judge's inherent authority, rather than any express authority found in the Rules of Criminal Procedure, to allow limited discovery [when a party is pursuing a post-conviction claim].”); People ex rel. Daley v. Fitzgerald, 123 Ill.2d 175 (1988) (holding that courts have inherent authority to authorize taking of depositions in post-conviction proceedings).

State v. Marshall, 148 N.J. 89, 269-270 (1997).

Considering that, we turn to why justice requires this Court to act by insisting upon the application of Giglio discovery rights to guarantee basic due process and fundamental fairness in the revocation process. There is indisputably a liberty interest in parole revocation. Once a liberty interest has been identified, the question

of the “specific dictates of due process” “generally requires consideration of three distinct factors.” Because due process “is a flexible concept”, Courts assess what protections “the particular situation demands” by weighing these factors. Morrissey, 408 U.S. at 481. First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. Mathews v. Eldridge, 424 U.S. 319, 335 (1976); Doe v. Poritz, 142 N.J. 1, 106–07 (1995). A review of these three factors considering the interests involved in parole revocation makes clear that the application of Giglio to safeguard due process and fundamental fairness is appropriate.

1. The private interest that will be affected by the official action is great.

Morrissey established that those on parole have a significant liberty interest in remaining on parole. 408 U.S. at 482. There can be no question that the liberty interest at stake in parole decisions is substantial. As N.J. State Parole Bd. v. Byrne instructs, “[t]he joint interests of society and the prisoner in basic fairness require some measure of protection from gross miscarriages of justice and totally arbitrary action.” 93 N.J. at 210-211. Because the decision concerning revocation determines if a parolee will be returned to prison, the liberty interest is significant.

In 1972, the Court in Morrissey started that “the liberty is valuable and must be seen as within the protection of the Fourteenth Amendment.” Morrissey, 408 U.S. at 482. Termination of parole inflicts a “grievous loss” on the individual. Id. In 1973, one year later, the Court in Gagnon v. Scarpelli reiterated that in the probation and parole revocation contexts, “the loss of liberty entailed is a serious deprivation.” 411 U.S. at 782.

Because parole revocation impacts a strong liberty interest, this Court must find the significant interest that will be affected by the official action - - the loss of liberty - - requires additional due process protections. In the instant case, denying Mr. Tarakji the video recording may have prevented him from presenting exculpatory evidence and curtailed his ability to impeach the critical witness against him. This negatively impacted his ability to demonstrate that the allegations were not based upon substantial credible evidence.

The inability to prove that one has not violated a condition of parole subjects the parolee to imprisonment, which is undisputably a “grievous loss” of liberty. The revocation proceeding determines if the parolee will maintain a conditionally free life and all that entails, such as the ability to be gainfully employed and receive remuneration for the same, the ability to participate in family life and care for loved ones, and the ability to exercise some amount of agency in personal decisions. In New Jersey, the revocation hearing outcome also determines if one can exercise the

fundamental right to vote because those on parole can vote, but those serving a sentence cannot. N.J.S.A. 19:4-1; N.J.S.A. 19:4-1.1. Thus, the consequences of the governmental actions are great. This failure to provide basic due process by preserving the key objective evidence, precluded Mr. Tarakji from having the opportunity to confront his accuser, with devastating ramifications.

In parole release cases, this Court has held that it is improper for Parole to minimize or ignore favorable information. New Jersey State Parole Bd. v. Cestari, 224 N.J. Super. 534, 550-551. (App. Div. 1988); Acoli, 250 N.J. at 460-461; Berta, 473 N.J. Super. at 320. If the Parole Board cannot ignore or minimize favorable information in the parole release context, which does not trigger the same array of protections arising under the Fourteenth Amendment enunciated in Morrissey and Gagnon, the same entity cannot be permitted to do so in the more constitutionally protected revocation context.

The interests involved in the State action are not limited to a parolee. Society has a stake in ensuring that Mr. Tarakji becomes a productive member of the community. Society has an interest in not having a parolee subject to revocation based upon the withholding of potentially exculpatory evidence. Society has a further interest in ensuring that parolees are treated with fundamental fairness. Clearly, due process and fairness in the revocation process will enhance society's confidence in administrative decision-making.

2. The value of the safeguard is great.

Access to evidence that impacts the credibility of a witness is essential if unfair procedures for assessing culpability are to be avoided. Therefore, the probable value of the additional safeguard - - providing the evidence - - is the likelihood that the parolee may convince the factfinder to reach a different outcome. In Mr. Tarakji's case, there is a reasonable probability that the video from Kintock would have resulted in a proceeding where the Parole Board did not revoke his parole.

Moreover, there are additional benefits to safeguarding the right to discovery. The Court has made clear that the liberty interest inherent in parole revocation hearings is so great that due process demands a procedure that ensures a revocation is premised on substantial credible evidence and is not arbitrary. Requiring the State and its agents to turn over evidence that may demonstrate the falsity of allegations is a minimum requirement for ensuring that revocation hearings comport with due process and fundamental fairness. Society cannot trust a system where Parole, the prosecuting entity, files a parole violation and subsequently withholds a parolee's ability to question the alleged violations by destroying evidence that was specifically requested be preserved. The integrity of the revocation process and the ability of society to accept the results of that process, hinges on citizens believing it is fair, transparent, and not rigged by Parole.

3. The governmental interest would not be adversely impacted by the safeguard.

The government has an interest in the orderly administration of justice and a system that the public can support. The failure to provide Giglio protection counters that interest. The government's interest is further served by including a right to evidence that prevents erroneous determinations in revocation hearings. In Morrissey, the Court stated that "the state has no interest in revoking parole without some informal procedural guarantees." 408 U.S. at 483. The Court further stated that "society has an interest in not having parole revoked because of erroneous information or because of an erroneous evaluation of the need to revoke parole." Id. Providing parolees with evidence which will ensure the integrity of the revocation process and advance the goal of truth finding is consistent with this interest.

Additionally, providing surveillance evidence in revocation proceedings as part of the discovery process would not lead to significant fiscal or administrative burdens. Parolees facing revocation are already entitled to disclosure of evidence against them. Morrissey, 408 U.S. at 489. The evidence at issue is not significantly different from the evidence that parole officers already provide and would not cause an increased burden. Parole regularly utilizes videotape surveillance evidence in prosecuting revocation cases. There is no reason it should not be utilized in the defense of those cases. Here, Mr. Tarakji requested the video footage from his parole officer four days after the alleged incident. Thereafter, Madden counsel requested

the video footage. There would not have been a substantial burden on the parole officer to ensure that the video footage was preserved.

Importantly, the failure to provide a parolee with the very evidence that may disprove the violation would increase the fiscal burden on the State given the economic impact of incarceration.¹⁴ There is a cost associated with not only incarceration, but the loss of tax dollars and other financial contributions from parolees who are gainfully employed. This does not begin to address the harm done to families, especially children, who must function with missing caregivers. Those families, compromised by the removal of care givers and providers, are left to try to make ends meet and may need to turn to governmental services. Moreover, the children of the incarcerated are more likely to need enhanced health services and are at an increased risk of becoming involved in the criminal justice system. Laurie S. Kohn, Money Can't Buy You Love: Valuing Contributions By Nonresidential Fathers, 81 Brooklyn L. Rev. 53, 54, 85-86 (2015); Leila Morsy and Richard

¹⁴ According to the New Jersey Governor's Budget Message for FY2024, in 2022 the average cost of imprisonment was between \$52,666 and \$90,592 to house someone in the majority of Department of Corrections facilities (the cost is higher at the Adult Diagnostic and Treatment Center and at Edna Mahan Correctional Facility where women are housed). In 2023, the revised data shows that, on average, it cost between \$139.40 and \$250.12 per day to house a man in most DOC facilities. Id. at D-75 to D-78. (Pa 37-41)

Rothstein, Mass Incarceration and Children's Outcomes, Economic Policy Institute, (December 16, 2016).

The State has an interest in making sure that those who have violated their parole conditions are treated fairly and returned to prison, if appropriate. The private interest inherent in parole revocation are substantial and the proposed Giglio protections provide great value while not negatively impacting the State's interest. A Mathews analysis makes clear that Giglio discovery rights must be extended to parole revocation cases.

C. The Parole Board's Decision to Revoke must be vacated because an adverse inference must be drawn because of Parole's destruction of critical evidence.

In a case of first impression, Mr. Tarakji submits that on remand the hearing officer must draw an adverse inference against Parole for failing to preserve the surveillance video that was specifically requested by Mr. Tarakji and his Madden counsel. Mr. Tarakji was entitled to that evidence both because it had the potential to exculpate and because it could be used to confront the credibility of the critical witness. That evidence can never be recovered, and Mr. Tarakji will never be able to utilize it for those constitutionally protected purposes. Under the circumstances presented, with Parole failing to preserve the best evidence that was the basis for the violation, an adverse inference against Parole must be drawn.

There was unquestionably a discovery violation. In the criminal trial context, “[a]n adverse-inference charge is one permissible remedy for a discovery violation.” State v. Dabas, 215 N.J. 114, 140 (2013); See also State v. W.B., 205 N.J. 588, 597, 609 (2011). As stated in Dabas:

The criminal adverse-inference charge is analogous to the spoliation inference which may be drawn when evidence has been concealed or destroyed in civil cases. The spoliation inference - - like the adverse-inference charge - - allows a jury in the underlying case to presume that the evidence the spoliator destroyed or otherwise concealed would have been unfavorable to him or her. The spoliation inference follows from a centuries-old rule followed by courts: “omnia praesumuntur contra spoliatores,” which means “all things are presumed against the destroyer.”

State v. Dabas, 215 N.J. at 140, n. 12 (Internal citations omitted)

This Court and our Supreme Court have addressed the appropriateness of the use of the adverse inference charge where law enforcement knew or should have expected that a matter was proceeding toward a prosecution. In Dabas, police knew that the defendant was arrested and questioned about, among other things, the death of his wife. Id. at 117-118. The interrogating officer took notes and then, based on the notes, conducted a truncated additional taped interview where he asked leading questions based upon the previous interview and notes. Id. The defendant was later indicted. After the indictment, the officer typed up a synopsis of his notes and then destroyed the handwritten detailed notes. Id. Our Supreme Court held that “if [the

jury] found [the investigating officer] destroyed his notes at a time when he knew the case was proceeding to trial, it could infer that the notes contained information inconsistent with the witness's trial testimony.” Id. at 140.

While Dabas addresses the destruction of evidence after charges have been lodged, in State v. Richardson, this Court addressed law enforcement’s pre-charging failure “despite defendant's request, to preserve obviously relevant evidence . . .” State v. Richardson, 452 N.J. Super. 124, 131–32 (App. Div. 2017). This Court concluded that the State breached its obligations, noting that courts’ “power to order discovery is not limited to the express terms of the automatic discovery provisions of Rule 3:13–3(b). See State ex rel. A.B., 219 N.J. 542, 555 (2014). The courts have the inherent power to order discovery when justice so requires.” Id. at 132 (Internal quotation marks and citations omitted)

At the time that Mr. Tarakji requested the surveillance tape, it was known that Parole was alleging he had violated parole and was charging him with a violation. However, even if that was not known, his clear request, even if pre-violation, sufficed to make Parole aware of his need for the evidence. Indeed, it is difficult to imagine any reasonably good faith explanation that Parole could assert for not preserving the surveillance video. Even if Parole was able to assert some justification for its actions, it would not obviate the need for an adverse inference to be drawn in its prosecution of the revocation matter. Our Supreme Court held in both “W.B. and

Dabas, neither proof of bad faith, nor a showing that evidence is exculpatory, is essential to demonstrate a discovery violation or to justify an adverse inference charge.” Richardson, 452 N.J. Super. at 138.

Given the significant prejudice caused by Parole’s actions and the significant liberty interest at stake, parole hearing officers must be permitted to draw an adverse inference when assessing violations. This protection is necessary if hearing officers are to avoid basing critical determinations on “erroneous information” or making “an erroneous evaluation of the need to revoke parole.” Morrissey, 408 U.S. at 483.

In view of the above, the decision of the hearing officer must be reversed and the matter dismissed, with prejudice. Alternatively, Mr. Tarakji is requesting a reversal and remand for a de novo hearing. On remand, the hearing officer, after hearing the evidence, must be permitted to draw an adverse inference against Parole.

POINT II

THE HEARING OFFICER VIOLATED MR. TARAKJI'S DUE PROCESS RIGHTS BY PERMITTING PAROLE OFFICER VILMARY LOPEZ AND THE ONLY NON-HEARSAY FACT WITNESS, EMMANUEL AJIDAHUM, TO TESTIFY VIA AUDIOCONFERENCING, WITHOUT GOOD CAUSE, THEREBY DEPRIVING MR. TARAKJI OF HIS RIGHT TO OBSERVE AND MEANINGFULLY CONFRONT ADVERSE WITNESSES. (U.S. CONST. AMEND. XIV; N.J. CONST. (1947) ART. I, PAR. 1) (RAISED BELOW) (1T 4-13 to 20) (1T 44-17 to 24) (Pa 13) (Pa 15)

Mr. Tarakji's due process confrontation rights were further infringed upon when the hearing officer, over objection by counsel, permitted Parole Officer Lopez, and Mr. Ajidahum, to testify via audioconferencing. While the hearing officer could observe the witnesses, Mr. Tarakji and counsel were precluded from observing them. Therefore, cross-examination by counsel was not meaningful in derogation of Mr. Tarakji's Federal and State due process rights.

With respect to Parole Officer Lopez, who, in addition to being a witness, functioned as the *de facto* prosecutor, counsel stated:

[W]e cannot all see each other. And so[,] the defendant and defense Counsel cannot see the prosecuting Officer on behalf of the State. We can hear the Officer, and we can see the Hearing -- the Hearing Officer, but we cannot see the prosecuting Officer. So, to the extent that there may be a constitutional issue regarding the right to face one's accusers I would just note that objection on the record.

(1T 4-13 to 20)

With respect to Mr. Ajidahum, a key fact witness, counsel stated:

I would make a formal objection . . . that neither the defendant, nor defense counsel, is able to see the witness. And that is a violation of the [c]onstitutional [r]ight to face one's accusers, especially witnesses that are . . . looking to make [] accusations of fact. So that objection is being preserved for the record and potential appeal.

(1T 44-17 to 24)

As noted, in Morrissey v. Brewer, 408 U.S. at 489, the United States Supreme Court held that to satisfy the minimum requirements of due process, a parolee facing revocation must have “the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation).” See, also, Thompson v. New Jersey State Parole Bd., 210 N.J. Super. 107, 122 (App. Div. 1986) citing Morrissey, 408 U.S. at 488-489, stating that “in parole revocation proceedings, the parolee's constitutional right to confront and cross-examine witnesses is qualified, and it gives way to a well-grounded specific finding by the hearing officer of good cause for not allowing confrontation.” Our Administrative Code has adopted the right of confrontation established in Morrissey stating that a parolee has the “right to confront and cross-examine adverse witnesses, *unless* the hearing officer determines that such witnesses would be subject to risk of harm.” N.J.A.C. 10A:71-7.14 (Emphasis added)

The due process right of confrontation, grounded in Morrissey, is meaningless without the ability to observe adverse witnesses. While N.J.A.C. 10A:71-7.13 permits videoconferencing, the Administrative Code provides no such provision for audioconferencing.¹⁵ This underscores the importance of the defense argument that the fundamental right to confront adverse witnesses can only occur when counsel can observe and assess adverse witnesses.

The substantial prejudice to Mr. Tarakji is magnified because Mr. Ajidahum was the sole witness to the alleged threats and was responsible for monitoring the surveillance cameras at Kintock, which he failed to preserve. (Pa 14) The credibility of Mr. Ajidahum was addressed by counsel in closing argument when he stated, “the events did not occur as the witness has presented.” (1T 65-10 to 11) Thus, his credibility was directly at issue. But neither Mr. Tarakji nor counsel could observe Mr. Ajidahum or Parole Officer Lopez, placing Mr. Tarakji at a distinct disadvantage

¹⁵ Noteworthy, a recent decision of the Appellate Division barred video expert testimony at trial, *at the State’s request*. This Court, relying upon Pathri v. Kakarlamath, 462 N.J. Super. 208 (App. Div. 2020), held that the trial court did not abuse its discretion when denying defendant's motion to have his expert testify remotely. State v. Lansing, 479 N.J. Super. 565 (App. Div. 2024) This Court applied the Pathri factors in deciding whether to permit the witness to testify remotely. Relevant to the case at bar, are factors 1 and 2: “the witness’ importance in the dispute” and whether the witness’ testimony “goes to the heart of the matter.” Id. at 576-577 Applying these factors to the instant hearing, Officer Lopez and Mr. Ajidahum were critically important, and their testimony went to the “heart of the matter.” Id.

especially considering that witnesses were not “merely conveying some information of relatively minor importance.” Lansing, 479 N.J. Super. at 577.

Clearly, counsel in a revocation case, where the parolee is facing a grievous deprivation of liberty, and was previously sentenced to parole supervision for life, must be permitted to observe the appearance of witnesses including the manner in which they testify. There is no legitimate substitute for observing a witness during cross-examination because it allows counsel to evaluate credibility and uncover new information by interpreting nonverbal cues such as body language, facial expressions, and demeanor, which can be very revealing. For example, by observing a witness's reactions to questions, counsel may detect signs of hesitation, nervousness, or discomfort which may indicate the witness is not being truthful. Nonverbal signals like eye movement or changes in posture can reveal inconsistencies between a witness's verbal testimony and their true beliefs, allowing counsel to probe inconsistencies. Further, observing the demeanor of a witness may assist counsel in altering his cross-examination strategy, thereby exploiting vulnerabilities or emphasizing areas where the witness appears overly confident. There is no question that when a witness appears via videoconferencing, as opposed to *merely being heard* via audioconferencing, it permits counsel to evaluate eye contact, facial expressions, and body language. There is no substitute for observing a witness and developing cross-examination strategies based upon that

observation. Wigmore stated that cross-examination is the greatest legal engine ever invented for the discovery of truth. California v. Green, 399 U.S. at 149. That legal engine is significantly crippled when the parolee and counsel are precluded from observing and assessing the testimony of witnesses.

Simply stated, the infringement on Mr. Tarakji's confrontation rights deprived him of a fair revocation hearing. The hearing was the antithesis of due process. For the revocation hearing to move forward via audioconferencing, which directly infringed upon Mr. Tarakji's fundamental right of confrontation, the hearing officer was mandated to make a finding that "good cause" existed to proceed. Morrissey, 408 U.S. at 488-489. In other words, the hearing officer must make a specific finding that by utilizing videoconferencing "the witnesses would be subject to risk of harm" as required by N.J.A.C. 10A:71-7.14. That did not occur. Instead, the hearing officer merely "noted" counsel's objection for the record (1T 4-24) and did not make any finding that videoconferencing would subject Parole Officer Lopez or Mr. Ajidahum to "risk of harm." Id. Due process requires more.

Moreover, in the absence of a finding that Parole Officer Lopez and Mr. Ajidahum were "subject to risk of harm" and "good cause" existed to justify audioconferencing, the hearing officer was required to secure a knowing, intelligent, and voluntary waiver from Mr. Tarakji. The United States Supreme Court has utilized different language to describe the constitutional standard for waiver. See,

e.g., Faretta v. California, 422 U.S. 806, 835 (1975) (defendant must voluntarily exercise his own free will and must knowingly and intelligently relinquish the right); Boykin v. Alabama, 395 U.S. 238, 242 (1969) (waiver needs "an affirmative showing that it was intelligent and voluntary"); Johnson v. Zerbst, 304 U.S. 458, 464 (1938) (a waiver is an "intentional relinquishment" of a "known right"). There is *nothing* in the record to indicate that a waiver was secured from Mr. Tarakji prior to utilizing audioconferencing. The failure to secure a waiver substantially infringed upon his fundamental right of confrontation guaranteed by the Fourteenth Amendment and Article 1, Paragraph 1 of our State Constitution.¹⁶ The hearing officer had every right to adjourn the hearing to ensure that Mr. Tarakji's right of confrontation was not trampled upon. See, N.J.A.C. 10A:71-7.13(d).

In addition, the Parole Board's final agency decision did not find that good cause existed for the hearing to occur without the ability to observe witnesses. The Board concluded that counsel's "inability to see the parole officer [Lopez] and her testifying witness [Ajidahum], did not affect [counsel's] ability to represent Mr. Tarakji's interests . . ." (Pa 13) Further, the Board stated:

¹⁶ This is critical because the Court in Morrissey clearly articulated that the rights inherent in the revocation process include the "opportunity to be heard in person." Audioconferencing, with no ability to squarely confront and observe a parolee's accusers, is clearly a poor substitute for this mandated constitutional right. Morrissey v. Brewer, 408 U.S. at 489.

The Board finds that the hearing officer had the opportunity to observe and assess the testimonial demeanor of the parties and their witnesses in this matter and to independently judge the clarity, coherence and consistency of that testimony with both itself and with the other evidence of record. The Board finds that the hearing officer found Mr. Ajidahun to be a credible witness and indicated same in the Hearing Summary.

(Pa 15)

Thus, the focus on the Parole Board's decision was on the ability of the *hearing officer* to observe and judge the credibility of the witnesses, not the ability of *counsel* to observe and make strategic decisions based upon the appearance, demeanor, and the manner in which the witnesses testified. Had counsel had the ability to observe the witnesses, his cross-examination may have changed. Without question, Mr. Tarakji's right to engage in meaningful cross-examination was substantially infringed upon, without a finding of good cause by the hearing officer.

In view of the above, the decision revoking Mr. Tarakji's parole must be reversed and the matter remanded for a *de novo* revocation hearing, with the right to meaningfully engage in cross-examination, including the ability to observe and evaluate the witnesses.

POINT III

**MR. TARAKJI DID NOT SERIOUSLY OR
PERSISTENTLY VIOLATE A CONDITION OF HIS
PAROLE AND REVOCATION WAS NOT
DESIRABLE, THUS THE FINAL AGENCY
DECISION OF THE PAROLE BOARD MUST BE
REVERSED. (Pa 15)**

Simply stated, there did not exist clear and convincing evidence that Mr. Tarakji “seriously or persistently” violated the conditions of his parole. N.J.S.A. 30:4-123.60. There is no support in the record for the Board’s finding that Mr. Tarakji’s violations, of the same condition, were serious or persistent and that revocation was desirable. See, N.J.A.C. 10A:71-7.12(c)(1); N.J.A.C. 10A:71-7.12(c)(2). The alleged failure of Mr. Tarakji to complete the non-residential and residential Kintock program cannot be characterized as serious or persistent, given Mr. Tarakji’s compliance with all other parole conditions. The charging of two separate counts for violating the same condition, (Pa 25) constitutes impermissible double counting.

Moreover, given Parole’s failure to preserve the videotape surveillance, the second count of violating condition 14 is eviscerated, leaving this Court with one singular violation - - failing to complete the Kintock residential program. (Pa 25) This singular alleged violation cannot be said to serious or persistent necessitating revocation.

The Parole Board's decision was not supported by "sufficient credible evidence. . . in the record" considering "the proofs as a whole." In re Taylor, 158 N.J. 644, 656 (1999) (Internal citations omitted). Therefore, the Parole Board's decision was "arbitrary, unreasonable or capricious," McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 563 (App. Div. 2002), necessitating reversal.

CONCLUSION

In view of the above, the decision of the hearing officer must be reversed and the parole violations dismissed, with prejudice. Alternatively, Mr. Tarakji is requesting a reversal and remand for a de novo hearing. On remand, the hearing officer, after hearing the evidence, must be permitted to draw an adverse inference against Parole for its failure to preserve the surveillance videotape, which was clearly relevant and probative evidence in this case.

Further, given that the alleged violations were not serious or persistent, and revocation was not desirable, the decision of the Parole Board must be reversed.

Respectfully submitted,

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DATED: December 19, 2024

RONALD TARAKJI,	:	SUPERIOR COURT OF NEW JERSEY
	:	APPELLATE DIVISION
Petitioner-Appellant,	:	
	:	DOCKET NO. A-002522-23T4
v.	:	
	:	<u>Civil Action</u>
NEW JERSEY STATE PAROLE	:	
BOARD,	:	
	:	ON APPEAL FROM A FINAL
Defendant-Respondent.	:	AGENCY DECISION FROM THE NEW
	:	JERSEY STATE PAROLE BOARD
	:	
	:	
	:	

**BRIEF OF DEFENDANT-RESPONDENT,
NEW JERSEY STATE PAROLE BOARD
SUBMITTED: April 25, 2025**

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PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS¹

Appellant, Ronald Tarakji, appeals from the New Jersey State Parole Board's February 28, 2024 final agency decision revoking Taraji's parole supervision for life (PSL) status and imposing a sixteen-month term of incarceration. (Ra10-Ra15; Pa16-Pa22).² The facts relevant to this appeal are as follows.

1. Tarakji's History During His Parole Supervision for Life Status.

Tarakji was under the Board's parole supervision because fourteen years earlier he had pleaded guilty to aggravated criminal sexual contact and aggravated sexual assault involving a helpless or incapacitated victim. (Ra16-Ra18). The state court imposed a four-year term of imprisonment and a special sentence of PSL under N.J.S.A. 2C:43-6.4. Ibid. Tarakji was released from custody in August 2012 and began to serve his PSL term. (Ra20-Ra23).

Although Tarakji provided written confirmation that he understood he was subject to the Board's general and specific conditions for his PSL term, the

¹ Because the procedural history and counterstatement of facts are closely related, they are combined for efficiency and the court's convenience.

² "Pb" refers to Tarakji's December 19, 2024 appellate brief; "Pa" refers to Tarakji's appendix of the same date; and "1T" refers to the transcript of the July 26, 2023 parole-revocation hearing before the hearing officer.

record reflects that Tarakji violated his parole conditions several times before the present appeal. (Ra21-Ra26; Ra27-Ra91).

In April 2015, a two-member Board panel found clear and convincing evidence that Tarakji had violated three parole conditions, for which the panel revoked Tarakji's parole status and imposed a twelve-month term of incarceration. (Ra27-Ra28). The two-member Board panel found clear and convincing evidence that Tarakji had violated four parole conditions in his subsequent parole term but allowed Tarakji to remain on parole, subject to two added special parole conditions. (Ra29-Ra34).

Then, in June 2017, a two-member Board panel found clear and convincing evidence that Tarakji had again violated two parole conditions, including a special condition that Tarakji complete the Re-Entry Substance Abuse Program (RESAP). (Ra44-Ra45). The panel revoked Tarakji's parole and imposed a fourteen-month term of incarceration. Ibid.

In December 2019, a two-member Board panel found by clear and convincing evidence that Tarakji had violated two parole conditions, including the general condition that Tarakji "[p]articipate in and successfully complete an appropriate community or residential counseling or treatment program as directed by the assigned parole officer." (Ra61-Ra62). In particular, the two-member Board panel adopted the hearing officer's finding that Tarakji had

“engaged in insolence towards staff” at an assigned Community Resource Center (CRC) program. (Ra61-Ra62; Ra65-Ra67). Despite this new failure to abide by his parole conditions, the Board continued Tarakji’s parole status, subject to two added special conditions of parole, including the special condition that Tarakji successfully complete the Stages to Enhance Parolee Success (STEPS) program at the Bo Robinson Assessment and Treatment Center. (Ra61-Ra62).

In January 2021, Tarakji’s parole officer referred Tarakji to an outpatient drug counseling program as a general condition of Tarakji’s parole, because Tarakji had recently admitted to marijuana use and also found that Tarakji had been “non compliant with sex offender therapy.” (Ra71).³ The following month, Tarakji was again arrested for a parole violation. (Ra72). There, the arresting parole officers reported that Tarakji had demonstrated continuing noncompliance with the conditions of his parole status regarding sex-offender treatment and outpatient drug counseling, and noted that, when offered the chance to participate in the Stages to Enhance Parolee Success (STEPS)

³ Tarakji’s admitted marijuana use predated the Board’s September 6, 2022 amendment to N.J.A.C. 10A:71–6.4(a)(13), which removed the requirement to abstain from marijuana use or possession from general conditions of parole.

program, Tarakji “adamantly and aggressively refused,” resulting in his arrest. (Ra72).

In the ensuing May 2021 parole-revocation hearing conducted after his arrest, a two-member Board panel found clear and convincing evidence that Tarakji had violated the general condition of his parole that required Tarakji to “[p]articipate in and successfully complete an appropriate community or residential counseling or treatment program as directed by the assigned parole officer.” (Ra76). Still, the Board panel did not impose a term of incarceration; rather the Board continued Tarakji’s parole status, subject to the added special condition that Tarakji successfully complete the STEPS program provided by The Kintock Group⁴ (Kintock), and the requirement that Tarakji comply with all rules and regulations of his institutional housing location. Ibid.

In September 2022, Tarakji’s parole officer referred Tarakji to a CRC program as a general condition of Tarakji’s parole because Tarakji’s “employment history has been sporadic” during his parole supervision term, with Tarakji also being “unemployed since January 2020.” (Ra83). The parole officer determined that the CRC program would assist Tarakji “with [his]

⁴ Kintock is a private vendor that contracts with the Board to, in part, operate the STEPS Program in Newark. (Pa26). Kintock states that it has “has partnered with the Parole Board since 2003 to provide Residential Re-entry services in Newark and Bridgeton, respectively.” Ibid.

transition into society and successful rehabilitation.” (Ra83). But approximately four months later, on February 15, 2023, Tarakji was “negatively discharged” from the Paterson CRC because of “numerous absences from the program” and Tarakji’s failure to “make any progress towards proof of on the books, legal employment.” (Ra84). In the accompanying CRC Discharge Summary, the case manager reported that Tarakji’s LSI-R assessment reflected “high-risk levels” and “probability for recidivism is 61%.” (Ra87).

As a result of Tarakji’s parole history, on the same date, Tarakji’s parole officer referred him to a Board community-based residential program as a general condition of Tarakji’s parole because the officer believed such a program would assist Tarakji “in making a successful reintegration into the community” and would help Tarakji the acquire skills necessary to become self-sufficient. (Ra84). Tarakji also signed an agreement acknowledging in relevant part that he was required to participate in a Board-sponsored community-based program as a condition of his parole supervision and that the program rules and regulations were special conditions of his supervision status. (Ra85).

Less than three weeks later, on March 2, 2023, Tarakji committed another parole violation by being unsuccessfully discharged from the STEPS program at Kintock after he allegedly threatened a program staff member. (Pa2-Pa3).

Tarakji was arrested on the same date and served with a notice of probable cause concerning his alleged parole violation. (Pa4; Pa23-Pa25).

2. Tarakji's Present Parole Revocation.

On July 26, 2023, the Board hearing officer remotely conducted Tarakji's parole revocation hearing on the Zoom videoconferencing platform. (1T3:1-64:24). Tarakji was charged with twice violating the general condition of his PSL status that required him to “participate in and successfully complete an appropriate community or residential counsel or treatment program as directed by your assigned parole officer”: first, due to Tarakji's February 15, 2023 unsuccessful discharge from the CRC program; and second, for his March 2, 2023 unsuccessful discharge from the STEPS program. (1T17:11-18:22).

Through counsel, Tarakji pleaded not guilty to both alleged violations. Ibid. Through counsel, Tarakji also waived his right to proceed through an initial probable cause hearing before the parole revocation hearing. (1T9:2-12).

During the hearing that ensued, the hearing officer heard testimony from the testifying parole officer, the Kintock staff member who reported Tarakji's threatening statement, and Tarakji. (1T18:23-63:19). Due to a technical issue, Tarakji and Tarakji's counsel could hear, but not see, the testifying parole officer and Kintock staff member on the Zoom. (1T4:12-23; 1T44:17-24).⁵ Although

⁵ The hearing officer did not report having any similar issues. (1T3:1-64:24).

Tarakji's counsel raised an objection concerning that issue, he nonetheless reserved that objection and consented to proceed with the hearing "in light of the desire to move forward." (1T4:12-23; 1T44:17-24; 1T4:18-23).

On direct questioning from the Board hearing officer, the parole officer testified that Tarakji was discharged from the CRC program on February 15, 2023, because Tarakji failed to comply with that program's attendance rules and regulations. (1T19:18-20:1) The parole officer further testified that, even though Tarakji's conduct constituted a parole violation, no parole revocation was sought as to that initial unsuccessful discharge because the Board "wanted to give him another chance to continue to be supervised." (1T21:20-22).

In addition, the Board hearing officer heard testimony from Emmanuel Ajidahun, the Kintock employee and resident supervisor. (1T38:21-50:25). Ajidahun first testified about his responsibilities with Kintock, which included "[m]onitor[ing] surveillance cameras within the facility." (1T40:3-25). Even though Tarakji's counsel had asserted in pre-hearing discovery that the Board had committed a "Brady violation" by failing to preserve a surveillance video from Kintock, Tarakji's counsel did not later cross-examine Ajidahun about that surveillance video. (Pa5-Pa9; 1T44:25-50:25).

Ajidahun also separately testified about the February 2023 incident in which he alleged that Tarakji personally threatened him. (1T41:19-50:25). He

testified that the incident first began while Ajidahun was performing a walking inspection and observing the housekeeping work performed by the residents, during which he saw “thick smoke” coming from a bathroom stall in the parolees’ living area. (1T41:22-42:23). Ajidahun then asked the person in the bathroom stall to exit, and a facility resident—Tram Doan—exited the bathroom with a cigarette. Ibid. Ajidahun asked Doan to give him the cigarette, but Doan did not immediately comply. (1T42:17-23).

According to Ajidahun, Tarakji, whose room was opposite the bathroom, then came out and warned Doan to not comply with Ajidahun’s request because it would result in Doan being written up in a report by Ajidahun. (1T42:23-43:8). Then, Tarakji directed his attention at Ajidahun, telling Ajidahun that if he wrote a report, Tarakji would “deal with [him] outside the facility,” and that Tarakji had been in the facility before and “knew everything.” (1T43:8-44:7). Ajidahun testified that he felt personally threatened by Tarakji’s statements to him. (1T44:5-6).

On direct examination by Tarakji’s counsel, Tarakji claimed that Ajidahun’s sworn testimony was “a big old lie,” and that he “didn’t say nothing to the man [Ajidahun].” (1T57:25-59:5). Tarakji then confirmed the accuracy of his parole officer’s report that, after hearing about the reported threat to Ajidahun, Tarakji had asked his parole officer to “run the camera back because

he did not threaten staff.” (1T60:4-15). But Tarakji said “that did not happen.” (1T60:13-17).

At the end of the parole revocation hearing, Tarakji’s counsel requested dismissal of the parole violation charge because of the Board’s alleged Brady violation concerning the alleged surveillance video of the incident. (1T61:7-62:21). Even though Tarakji’s counsel asserted that the Board had “failed to preserve that evidence” and “likewise, failed to produce that evidence,” counsel did not cite any evidence that the Board ever had possession or control of the surveillance video. Ibid. In the alternative, counsel argued that the Board had not demonstrated by clear and convincing evidence that Tarakji’s parole violations were “severe or persistent.” (1T65:15-66:8). The hearing officer did not make any determination on the record as to Tarakji’s motion to dismiss. (1T67:5-24).

The hearing officer subsequently issued a written determination that Tarakji had engaged in a “serious” violation of his parole conditions and that revocation was appropriate. (Ra5). In so doing, the hearing officer found that Ajidahun’s testimony was “sufficiently detailed and overall to be credible and reliable” (Ra1-Ra5; Ra5), and that “[Tarakji]’s behavior is not only aggressive and threatening, but it also respectively compromises the safe and rehabilitative atmosphere that the program is to facilitate to those within.” (Ra5). And after

considering Tarakji's entire parole history, the hearing officer also found that Tarakji "continues to demonstrate behaviors that directly mirror his noncompliance during his prior terms of PSL." Ibid. Thus, he recommended revocation of Tarakji's PSL status and the imposition of a sixteen-month term of incarceration. Ibid.

3. Two-Member Board Panel Decision & Full Board Final Agency Decision.

On August 16, 2023, a two-member Board panel issued its notice of decision on Tarakji's parole revocation, which adopted the hearing officer's findings of fact. (Ra9). The Board panel also concurred with the hearing officer's recommendation to revoke Tarakji's PSL status and impose a sixteen-month term of incarceration. Ibid.

Tarakji filed an administrative appeal of the two-member Board panel's decision to the full Board. (Ra10). The Board issued its final agency decision on February 28, 2024 (Ra10-Ra15), affirming the panel's findings and conclusions (Pa12), and the determination that clear and convincing evidence existed that Tarakji's parole violation was "serious and that revocation is desirable." (Ra13).

The Board also addressed the two constitutional challenges. (Pa13-Pa15). First, the Board rejected Tarakji's due process claim concerning the technical issue with the video during the parole revocation proceeding on the Zoom.

(Pa13). The Board noted that, although Tarakji and his counsel could not see the two testifying witnesses, due process had still been afforded because: (1) those witnesses' testimony could be "clearly heard" by Tarakji and his counsel; (2) Tarakji had received a hearing from a neutral and detached hearing officer; (3) Tarakji had been allowed to testify on his own behalf; and (4) Tarakji's counsel was able to cross-examine witnesses and to present argument and testimony. Ibid. Thus, in the absence of evidence in the record that Tarakji's counsel had "experience[ed] a communication problem," the Board found Tarakji's argument on this point to be without merit. (Pa13).

The Board next addressed Tarakji's claim concerning the Board's purported Brady violation. (Pa14-Pa15). The Board noted that Tarakji had been "advised that the Division of Parole requested the video of the incident [from Kintock] and that Kintock advised that the requested video was no longer available." (Pa14). The Board further found that, in the absence of that video evidence, substantial evidence in the record supported the hearing officer's findings. (Pa14-Pa15). In particular, the Board found that the hearing officer had before him Tarakji's discharge report, the testimony of the witnesses, an "opportunity to observe and assess the testimonial demeanor of the parties and their witnesses in this matter and to independently judge the clarity, coherence

and consistency of that testimony with both itself and with the other evidence of record.” (Pa14-Pa15).

In conclusion, the Board concurred with the two-member Board panel’s determinations that clear and convincing evidence existed that Tarakji “seriously violated” the conditions of his parole status, and that revocation of parole and imposition of a sixteen-month incarceration term was appropriate. (Pa15). Thus, the Board affirmed the two-member Board panel’s decision. Ibid.

This appeal followed. (Pa16-Pa20).

ARGUMENT

POINT I

THE REVOCATION PROCEEDINGS HERE COMPORTED WITH THE REQUIREMENTS OF PROCEDURAL DUE PROCESS.

Here, despite the technical issue that impeded Tarakji's ability to observe the Board's witnesses during the virtual parole revocation hearing, the Board appropriately found that the requirements of procedural due process had been met because the hearing officer could "observe and assess the testimonial demeanor of the parties and their witnesses in this matter and to independently judge the clarity, coherence and consistency of that testimony with both itself and with the other evidence of record." (Pa13; Pa15). The Board's conclusion on that issue was consistent with applicable law, and this court should affirm.

In Morrissey v. Brewer, 408 U.S. 471, 489 (1972), the Court held that "minimum requirements of due process" at a parole revocation hearing included, among other things, "the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation)." The Court grounded these procedural rights within the Due Process Clause of the Fourteenth Amendment, rather than the Sixth Amendment. Id. at 472. The Board has adopted regulations for parole revocation hearings that afford parolees the broad due process protections outlined in Morrissey,

including the conditional right of confrontation. See N.J.A.C. 10A:71-7.7(c)(5) (providing the “right to confront and cross-examine adverse witnesses, unless the hearing officer determines that such witnesses would be subjected to risk or harm.”).

In the present appeal, Tarakji advances two arguments concerning his right of confrontation. (Pb33-Pb39). First, he argues that his right of confrontation is “meaningless without the ability to observe adverse witnesses.” (Pb35). Next, he argues that his “right to engage in meaningful cross-examination was substantially infringed upon.” (Pb39). Neither of these arguments finds support in existing law or the factual record here.

As to Tarakji’s first argument, courts have deemed observation of a witness’s demeanor as relevant to the right of confrontation to the extent that such observations assist the trier of fact. See, e.g., Maryland v. Craig, 497 U.S. 836, 846 (1990) (defining “elements of confrontation” as “physical presence, oath, cross-examination, and observation of demeanor by the trier of fact.”); Mattox v. United States, 156 U.S. 237, 242–43 (1895) (reasoning the “primary object” of right of confrontation was compelling witnesses “to stand face to face with the jury in order that they may look at him, and judge by his demeanor upon the stand and the manner in which he gives his testimony whether he is worthy of belief.”).

Here, despite the admitted technical difficulties for Tarakji and his counsel, the Board correctly found that the finder of fact—here, the hearing officer—did have “the opportunity to observe and assess the testimonial demeanor of the of the parties and their witnesses in this matter.” (Pa15). The Board also specifically found that the hearing officer was able to “independently judge the clarity, coherence and consistency of that testimony with both itself and with the other evidence of record.” Ibid. These findings are undisputed by Tarakji on appeal (Pb33-Pb39), and fully supported by the record. (1T3:1-67:24).

Thus, the parole-revocation hearing in which the trier of fact was able to observe and asses the testimony of the witnesses comported with the recognized “primary object” of the right of confrontation: compelling a witness “to stand face to face with the jury in order that they may look at him, and judge by his demeanor upon the stand and the manner in which he gives his testimony whether he is worthy of belief.” Mattox, 156 U.S. at 242–43. For these reasons, and on this record, this court should reject Tarakji’s first due process argument.

Similarly without merit is Tarakji’s second due process argument: that his “right to engage in meaningful cross-examination was substantially infringed upon.” (Pb39). In Delaware v. Fensterer, 474 U.S. 15, 22 (1985), the Court stated, “the Confrontation Clause is generally satisfied when the defense is given

a full and fair opportunity to probe and expose . . . infirmities [forgetfulness, confusion, or evasion] through cross-examination, thereby calling to the attention of the factfinder the reasons for giving scant weight to the witness' testimony." See also State ex rel. J.A., 195 N.J. 324, 351 (2008) ("The Confrontation Clause only requires that a witness who bears testimony against the accused be present at trial and subject to cross-examination."). The Court in Fensterer, 474 U.S. at 20, also made clear that "the Confrontation Clause guarantees an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." (emphasis in original).

While Tarakji may have preferred to "make strategic decisions based upon the appearance, demeanor, and the manner in which the witnesses testified" (Pb39), he makes no argument on appeal as to how the parole revocation hearing here failed to satisfy the requirements of confrontation. Indeed, Tarakji does not cite any specific infirmities from the record at all. Instead, he merely offers this court his generalized conjecture that "[h]ad counsel had the ability to observe the witnesses, his cross-examination may have changed." Ibid. (emphasis added). It is evident on the record that counsel was able to cross-examine the witnesses (1T44:25-50:25), and there is no specific indication that such was limited by the technical issue.

Indeed, such generalized conjecture is an insufficient basis for a finding of prejudice. See, e.g., State v. Miller, 205 N.J. 109, 124 (2011) (holding that generalized contentions about prejudice with respect to evidence are insufficient); Blank v. City of Elizabeth, 318 N.J. Super. 106, 114 (App. Div. 1999) (noting that party complaining “has the burden of coming forward and of persuasion on the question of prejudice” and rejecting claims of prejudice there because objecting party did so “in general terms.”). Because Tarakji fails to demonstrate any cognizable prejudice from his inability to see the witnesses as they testified, this court should affirm the Board’s decision because the trier of fact was able to see and assess the witnesses’ testimony.

POINT II

SUBSTANTIAL CREDIBLE EVIDENCE SUPPORTS THE BOARD'S FINDING THAT TARAKJI SERIOUSLY VIOLATED THE CONDITIONS OF HIS PAROLE.

The Board's finding that Tarakji "seriously violated" the conditions of his parole status was fully supported by substantial credible evidence in the record, in particular, the Board's finding that Tarakji was discharged from his assigned residential program after verbally threatening a resident supervisor at the program. (Ra1-Ra7; Pa11-Pa15). With this appeal (Pb40-Pb41), Tarakji asks this court to reverse that unanimous decision under a standard of review which only permits reversal upon "a clear showing that [the decision] is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." In re Herrmann, 192 N.J. 19, 27-28 (2007) (internal citation omitted). Because Tarakji has failed to make any such clear showing, this court should affirm the Board's unanimous decision.

The Board, created by the New Jersey Legislature under N.J.S.A. 30:4-123.47(a), has duly adopted administrative regulations permitting it to revoke a parole status where a hearing officer finds "probable cause" that a parolee "seriously or persistently violated the conditions of parole status and that revocation of parole is desirable." N.J.A.C. 10A:71-7.12(a)(1).

The record here demonstrates that the hearing officer made these required findings. (Ra1-Ra7; Pa11-Pa15). In particular, the hearing officer made findings that Tarakji violated General Condition #14 when he was unsuccessfully discharged from the STEPS residential program at Kintock. (Ra5; Ra80). And after considering the sworn testimony of both the resident supervisor and Tarakji and making credibility determinations based on their testimony, the hearing officer found that Tarakji was discharged from Kintock a week after he had verbally threatened a resident supervisor. (Ra5). After fully considering the factual record, the hearing officer cogently expressed in his hearing summary why Tarakji's discharge from the STEPS program, combined with his extensive history of parole noncompliance, constituted a "serious" parole violation meriting parole revocation, specifically noting that Tarakji's "behavior is not only aggressive and threatening, but it also respectively compromises the safe and rehabilitative atmosphere that the program is to facilitate to those within." Ibid.

In like manner, after thoroughly considering the hearing officer's factual findings and the entire record of the parole revocation proceeding, the two-member Board panel found clear and convincing evidence that Tarakji had violated General Condition #14, that the violation was serious, and that revocation and a sixteen-month incarceration term was appropriate. (Ra8-Ra9).

The record also demonstrates that the full Board issued its final agency decision after reviewing the administrative record and considering Tarakji's arguments in his administrative appeal (Pa10-Pa15), which the Board ultimately concluded were "without merit." (Pa12-Pa14). The Board's well-supported findings that Tarakji "seriously violated" the conditions of his parole status and that "revocation is desirable" are entitled to deference here. (Pa14).

New Jersey courts have recognized that the Legislature "did not further define the type of conduct it intended to capture within the statutory standard—'seriously or persistently violated,'" and that "the Board has not adopted a regulation to guide exercise of its expertise to distinguish cases in which parole should and should not be revoked." Hobson v. New Jersey State Parole Bd., 435 N.J. Super. 377, 382 (App. Div. 2014). And New Jersey courts have further recognized that the Board's parole determinations are "highly predictive and individualized discretionary appraisals." Acoli v. New Jersey State Parole Bd., 224 N.J. 213, 222 (2016) (quoting Beckworth v. New Jersey State Parole Bd., 62 N.J. 348, 359 (1973)). Thus, "[j]udicial review of the Parole Board's decisions is guided by the arbitrary and capricious standard that constrains other administrative action." Acoli, 224 N.J. at 222-23.

With this appeal, Tarakji generally repeats the appropriate standard of review, asserting that his discharge from the STEPS program "cannot be said to

[be] serious or persistent necessitating revocation” and that therefore the Board’s decision was “arbitrary, unreasonable or capricious.” (Pb40-Pb41). However, he fails to explain how so. Tarakji’s two supporting arguments that his parole violation “cannot be characterized as serious or persistent, given Mr. Tarakji’s compliance with all other parole conditions” and that the Board’s decision was not supported by “sufficient credible evidence”—are both at odds with the factual record and recognized law.

Tarakji’s first assertion—that his violation cannot be considered serious or persistent on this record—has no basis in fact on this record. In particular, Tarakji entirely ignores the Board’s decision, wherein the Board considered Tarakji’s immediate parole violation under the totality of circumstances, including that this was his third term of PSL, and found that Tarakji “continues to demonstrate behaviors that directly mirror his noncompliance during his prior terms of parole supervision for life.” (Pa11-Pa15; Pa13-Pa14). The Board specifically detailed Tarakji’s failures in the CRC and STEPS programs that were more than just his failure to complete it and explained that these failures, including the “aggressive and threatening” behavior toward a Kintock staff member, were serious. (Pa12-Pa14). In short, Tarakji’s bald assertion on appeal that there is no support in the record for the Board’s decision, (Pb40), fails to recognize the undisputed facts detailed in the Board’s decision. (Pa11-

Pa15). In this context, this court should find Tarakji's argument on this point to be without merit.

This court should similarly find Tarakji's second argument—that the Board's decision was not supported by “sufficient credible evidence” (Pb41)—to be without merit. Longstanding precedent provides that, under the “sufficient credible evidence” standard of review, courts should not disturb an administrative agency's decision unless the decision is not “supported by substantial credible evidence in the record as a whole.” Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980); see also Goodman v. London Metals Exch., Inc., 86 N.J. 19, 28-29 (1981) (“Though an independent de novo examination of the record might lead a reviewing court to an opposite conclusion, the court's obligation is to examine the record in order to determine whether the evidence and the reasonable inferences to be drawn therefrom could reasonably support the decision.”).

With this appeal, Tarakji asserts that the Board's decision was not supported by “sufficient credible evidence.” (Pb40-Pb41). Then, without supporting that claim with specific cites to the record, Tarakji flips the standard of review on its head and asserts that the Board's decision should be reversed because of “evidence” that the Board never received nor reviewed: a purportedly exculpatory surveillance video from Kintock. (Pb15; Pb40).

Tarakji raises three separate legal claims concerning the missing surveillance video: (1) the Board’s failure to preserve the surveillance video means that the Board’s STEPS program parole-violation charge was somehow “eviscerated”; (2) the Board’s failure to preserve the surveillance video constituted a Brady discovery violation; and (3) the Board’s failure to preserve the surveillance video merits an “adverse inference” against the Board. (Pb40; Pb9-Pb29; Pb29-Pb32).

These three legal claims are without merit, primarily for the same fundamental reason: the Board never possessed the surveillance video footage. (Pa6). Indeed, in his brief, Tarakji concedes that “[t]he video was in the possession of Kintock,” and that Kintock “is a “private organization” and merely “a duly authorized agent” of the Parole Board. (Pb1; Pb4). Yet, Tarakji also asserts that the onus was on the Board to have secured and preserved the surveillance video footage that Kintock possessed. (Pb19). The Board has no such duty.

To the contrary, this court has unambiguously held that a litigant should directly subpoena a State private contractor if the litigant believes that relevant evidence is controlled by, or in the possession of, that State private contractor. State v. Robertson, 438 N.J. Super. 47, 69 (App. Div. 2014). In that case, the court found that the State was not obliged to produce certain evidence unless it

was “within the possession, custody or control of the prosecutor.” Id. at 68-69. Because there was no evidence in that record to indicate that the State controlled the evidence generated by the contractor, the court found that it was defendant’s obligation to subpoena those records from [the contractor].” Id. at 69. Similarly, here, the video evidence Tarakji sought was never within the possession, custody or control of the Board. (Pa6). The Board attempted to obtain the video and was notified that “the video footage does not exist.” Ibid.

Tarakji’s Brady discovery-violation and “adverse inference” arguments fail for similar reasons. (Pb9-Pb32). In particular, as noted, this court has expressly held that “the Brady disclosure obligation does not extend to documents held by a private contractor; nor is the State required to ask a private contractor to produce data for a defendant’s potential use.” Robertson, 438 N.J. Super. at 69. Accordingly, although the Board did attempt to obtain the video here without success, it was not required to do so. And Tarakji’s reliance on State v. Dabas, 215 N.J. 114, 140 (2013) (Pb30), is similarly unpersuasive. There, the Court’s holding was premised on the prosecutor’s actual possession of the evidence that was later destroyed. See Dabas, 215 N.J. at 119 (“In this case, the prosecutor’s office possessed the notes at a time when it was required to provide them to the defense in accordance with Rule 3:13–3. In violation of that rule, the prosecutor’s office withheld the notes from the defense and then

destroyed them.”). Here, the record is clear that the Board never possessed any surveillance video. Thus, Tarakji’s reliance on Brady and Dabas is misplaced.⁶

In short, the Board’s final agency decision revoking Tarakji’s parole status and imposing a sixteen-month term of incarceration clearly was not arbitrary or capricious. (Ra10-Ra15).

CONCLUSION

For these reasons, this court should affirm the Board’s final agency decision revoking Tarakji’s parole status and imposing a sixteen-month term of incarceration. (Pa11-Pa15).

Respectfully submitted,

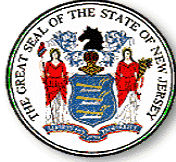
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Date: April 25, 2025

⁶ Because Brady is inapplicable here, this court need not consider Tarakji’s newly-raised “issue of first impression in New Jersey” concerning “whether the discovery rights provided in Giglio v. United States, 405 U.S. 150, 154 (1972), should be provided to those facing parole revocation.” (Pb17; Pb17-Pb29).

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LETTER-BRIEF ON BEHALF OF PLAINTIFF-APPELLANT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-002522-23T4

RONALD TARAKJI,

:
:

CIVIL ACTION

Plaintiff-Appellant,

:
:

Reply Brief on Behalf of
Plaintiff-Appellant

v.

New Jersey State Parole Board,

:

Defendant-Respondent.

:

Your Honors,

On behalf of Plaintiff-Appellant, Roald Tarakji, kindly accept this letter brief, in lieu of formal brief, in reply to the Defendant-Respondent's response brief.

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PROCEDURAL HISTORY AND STATEMENT OF FACTS

Mr. Ronald Tarakji respectfully refers the Court to the Procedural History and Statement of Facts set forth in his initial brief (Pb4-8).¹

LEGAL ARGUMENT

Mr. Tarakji's initial brief presented two major constitutional arguments. The first addressed the constitutional infirmity of not preserving a key surveillance video which was specially demanded by Mr. Tarakji. (Pb9) The second constitutional error addressed the right of confrontation enshrined in Morrissey v. Brewer, 408 U.S. 471 (1972) over a half century ago, which stands as a bedrock principle of due process. (Pb33) This reply primarily focuses on this second constitutional error, but also addresses the subpoena issue raised in respondents brief. (Db23–Db24)

The defendant-respondent dismisses the fundamental right of confrontation as a mere “technical issue,” attempting to undermine decades of established constitutional protections. Such a characterization not only weakens the respondent’s position but threatens the integrity of foundational legal precedent. This reply brief will address the fundamental flaws in the respondent’s argument and

¹ “Pb refers to Plaintiff-Appellant’s initial brief; “Pa” refers to Plaintiff-Appellant’s appendix; “Db” refers to Defendant-Respondent’s response brief; “1T” refers to the transcript of the revocation hearing dated July 26, 2023.

reaffirm the unshakable significance of Morrissey's guarantee, ensuring that critical constitutional protections remain intact.

POINT I

RESPONDENT'S CHARACTERIZATION OF MR. TARAKJI AND HIS COUNSEL'S INABILITY TO OBSERVE CRITICAL WITNESSES AT HIS PAROLE REVOCATION HEARING AS A MERE "TECHNICAL ISSUE", UNDERMINES CRITICAL DUE PROCESS PROTECTIONS RECOGNIZED IN MORRISSEY V. BREWER, 408 U.S. 471 (1972) (U.S. CONST. AMEND. XIV; N.J. CONST. (1947) ART. I, ¶ 1)

Throughout respondent's brief, constitutional protections in revocation hearings are repeatedly dismissed as mere "technical issues." Five (5) examples of this characterization are as follows:

- "Due to a technical issue, Tarakji and [his] counsel could hear, but not see, the testifying parole officer and Kintock staff member on the Zoom." (Db6)
- "[T]he Board rejected Tarakji's due process claim concerning the technical issue with the video during the parole revocation proceeding on the Zoom." (Db10)
- "[D]espite the technical issue that impeded Tarakji's ability to observe the Board's witnesses during the virtual parole revocation hearing, the Board

appropriately found that the requirements of procedural due process had been met because the hearing officer could ‘observe and assess the testimonial demeanor of the parties and their witnesses in this matter and to independently judge the clarity, coherence and consistency of that testimony with both itself and with the other evidence of record.’” (Db13) (Pa13; Pa15)

- “[D]espite the admitted technical difficulties for Tarakji and his counsel, the Board correctly found that the finder of fact—here, the hearing officer—did have “the opportunity to observe and assess the testimonial demeanor of the of the parties and their witnesses in this matter.” (Db15) (Pa15)
- “It is evident on the record that counsel was able to cross-examine the witnesses (1T44:25-50:25), and there is no specific indication that such was limited by the technical issue.” (Db16)

Respondent’s persistent characterization of the right to confrontation as a mere “technical issue” trivializes its foundational role in due process and undermines the holding in Morrissey. When Morrissey was decided in 1972, cross-examination was understood to occur in person, with all parties and witnesses physically present. The Court could not have anticipated a technological landscape in which critical revocation hearings might be conducted remotely—let alone one where a parolee

and counsel would be entirely unable to observe key adverse witnesses. The foundational right of confrontation, recognized as essential to due process in Morrissey, loses its substance when the parolee is denied even the ability to see the witnesses testifying against him. A remote format that strips the parolee of this basic procedural safeguard fundamentally distorts the adversarial nature of the proceeding and is squarely at odds with the intent and plain holding of Morrissey.

As argued in appellants' initial brief, Mr. Tarakji's right of confrontation protected in the Fourteenth Amendment Due Process clause and Art 1, ¶ 1 of the New Jersey Constitution, was severely compromised. And when Parole Officer Lopez testified as a fact witness and was the de facto prosecutor, this further compromised the fairness of the revocation hearing. Thus, respondent's assertion that appellant "makes no argument on appeal as to how the parole revocation hearing here failed to satisfy the requirements of confrontation" (Db16), is simply wrong.

First, appellant argued that "[w]hile the hearing officer could observe the witnesses, Mr. Tarakji and counsel were precluded from observing them. Therefore, cross-examination by counsel was not meaningful in derogation of Mr. Tarakji's Federal and State due process rights." (Pb33)

Second, appellant argued that "[t]he due process right of confrontation, grounded in Morrissey, is meaningless without the ability to observe adverse

witnesses. Indeed, while N.J.A.C. 10A:71-7.13 permits videoconferencing, the Administrative Code provides no such provision for audioconferencing. This underscores the importance of the defense argument that the fundamental right to confront adverse witnesses can only occur when counsel can observe and assess adverse witnesses.” (Pb35)

Third, appellant argued that pursuant to the recent case of State v. Lansing, 479 N.J. Super. 565 (App. Div. 2024), in deciding whether to permit a witness to testify remotely, two factors are critical under Pathri: (1) “the witness’ importance in the dispute” and (2) whether the witness’ testimony “goes to the heart of the matter.” Id. at 576-577; see Pathri v. Kakarlamath, 462 N.J. Super. 208 (App. Div. 2020). Applying these factors to the instant revocation hearing, Officer Lopez and Mr. Ajidahum were critically important, and their testimony went to the “heart of the matter.” (Pb35, note 15)

Fourth, appellant argued that “[t]he substantial prejudice to Mr. Tarakji is magnified because Mr. Ajidahum was the sole witness to the alleged threats and was responsible for monitoring the surveillance cameras at Kintock, which he failed to preserve. (Pa 14) The credibility of Mr. Ajidahum was addressed by counsel in closing argument when he stated, ‘the events did not occur as the witness has presented.’” (1T 65-10 to 11) Thus, his credibility was directly at issue.” (Pb35)

Therefore, contrary to respondent’s assertion, appellant made several cogent arguments regarding “how the parole revocation hearing [] failed to satisfy the requirements of confrontation” (Db16)

Given the dearth of cases interpreting the confrontation rights set forth in Morrissey, respondent cited Sixth Amendment confrontation clause jurisprudence, including Maryland v. Craig, 497 U.S. 836 (1990). (Db14) However, in none of the cases cited by the respondent is the issue before this Court squarely addressed, namely the inability of a defendant (or parolee) and his counsel, to observe and meaningfully confront his accusers. Under Morrissey, and the entire line of precedent cited by the respondent, it is not the hearing officer or judge who has the right to confrontation, it is the defendant (or parolee) who has the right of confrontation. Thus, the respondent’s argument on this critical point is wanting.

In the context of remote parole revocation hearings—such as those conducted via Zoom—the parolee’s confrontation rights must be meaningfully preserved. Although Morrissey did not contemplate virtual proceedings, its core due process protections remain fully applicable. Courts evaluating confrontation rights in criminal proceedings have emphasized the centrality of face-to-face interaction. For example, in Coy v. Iowa, 487 U.S. 1012 (1988), a case notably absent from respondent’s analysis, the Supreme Court, per Justice Scalia, held that “the Confrontation Clause guarantees the defendant a face-to-face meeting with

witnesses appearing before the trier of fact.” *Id.* at 1016 (emphasis added). While *Coy* arose in the Sixth Amendment context, its principle—that physical confrontation is a critical safeguard against false testimony—applies with equal force in parole revocation hearings, where the liberty at stake is substantial and the credibility of adverse witnesses is often determinative. Permitting witnesses to testify outside the parolee’s view fundamentally erodes this right and violates the core tenets of procedural fairness required under *Morrissey*. The Court in *Coy* reasoned:

The Sixth Amendment's guarantee of face-to-face encounter between witness and accused serves ends related both to appearances and to reality. This opinion is embellished with references to and quotations from antiquity in part to convey that there is something deep in human nature that regards face-to-face confrontation between accused and accuser as “essential to a fair trial in a criminal prosecution.” *Pointer v. Texas*, 380 U.S. 400, 404 (1965). What was true of old is no less true in modern times. President Eisenhower once described face-to-face confrontation as part of the code of his hometown of Abilene, Kansas. In Abilene, he said, it was necessary to “[m]eet anyone face to face with whom you disagree. You could not sneak up on him from behind, or do any damage to him, without suffering the penalty of an outraged citizenry.... In this country, if someone dislikes you, or accuses you, he must come up in front. He cannot hide behind the shadow.” Press release of remarks given to the B'nai B'rith Anti-Defamation League, November 23, 1953, quoted in *Pollitt*, *supra*, at 381. The phrase still persists, “Look me in the eye and say that.” Given these human feelings of what is necessary for fairness, the right of confrontation “contributes to the establishment of a system of criminal justice in which the perception as well as the

reality of fairness prevails.” Lee v. Illinois, 476 U.S. 530, 540 (1986).

Id. at 1017–19.

Respondent’s reliance on Maryland v. Craig, 497 U.S. 836 (1990), is misplaced. Craig carved out a very narrow exception to the face-to-face confrontation guarantee recognized in Coy, and is clearly distinguishable. In Craig, the Court permitted testimony via one-way closed-circuit television, but only upon specific findings that such an arrangement was necessary to protect the physical and psychological well-being of a child abuse victim, and that the reliability of the testimony was otherwise assured. The Court emphasized that exceptions to face-to-face confrontation are permissible only where they serve an important public policy and are justified by case-specific necessity. As the Court explained:

“We likewise conclude today that a State's interest in the physical and psychological well-being of child abuse victims may be sufficiently important to outweigh, at least in some cases, a defendant's right to face his or her accusers in court. That a significant majority of States have enacted statutes to protect child witnesses from the trauma of giving testimony in child abuse cases attests to the widespread belief in the importance of such a public policy.”

Craig, 497 U.S. at 853.

No such compelling interest exists here. The remote format employed in this parole revocation hearing was not justified by any individualized findings or pressing public policy—nor was the reliability of the testimony otherwise

guaranteed. On the contrary, the parolee and counsel were entirely unable to observe two key witnesses during direct and cross-examination. That deprivation falls far short of the constitutional floor set forth in Morrissey and is fundamentally incompatible with the adversarial protections that due process requires. Craig reaffirms that confrontation rights may only be curtailed under exceptional circumstances—none of which are present here.

Applying these principles to parole revocation hearings suggests that any deviation from in-person confrontation must be justified by specific findings that uphold the parolee's due process rights. Clearly, the hearing officer's ability to observe and assess testimonial demeanor does not substitute for the parolee's right to confront his accusers. Therefore, arguments focusing solely on the hearing officer's observations clearly overlook the fundamental rights afforded to the accused in Morrissey and Coy.

In summary, the right of confrontation in parole revocation hearings is centered on the parolee's ability to challenge adverse witnesses, and any limitations on this right must be scrutinized to ensure compliance with due process and fundamental fairness requirements. As noted in appellant's initial brief, New Jersey's Administrative Code has adopted the right of confrontation established in Morrissey stating that a parolee has the "right to confront and cross-examine adverse witnesses, unless the hearing officer determines that such witnesses would be subject

to risk of harm.” N.J.A.C. 10A:71-7.14 (Emphasis added) Because no such finding was ever made in the instant case, reversal is required.

POINT II

THE LACK OF FACE-TO-FACE CONFRONTATION IN THIS CASE WAS NOT A MERE “TECHNICAL” ISSUE AND THUS CANNOT BE ANALYZED UNDER A HARMLESS ERROR STANDARD. THIS ERROR WAS CLEARLY STRUCTURAL BECAUSE IT CONTAMINATED THE ENTIRE REVOCATION HEARING.

Further, some constitutional violations are so serious that they constitute structural error—a category of defects that defy harmless-error analysis and require automatic reversal. As the Supreme Court explained in Arizona v. Fulminante, 499 U.S. 279, 282 (1991), structural errors are “defects in the constitution of the trial mechanism” itself. “The existence of such defects ... requires automatic reversal of the conviction because they infect the entire trial process.” State v. Thomas, 362 N.J. Super. 229, 244 (App. Div. 2003) (Internal citations omitted)

For example, the following structural errors cannot be categorized as harmless and require an automatic reversal of a conviction: using a coerced confession against a defendant in a criminal trial; depriving a defendant of counsel; trying a defendant before a biased judge; unlawfully excluding members of the defendant's race from a grand jury; denying a defendant's request to represent himself in a criminal trial;

violation of the right to public trial; and denial of the right to trial by jury by giving a defective reasonable-doubt instruction. State v. Camacho, 218 N.J. 533, 550 (2014) (citing to United States v. Gonzalez-Lopez, 548 U.S. 140, 148-49 (2006); Arizona v. Fulminante, 499 U.S. at 309; Chapman v. California, 386 U.S. 18, 24 (1967); State v. Gibson, 219 N.J. 227, 241 (2014)).

The violation of confrontation rights here—where the parolee and counsel were entirely unable to observe two key witnesses during cross-examination—implicates a structural defect of the same order. It is not a mere “technical” evidentiary irregularity as argued by respondent, but a breakdown in the fundamental architecture of due process. Just as a criminal defendant cannot meaningfully confront unseen accusers, a parolee facing reincarceration cannot mount an effective defense when denied the opportunity to see and assess the credibility of adverse witnesses. The revocation hearing in this case was constitutionally infirm from the outset, and that infirmity cannot be cured by post hoc speculation about whether the outcome would have been the same. This structural error requires reversal.

The due process right of confrontation, grounded in Morrissey, is meaningless without the ability to observe witnesses. While N.J.A.C. 10A:71-7.13 permits videoconferencing, the Administrative Code provides no such provision for audioconferencing. This underscores the importance of Mr. Tarakji’s argument that

the fundamental right to confront adverse witnesses can only occur when counsel can observe and evaluate adverse witnesses.

POINT III

CONTRARY TO THE RESPONDENT'S ASSERTION, APPELLANT COULD NOT ISSUE A SUBPOENA FOR THE SURVEILLANCE VIDEO, WITHOUT SEEKING PERMISSION FROM THE DIVISION OF PAROLE, BASED UPON THE PLAIN LANGUAGE OF N.J.A.C. 10A:71-2.9.

Mr. Tarakji fully incorporates by reference the arguments set forth in his initial brief (Pb9–Pb32) regarding Kintock’s inexcusable destruction of critical surveillance evidence. The respondent relies on State v. Robertson, 438 N.J. Super. 47, 69 (App. Div. 2014), to assert that Mr. Tarakji was required to subpoena Kintock directly if he believed it possessed relevant evidence. (Db23–Db24.) This argument is flawed both legally and factually.

First, the argument ignores the undisputed reality that Kintock is not an independent third party—it is a duly authorized agent of the Division of Parole, operating under multi-million-dollar contracts with the State of New Jersey. (Pa26; Pb1) The State cannot outsource its constitutional obligations by delegating functions to a private contractor and then disclaim responsibility for the evidence in that contractor’s possession.

Second, and more fundamentally, the respondent's argument fails under controlling constitutional law. Under Morrissey, 408 U.S. at 489, the Fourteenth Amendment guarantees that parolees facing revocation must have a meaningful opportunity to be heard, which includes the right to obtain and present exculpatory evidence. This right is not conditioned on the parolee's procedural acumen or subpoena power—it is a due process requirement that the State itself must honor.

Here, Mr. Tarakji promptly and unequivocally demanded preservation of the Kintock surveillance footage through his supervising parole officer. This demand is memorialized in the Community Supervision Reports. The surveillance footage—arguably the best objective and most direct evidence bearing on whether a violation occurred—was nonetheless destroyed. (Pb1) Appellant submits that this destruction, despite a timely preservation request, violates due process and the spirit of Brady v. Maryland, 373 U.S. 83 (1963), which, appellant submits, should be extended to parole revocation cases.

Third, respondent's reliance on the notion that counsel could have subpoenaed Kintock directly is plainly inconsistent with the New Jersey Administrative Code governing parole revocation. N.J.A.C. 10A:71-2.9 expressly states that “[a]ny hearing officer or Board member may issue a subpoena to compel the appearance of witnesses and the production of documentary evidence relevant to any proceedings before such hearing officer or Board member.” The regulation does not authorize

parolee's counsel to unilaterally issue subpoenas in parole revocation matters. In both law and practice, the issuance of a subpoena in these proceedings requires the prior approval and cooperation of the Division of Parole. The Board's longstanding internal policies confirm that counsel must request that the Division issue a subpoena; independent subpoena power is categorically denied to parolees and their counsel.

Thus, the respondent's claim that Mr. Tarakji should have issued a subpoena is not only legally incorrect—it is institutionally disingenuous. The destruction of the surveillance footage—despite a clear preservation request, despite its obvious evidentiary value, and despite the State's exclusive control over the evidence—constitutes a direct violation of Mr. Tarakji's due process rights. No amount of misplaced blame-shifting can obscure that constitutional defect.

CONCLUSION

The parole revocation hearing in this case was fundamentally defective. The parolee and his counsel were denied a core due process right guaranteed by Morrissey—the ability to confront and cross-examine adverse witnesses. The inability to observe key witnesses during remote cross-examination rendered the hearing constitutionally infirm and deprived Mr. Tarakji of a meaningful opportunity to challenge the allegations used to justify reincarceration. This was not a mere

technicality or procedural misstep—it was a structural error that infected the entire proceeding and defies harmless error review, thereby necessitating the automatic reversal of the Parole Board’s decision.

Respectfully submitted,

A handwritten signature in black ink, consisting of a stylized initial 'J' followed by a long, horizontal, slightly wavy line.

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