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BRIEF ON BEHALF OF AMICUS CURIAE NEW JERSEY OFFICE OF THE PUBLIC DEFENDER

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3766-22

CRAIG BLACKMON,	:	CIVIL ACTION
Plaintiff-Appellant,	:	On Appeal from a Final Agency Decision of
v.	:	the New Jersey Parole Board
NEW JERSEY STATE PAROLE BOARD,	:	
Defendant-Respondent.	:	

Your Honors:

This letter is submitted in lieu of a formal brief pursuant to R. 2:6-2(b).

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PRELIMINARY STATEMENT

N.J.S.A. 30:4-140 sets forth a schedule by which prison inmates are awarded commutation credits that reduce their sentences. Pursuant to that schedule, the longer someone's prison sentence is, the more credits she receives. Under the 1979 version of the Parole Act, the calculation of credits under that schedule is also applied to reduce future eligibility terms (FETs). An FET is the amount of time an inmate must serve after a parole denial before again becoming eligible for parole.

In 1985, however, the Parole Board issued a regulation that stated the calculation of commutation credits applied to FETs must now be calculated based only on the length of the FET, not the length of the overall sentence. Inmates receiving commutation credits on their FETs then began receiving much fewer credits because FETs are necessarily going to be significantly shorter amounts of time than the inmates' overall sentences, and thus, accrue credits at a much lower rate.

The Board's regulation completely changed how credits for FETs were calculated in a way that conflicted with the plain language of the governing statutes and contradicted the express purpose of those statutes, with no clear rationale other than to reduce the amount of credits certain inmates receive on their FETs. Because our courts have been repeatedly clear that an agency

regulation that contradicts black-letter law has no force, it should be equally clear that this regulation is invalid. Nonetheless, a two-judge panel in Alevras v. Delanoy, 245 N.J. Super. 32 (App. Div. 1990), held that the regulation did not conflict with the statutes because the Board retains the broad discretion to remit credits however it chooses. That panel's reasoning cannot be squared with the plain language of the applicable statutes against the new rule imposed by the regulation. Accordingly, it is imperative that this Court overrule Alevras so that inmates can be afforded the full credits they are entitled to under the law.

Furthermore, when this court interprets the relevant statutes, it is important that no special deference is afforded to the Board's interpretation of those laws. It is the central function of the judiciary to interpret the meaning of statutes, and the Board possesses no greater tools for statutory interpretation—an exclusively legal and textual issue—than this Court. Indeed, both the New Jersey Supreme Court and United States Supreme Court have recently emphasized this principle. The result of affording undue weight to the agency's interpretations of the laws governing it is a decision like Alevras, where a regulation is deemed valid despite its explicit contradiction of the statutes it is supposed to implement.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Amicus curiae New Jersey Office of the Public Defender respectfully relies on the procedural history and statement of facts from plaintiff-appellant Craig Blackmon's appellant brief.

LEGAL ARGUMENT

POINT I

THE ERRONEOUS REASONING OF ALEVRAS V. DELANOY, 245 N.J. SUPER. 32 (APP. DIV. 1990), MUST BE OVERRULED, AND INMATES FOR WHOM THE 1979 PAROLE ACT APPLIES MUST HAVE COMMUTATION CREDITS BASED ON THEIR OVERALL SENTENCE APPLIED TO THEIR FUTURE ELIGIBILITY TERMS.

Prison inmates are entitled to a certain accumulation of credits as set forth in a specific schedule detailed in our statutes. The relevant statutes further state that that schedule of credits applies to reduce future eligibility terms. The Parole Board, however, issued a regulation that deviated from those statutes and created a new way of calculating credits to reduce the credits applied to future eligibility terms. Because the Board cannot create a regulation that conflicts with the plain language of statutes enacted by the Legislature, this Court must invalidate that regulation and allow for inmates to be provided with the full credits they are entitled to under the law. To the extent that Alevras v. Delanoy, 245 N.J. Super. 32 (App. Div. 1990) held otherwise, it must be overruled.

Under N.J.S.A. 30:4-140,[1] inmates serving custodial sentences are entitled to the automatic award of commutation credits (i.e., "good time" credits) to reduce both their maximum and minimum sentence.[2] Specifically, the statute requires that, as an inmate serves a custodial sentence, "there shall be remitted to the person from both the maximum and minimum term of the person's sentence, for continuous orderly deportment, the progressive time credits indicated in the schedule in this section." N.J.S.A. 30:4-140. The underlying principle of the schedule contained in the statute is easy to see: the more time in prison someone has, the more credits that person is entitled to. According to that schedule, a sentence of more than thirty years "shall be reduced by time credits for continuous orderly deportment at the rate of 192 days for each additional year or 16 days for each full month of any fractional part of a year." Ibid. This is the maximum rate of credit an inmate can receive under that schedule.

Once an inmate has served her minimum sentence, she becomes eligible for discretionary release by the Parole Board. If an inmate is denied parole, the Board will then impose a future eligibility term (FET), which is the amount of

[1] The text of this law has been more or less unchanged since 1957. L.1957, c. 27, § 1, eff. July 28, 1957. It was amended slightly in 2019 with changes that are mostly stylistic and non-substantive. L.2019, c. 364, § 11, eff. Feb. 1, 2021.

[2] A minimum sentence is the amount of time an inmate must serve for a conviction before becoming eligible for release on parole; a maximum sentence is the maximum amount of time an inmate can be confined on that conviction.

time the inmate must serve before again becoming eligible for parole. See N.J.S.A. 30:4-123.56. The 1979 version of N.J.S.A. 30:4-123.56—the version that is applicable to Mr. Blackmon's confinement—states that an FET "shall take into account usual remissions of sentence for good behavior and diligent application to work and other assignments." N.J.S.A. 30:123.56(b), L.1979, c. 441, § 12, eff. April 21, 1980.[3]

Although the intersections of custodial sentences, FETs, and commutation credits may be somewhat convoluted, the language of these statutes is clear enough: the Board must award good-time credits to inmates serving more than thirty years at a rate of 192 credits per year, and any FET imposed must likewise take into account those credits. In 1985, however, the Board issued a regulation that states,

> Where the inmate has been denied parole and required to serve a future eligibility term pursuant to N.J.A.C. 10A:71–3.21, a new book eligibility date shall be established by adding the additional term to the current actual eligibility date and by including, in the case of an adult inmate, commutation credits based on the additional term only.

[3] This statute was amended in 1997 as part of a major overhaul of the Parole Act to make it much more severe. Under the amended version of the statute, commutation credits do not reduce FETs at all. See N.J.S.A. 30:4-123.56(b) ("The future parole eligibility date shall not be altered to take into account remissions of sentence for good behavior and diligent application to work and other assignments.").

[N.J.A.C. 10A:71-3.2(c)(8) (emphasis added).[4]]

In other words, rather than applying commutation credits to the FET based on an inmate's overall sentence, the award of credits was now based only on the length of the FET, a term that is necessarily going to be much shorter than an inmate's overall sentence, and thus, afford much fewer credits. According to the Board, the policy behind this enactment was to "clarify the computation of parole eligibility upon an adult inmate being denied parole and being required to serve a future parole eligibility term." 16 N.J.R. 3391(a).

Clearly, this new regulation was not a "clarification" but a serious substantive change to how the credits applied to FETs were calculated. More significantly, it was a change that contradicted the plain language of the statutes. N.J.S.A. 30:4-140 states that an inmate with a sentence of more than 30 years "shall" receive credits of 192 days per year, and the 1979 version of N.J.S.A. 30:123.56 stated that the Board must apply the "usual remittance" of credits according to that schedule to FETs. This should be the end of the analysis: an agency cannot promulgate a rule that contravenes the plain language of statutes, In re Freshwater Wetlands Prot. Act Rules, 180 N.J. 478, 489 (2004) ("[I]f the regulation is plainly at odds with the statute, we must set it aside."); GE Solid State, Inc. v. Dir., Div. of Taxation, 132 N.J. 298, 306 (1993) ("[A]n

[4] Originally enacted as N.J.A.C. 10A:71-3.2(c)(7). See 16 N.J.R. 3391(a).

administrative agency may not, under the guise of interpretation, extend a statute to give it a greater effect than its language permits."); and that is exactly what N.J.A.C. 10A:71-3.2(c)(8) does.

Nonetheless, in Alevras v. Delanoy, 245 N.J. Super. 32 (App. Div. 1990), a two-judge panel held that this regulation did not conflict with N.J.S.A. 30:4-140 and N.J.S.A. 30:4-123.56. In rejecting a pro se inmate's argument that mirrored Mr. Blackmon's argument here, the panel held that the statutory scheme does not "direct the manner in which remission should be taken into account, but delegates that responsibility to the board." Alevras, 245 N.J. Super. at 37. The decision does not have much more substantive legal analysis for the regulation's validity. However, the panel further asserted the regulation was consistent with the policy "inherent" in the commutation-credits schedule "that short-term inmates receive less annual credit." Id. at 37-38. The panel concluded by assuring, "if defendant is not paroled he will be entitled to the full commutation credit authorized in N.J.S.A. 30:4–140 against his maximum sentence." Id. at 38.

Contrary to Alevras's holding, the statutes do tell the Board what credits to apply to FETs. N.J.S.A. 30:4–140 states that the Board "shall" apply credits according to the schedule it sets forth, and N.J.S.A. 30:123.56(b) (1979) states that FETs imposed by the Board "shall take into account usual remissions of

sentence for good behavior . . . .” There is nothing ambiguous about this language, nor does Alevras even conclude that these statutes are ambiguous. Instead, the plain language is essentially ignored under the veil of affording the Board “wide discretion” to award credits however it chooses. 245 N.J. Super. at 36-38. As our courts have elsewhere made clear, however, while agencies can issue regulations relating to their enforcement of statutes, those regulations cannot abrogate the plain language of those statutes. See, e.g., In re Freshwater Wetlands Prot. Act Rules, 180 N.J. at 489. The Alevras panel’s conclusion cannot be squared with that principle.

As to the panel’s conclusion that the Board’s regulation furthers the purpose of avoiding windfalls for short-term inmates, it is unclear how that conclusion was reached. Under Mr. Blackmon and Mr. Alevras’s interpretation, the windfall would be on inmates serving longer sentences, not short-term inmates. In other words, while it is conceivable that a person with a longer FET might come up for parole sooner than someone with a shorter FET, that would only be because that inmate has an overall sentence that is much longer, which furthers the underlying principle of the commutation-credits schedule that long-term inmates should accrue credits more quickly.

Critically, that concern about windfalls for short-term inmates—the only Board rationale clearly stated in Alevras for having the regulation—does not

even have any practical application to today's prisons. Because the application of commutation credits to FETs was legislatively discontinued for offenses committed after 1997, the only inmates left to whom this regulation even applies are almost certainly all going to have minimum sentences of thirty years or more. Thus, the regulation does not promote any greater uniformity because every eligible inmate would be getting the same rate of credits anyway under Mr. Blackmon's interpretation. It is the Board's interpretation that promotes a lack of uniformity by basing the calculation on the varying lengths of the FETs imposed instead.

It is additionally noteworthy that Alevras's assurance that defendants will still be able to apply their full credits to their maximum sentence is of no help to life-term inmates like Mr. Blackmon. After a life-term inmate completes his minimum sentence, the remainder of his sentence only exists in a series of FETs (unless he is paroled). Applying the Board's regulation, then, there is no opportunity for full application of the credits under the schedule after a life-term inmate is first denied parole because there is no outer-limit max-out date that can be reduced. In this sense, applying full credit to FETs furthers the commutation-credit statute's purpose to reduce "both the maximum and minimum term" of an inmate's sentence because it is the closest an application

of those credits can come to reducing a life-term inmate's maximum sentence. N.J.S.A. 30:4-140.

Finally, it is telling that the Board at least acknowledges it must afford Mr. Blackmon some credits pursuant to the 1979 version of the Act and cannot retroactively apply the 1997 version of the Act removing application of commutation credits to FETs altogether. Implicit in this is the recognition that the Board does not have the blanket authority to do whatever it wants with regard to FET credits and that it must award Mr. Blackmon some credit. See Weaver v. Graham, 450 U.S. 24, 31-35 (1981) (statue reducing availability of good-time credits violated Ex Post Facto Clause as applied to inmates who committed offenses before that statute's enactment).[5] Under Alevras's rationale, however, there does not appear to be any real limit on what credits the Board may apply to his FETs; if the Board had issued a regulation awarding inmates only a single day of credit for every year confined, nothing in Alevras's reasoning suggests that would be improper. Clearly, the more logical and reasonable interpretation of the statutes is that they mean exactly what they say, and the full award of credits applies to FETs.

[5] The Board regulation at issue was made effective about a month before Mr. Blackmon committed his offenses, so ex post facto concerns are not implicated.

In sum, amicus concurs with Mr. Blackmon's position that the term "usual remittance" of commutation credits as applied to FETs requires the Board to apply commutation credits based on the full sentence in accordance with N.J.S.A. 30:4-140, and Alevras should be overruled to the extent it holds otherwise.

POINT II

THE BOARD'S POSITION IN THIS CASE SHOULD NOT BE ENTITLED TO ANY SPECIAL DEFERENCE BECAUSE STATUTORY INTERPRETATION IS A STRICTLY JUDICIAL FUNCTION THAT IS ALWAYS DONE DE NOVO.

The fundament of this case is strictly a statutory interpretation issue: construing the plain language of N.J.S.A. 30:4-140 and N.J.S.A. 30:123.56(b) (1979). While our courts often discuss deference and discretion with respect to agencies' actions, there is no reason to afford the Board deference to its opinion on a purely legal question of the kind this Court is tasked with regularly handling. Accordingly, in answering the question posed by Mr. Blackmon's appeal, the issue should be reviewed de novo with no particular deference to the Board's interpretation of the statutes.

In Alevras, the two-judge panel essentially gave the Parole Board carte blanche to award as many or as few commutation credits as it likes to inmates for whom the 1979 version of the Parole Act applies, in apparent contravention

of the plain language of the applicable statutes. A significant factor in the panel reaching this conclusion was heavy deference to the Board's interpretation of the relevant statutes. The panel called its review of the validity of the Board's regulation "highly circumscribed," saying that, "[b]ecause of their expertise, administrative agencies are afforded wide discretion[,]" and the Board's authority must be "liberally construe[d.]" Alevras, 245 N.J. Super. at 35-36. While of course an agency needs a certain amount of breathing room for enacting regulations to meaningfully function, Alevras makes clear the dangers of applying that deference to an agency's interpretation of the statutes that govern and limit its authority.

In Loper Bright Enterprises v. Raimondo, the United States Supreme Court recently clarified that there should be no presumption of validity to an agency's interpretation of a statute that governs it, overruling its prior decision in Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984). Loper Bright Enterprises v. Raimondo, ___ U.S. ___ (2024) (slip op.). The decision begins by noting our legal and political system's founding principle that "it is emphatically the province and duty of the judicial department to say what the law is" as well as the courts' constitutionally-imposed "solemn duty" to "interpret[] the laws." Id. at ___ (slip op. at 9 (quoting Marbury v.

Madison, 5 U.S. 137, 177 (1803) and United States v. Dickson, 40 U.S. 141, 162 (1841)).

Accordingly, over the ensuing decades, although the Court sometimes afforded an agency a certain amount of deference to its view of a statute, the Court often "simply interpreted and applied the statute before it" without any special regard to the agency's position. Id. at ___ (slip op. at 11). Even after the landmark decision in Chevron, federal courts continued to be inconsistent in how much deference was afforded to agencies' statutory interpretations, and some decisions declined to meaningfully apply Chevron deference at all. Id. at ___ (slip op. at 18)

The Supreme Court in Loper Bright ultimately concluded that the agency deference announced in Chevron did not comport with the Administrative Procedure Act (APA) and therefore was improper. Id. at ___ (slip op. at 15). However, the Court also held that beyond simply violating the express terms of the APA, Chevron deference violated principles that are even more fundamental:

> Perhaps most fundamentally, Chevron's presumption is misguided because agencies have no special competence in resolving statutory ambiguities. Courts do. . . . The very point of the traditional tools of statutory construction—the tools courts use every day—is to resolve statutory ambiguities. That is no less true when the ambiguity is about the scope of an agency's own power—perhaps the occasion on which abdication in favor of the agency is least appropriate.

[Id. at ___ (slip op. at 16) (emphasis in original).]

Moreover, while agencies may have expertise in dealing with certain factual matters within its ken, statutory and regulatory interpretation "fall more naturally into a judge's bailiwick than an agency's." Ibid.; see also Axon Enterprise, Inc. v. FTC, 598 U.S. 175, 194-95 (2023) (discussing how questions of constitutional and administrative law are generally outside of an agency's area of expertise).

With respect to our own state, there is much about New Jersey's treatment of judicial deference to an agency's statutory interpretation that mirrors the trajectory of the federal courts. As a founding principle, the right to judicial review of administrative agency action is explicitly protected by the State Constitution. See In re Proposed Quest Acad. Charter Sch. of Montclair Founders Grp., 216 N.J. 370, 383 (2013) ("Judicial review of administrative agency action is a matter of constitutional right in New Jersey." (citing N.J. Const. art. IV, § 5, ¶ 4)). Judicial oversight of administrative agency actions traces back New Jersey's early common law, as later codified in the State Constitutions of 1844 and 1947. See Monks v. N.J. State Parole Bd., 58 N.J. 238, 248-49 (1971). The court's review of agency conduct is "designed to insure procedural fairness in the administrative process and to curb administrative abuses." Id. at 249.

In the history of our courts' constitutionally mandated review of agency decisions, however, is a line of cases affording agencies varying levels of deference to their interpretation of the statutes that govern them. Early cases held that "great weight" should be given to an agency's interpretation of the statutes that govern it. See, e.g., Peper v. Princeton Univ. Bd. of Trustees, 77 N.J. 55, 69-70 (1978) ("In interpreting the meaning of a statute, this Court places great weight on the interpretation of legislation by the administrative agency to whom its enforcement is entrusted."). In New Jersey Guild of Hearing Aid Dispensers v. Long, our Supreme Court stated, "It is a fundamental maxim that the opinion as to the construction of a regulatory statute of the expert administrative agency charged with the enforcement of that statute is entitled to great weight and is a substantial factor to be considered in construing the statute." 75 N.J. 544, 575 (1978) (citations and internal quotations omitted).[6] Still, the Court also recognized that "the courts remain the 'final authorities' on issues of statutory construction and are not obliged to 'rubber stamp' their approval of the administrative interpretation." Ibid. (citations omitted). The

[6] In support of this proposition, the Supreme Court in Hearing Aid Dispensers cited substantially to United States Supreme Court cases. However, as discussed earlier, the U.S. Supreme Court has now significantly curtailed that deference. Given that most subsequent references in our courts to the "great weight" afforded agency statutory interpretation can be traced back to Hearing Aid Dispensers, it is significant that the governing federal principle now cuts the other way.

Supreme Court has referred to this deference as "Chevron-like" in quality. In re RCN of New York, 186 N.J. 83, 93 (2006); see also Somers Associates, Inc. v. Gloucester Twp., 241 N.J. Super. 323, 343 (App. Div. 1990) (citing Chevron as binding rule for interpreting municipal agency-related ordinances).

In more recent cases, however, the Supreme Court has naturally drifted away from heavy-handedly applying that deference.[7] In L.A. v. Bd. of Educ. of City of Trenton, Mercer Cnty., our Supreme Court held that "[a] court is in no way bound by an agency's interpretation of a statute or its determination of a strictly legal issue" and that review of such an issue is "de novo." 221 N.J. 192, 204 (2015); accord K.K. v. Div. of Med. Assist. & Health Servs., 453 N.J. Super. 157, 161 (App. Div. 2018). The Court went on to render its decision without any apparent deference. Id. at 205.

In a more recent case from the Supreme Court dealing with the interpretation of statutory provisions governing parole, the Court proceeded similarly. In reviewing the relevant parole statutes, the Court held that,

[7] Even some early cases have rejected substantial deference to the agency when interpreting statutes. See, e.g., Grancagnola v. Planning Bd. of Twp. of Borough of Verona, 221 N.J. Super. 71, 75 (App. Div. 1987) ("It is well established . . . that the interpretation of an ordinance is purely a legal matter as to which an administrative agency has no peculiar skill superior to the courts. Consequently, where the issue is thus one of law, the court's duty and authority are not curtailed by the circumstance that the issue happens to reach it via [an agency.]" (citations and internal quotations omitted)).

"[a]lthough we ordinarily employ a deferential standard when reviewing a Parole Board administrative determination in the specialized area of parole supervision, in matters of statutory interpretation -- like here -- our review is de novo." Williams v. New Jersey State Parole Bd., 255 N.J. 36, 46 (2023). The Court then ruled against the Board's statutory interpretation without providing any deference to its position. Id. at 58.

De novo review of a statutory interpretation issue without affording any special deference to the agency's position makes sense because, as repeatedly observed in recent cases from the United States Supreme Court, judges are generally greater experts on interpreting the law—whether it be statutory, constitutional, or administrative in nature—than the members of a particular agency. Loper Bright, ___ U.S. at ___ (slip op. at 16); Axon Enterprise, 598 U.S. at 194-95. Moreover, judicial review of a statute governing an agency is when it is most important to have such review be meaningful, exacting, and independent. Loper Bright, ___ U.S. at ___ (slip op. at 16).

The logical result of such significant agency deference is decisions like Alevras, where the plain language of the statute is ignored in favor an agency's assertion that its regulation does not conflict or that it has good reason for departing from the plain language. The Board possesses no greater tools of statutory construction than this Court has. Accordingly, in reviewing this issue,

there should be no greater emphasis placed on the Board's legal construction of the pertinent statues than Mr. Blackmon's.

CONCLUSION

The Board's regulation at issue contravenes the plain language of the statutes it was enacted to implement. Accordingly, Alevras must be overruled, and inmates under the 1979 Parole Act must be afforded full commutation credits for their FETs. In this Court's review of this issue, the Board's statutory interpretation should not be entitled to any special deference.

Respectfully submitted,

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-003766-22

CRAIG BLACKMON,
Plaintiff-Appellant

v.

NEW JERSEY STATE PAROLE BOARD
Defendant-Respondent

CIVIL ACTION

LETTER-BRIEF AND APPENDIX ON BEHALF OF PLAINTIFF-APPELLANT

On Appeal from a Final Decision of the New Jersey Parole Board

Your Honors:

This letter-brief is respectfully submitted in lieu of a formal brief pursuant to R. 2:6-2(b).

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PRELIMINARY STATEMENT

Craig Blackmon has been imprisoned since 1985, serving a sentence that made him ineligible for parole for more than 32 years. New Jersey law provides that, for his good behavior and based on the length of his sentence, Blackmon was entitled to a set number of commutation credits that "shall be remitted" against his sentence. The Parole Board denied Blackmon parole in 2017 and determined that he would be ineligible for parole for an additional ten years. And then, based on its own rule, N.J.A.C. 10A:71-3.2(c)(8), and *Alevras v. Delanoy*, 245 N.J. Super. 32 (App. Div. 1990), the Parole Board awarded Blackmon commutation credits based only on that ten-year term, disregarding the fact that he has served more than 30 years. So, instead of a reduction of 1920 days, the Parole Board granted Blackmon only 996 days—a difference of more than *2.5 years* in prison.

That's not right. The New Jersey Legislature requires that Blackmon should receive commutation credits for good behavior calculated for someone who has served more than 30 years, and not just based on the ten-year Future Eligibility Term (FET) the Parole Board imposed. The statute applicable to Blackmon, N.J.S.A. 30:4-123.56, gave the Parole Board authority to impose an FET, but also specified that they "*shall* take into account *usual remissions* of sentence for good behavior[.]" P.L.1979, c.441, sec. 12 (emphasis added). That language is specific, unambiguous, and mandatory. The "usual remissions" of commutation credits were specified by

the Legislature in N.J.S.A. 30:4-140 and, for Blackmon who has served more than 30 years, was set at 1920 days. Nothing in the applicable statutes gave the Parole Board the authority to vary from the Legislature's directives. The Parole Board erred when they contravened the applicable statutes and failed to apply the "usual remissions" of commutation credits to Blackmon's FET, which was 1920 days. The Parole Board's decision should be reversed.

STATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

Blackmon has been incarcerated since 1985. On June 18, 1988, he was sentenced to life imprisonment with a parole ineligibility term of 30 years for murder and twenty years' imprisonment with a 10 year parole ineligibility term for aggravated sexual assault, running consecutively. He was later resentenced to an aggregate term of life imprisonment with a 32.5 year parole ineligibility term. Blackmon became eligible for parole for the first time on November 17, 2017 and was denied parole. Subsequently, on January 3, 2018, the Parole Board set an FET of 120 months.[2] As required under N.J.S.A. 30:4-123.56, the Parole Board applied commutation credits to the FET. However, the Parole Board only applied 996 days, the amount of days to be applied to a ten-year sentence, as opposed to 1920 days required under N.J.S.A. 30:4-140 for those who have served more than 30 years, like Blackmon.

On April 4, 2023, Blackmon asked the Parole Board why they did not give him the full number of credits required under the statute. The Parole Board responded on April 12, 2023, affirming the 996-day commutation credit as applied. Blackmon appealed. On June 28, 2023, the Parole Board issued a final decision

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[1] Blackmon combines his Statement of Facts and Procedural History for the Court's ease of reading, as they are intertwined for the purposes of this appeal.

[2] FET is the amount of time an inmate must serve before again becoming eligible for parole. The presumptive term for Blackmon's offense under the statute is twenty-seven months. N.J.A.C. 10A:71-3.21(a)(1).

rejecting Blackmon's argument that he was entitled to 1920 days, or 192 days for each year because he served more than 30 years. (Aa-7) The Parole Board relied on N.J.A.C. 10A:71-3.2(c)(8), which states that "where an inmate has been denied parole and required to serve a future eligibility term, a new parole eligibility date shall be established by adding the additional term (future eligibility term) to the current actual eligibility date and by including commutation credits based on the additional term (future eligibility term) only." (*Id.*) It then found that Blackmon was entitled to 996 days based on the 120-month FET without regard to the actual length of Blackmon's sentence. (Aa-8) Blackmon filed a notice of appeal on July 28, 2023. (Aa-9)

After serving the FET, Blackmon was granted parole on June 17, 2024 and is scheduled to be released on August 16, 2024. Nevertheless, this appeal is not moot. Because the issue in controversy is "likely to reoccur but capable of evading review," the Court should exercise its discretion to resolve the commutation credits issue because it affects innumerable incarcerated persons in New Jersey who could spend less time in prison and away from their families and friends if only the Parole Board calculated their commutation credits in accordance with the applicable New Jersey statutes. *See Zirger v. Gen. Acc. Ins. Co.*, 144 N.J. 327, 330 (1996); *Williams v. New Jersey State Parole Bd.*, No. A-1174-21, 2022 WL 10218594, at *1 (N.J. Super. Ct. App. Div. Oct. 18, 2022) (refusing to dismiss the case as moot where plaintiff had

been released on parole), *rev'd on other grounds*, 255 N.J. 36, 298 A.3d 1101 (2023). The Court should decide this case.

LEGAL ARGUMENT

POINT I

THE COURT SHOULD REVERSE THE BOARD'S DECISION BECAUSE THEY FAILED TO GRANT BLACKMON THE STATUTORILY REQUIRED COMMUTATION CREDITS. (Aa-1–3, Aa-5–6)

This case presents a conflict between the text of a statute and the interpretation of that statute by the agency in charge of implementing it. New Jersey law establishes the formula for calculating good behavior time credits, also known as "commutation" or "progressive time" credits, and sets the number of credits that "shall be remitted" based on the length of an incarcerated person's custodial sentence. When Blackmon received a 120-month future eligibility term (FET), N.J.S.A. 30:4-123.56 required that he receive the "usual remissions" of credits, which N.J.S.A. 30:4-140 prescribes as 1920 days. Nothing in these statutes granted the Parole Board the authority to alter the number of credits to be applied for any purpose, including for the calculation of an FET. Nevertheless, pursuant to their own interpretation of these statutes as reflected in New Jersey's administrative code, the Parole Board limited the credits awarded to Blackmon. But where there is a conflict between the statute and the Parole Board's interpretation, the statute must control. Therefore, the Parole Board's decision to award Blackmon 996 days in commutation credits against the FET should be reversed. Blackmon should be awarded

commutation credits for his FET in accordance with the plain text of N.J.S.A. 30:4-140 and N.J.S.A. 30:4-123.56.

A. Statutory Background

The evolution of New Jersey's statutory scheme governing parole and commutation credits and the accompanying legislative history make clear that the Legislature never intended to give the Parole Board the authority to change how the commutation credits would be applied to FETs. We examine this history below.

a. Commutation Credits

Since 1876, New Jersey has had a statutory scheme under which incarcerated persons are awarded commutation credits that would reduce the length of their overall sentence. *See* P.L.1876, c.155; P.L.1918, c.147. Prior to 1957, N.J.S.A. 30:4-140 provided that the incarcerated person would earn statutory credits based on good behavior, which was periodically certified to by prison officials. During this time, "there was a clear legislative purpose to authorize the periodic accumulation of the statutory credits in accordance with the sole discretion of the appropriate prison officials." Att. Gen. Formal Op. 1976, No. 16.

The statute was amended in 1957, which "reflect[ed] a significant change in legislative policy from the periodic evaluation of inmate behavior and accumulation of good time credits to an automatic award of credit subject to divestment only in

cases of obvious and flagrant misconduct." *Id.* As amended in 1957 and subsequently modified,[3] N.J.S.A. 30:4-140 provides that

> For every year . . . of a custodial sentence imposed upon any person there shall be remitted to the person from both the maximum and minimum term of the person's sentence, for continuous orderly deportment, the progressive time credits indicated in the schedule in this section. . . . Any sentence in excess of 30 years shall be reduced by time credits for continuous orderly deportment at the rate of 192 days for each such additional year[.]

The 1957 amendment was "designed to provide for more uniformity in the application of the principle of reducing the sentence of prisoners in confinement for good behavior" and "should eliminate much tension and discontent among the inmates resulting from the lack of uniformity in the present schedule." Statement on Assembly Bill 177. Accordingly, "[t]he credit is fixed and mandatory." Att. Gen. Formal Op. 1976, No. 16.

b. Parole

In 1979, New Jersey passed the Parole Act, which "effected a radical change in the parole system in New Jersey." *Application of Trantino*, 89 N.J. 347, 355 (1982). Prior to 1979, an inmate was required to prove his fitness to be released in order to be paroled. The Parole Act shifted the burden to the Parole Board and

[3] The pertinent parts of N.J.S.A. 30:4-140 were amended again in 2019 to change certain pronouns.

required that an inmate be paroled on the primary eligibility date unless the State proved a likelihood of recidivism.

The Parole Act also changed how the primary eligibility date is determined. N.J.S.A. 30:4-123.51[4] provides that for inmates with a term sentence, they would become "primarily eligible for parole" after having served a mandatory minimum term or after having served one-third of the sentence imposed minus commutation credits as calculated under N.J.S.A. 30:4-140, as well as other credits. For inmates with a sentence of life imprisonment, they would become "primarily eligible for parole" after having served a mandatory minimum term or after having served 25 years minus commutation credits as calculated under N.J.S.A. 30:4-140, as well as other credits. Accordingly, "while fitness for parole remains a determination to be made by parole authorities, parole eligibility is now a function of the sentence received." *Trantino*, 89 N.J. at 368. The parole eligibility date became "a judicial responsibility to be exercised at the time of sentencing" and is determined at sentencing based on the length of custodial sentence imposed. *Id.* N.J.S.A. 30:4-123.51 also provides that, for those with mandatory minimum sentences,

[4] The 1979 version of the Parole Act, which was in effect when Blackmon committed the crime, governs Blackmon's parole. *See Berta v. New Jersey State Parole Bd.*, 473 N.J. Super. 284, 304 (App. Div. 2022). The pertinent parts of the 1979 version and the present version of N.J.S.A. 30:4-123.51 are substantially the same.

commutation credits would not reduce the mandatory minimum term, but will be applied once the mandatory minimum is served.

If an incarcerated person was denied parole on the primary eligibility date, the 1979 version of N.J.S.A. 30:4-123.56 provided that "[t]he board shall develop a schedule of future parole eligibility dates for adult inmates denied release at their eligibility date. . . . Such future parole eligibility date shall take into account *usual remissions* of sentence for good behavior[.]" P.L.1979, c.441, sec. 12. By specifying that the remission of credits should be "usual," the Legislature incorporated the formula set out in N.J.S.A. 30:4-140.

The goal of the Parole Act is "to make the parole process more consistent, predictable, objective, and efficient," Assembly Judiciary, Law, Public Safety and Defense Committee, Statement to Assembly, No. 3093 (Dec. 3, 1979), and "to eliminate many problem areas in existing law which have led to inequities in the administration of parole," Sponsors' Statement to Assembly, No. 3093 (Jan. 25, 1979). It was passed to "complement the generally longer sentences of the new Criminal Code" and envisioned that "once parole eligibility has been reached, [] the punitive and retributive aspects of the sentence have thereby been satisfied," at which point, "the State's main interest . . . is to ensure that he does not commit another crime." Assembly Judiciary, Law, Public Safety and Defense Committee, Statement to Assembly, No. 3093 (Dec. 3, 1979).

B. Legal Standard

The Parole Board's decision, even if in line with the Administrative Code, cannot stand when it contravenes the plain language of a statute. "An administrative regulation must be within the fair contemplation of the delegation of the enabling statute." *N.J. Guild of Hearing Aid Dispensers v. Long*, 75 N.J. 544, 561 (1978). "An administrative agency only has the powers that have been 'expressly granted' by the Legislature and such 'incidental powers [as] are reasonably necessary or appropriate to effectuate' those expressly granted powers." *Borough of Avalon v. New Jersey Dep't of Env't Prot.*, 403 N.J. Super. 590, 607 (App. Div. 2008). "Where there exists reasonable doubt as to whether such power is vested in the administrative body, the power is denied." *In re Closing of Jamesburg High Sch., Sch. Dist. of Borough of Jamesburg, Middlesex Cty.*, 83 N.J. 540, 549 (1980).

While "[a]gency regulations are accorded a presumption of validity and reasonableness," "a rule will be set aside if it is 'inconsistent with the statute it purports to interpret.'" *In re Freshwater Wetlands Prot. Act Rules*, 180 N.J. 478, 489 (2004).[5] "[I]f an agency's statutory interpretation is contrary to the statutory language, or if the agency's interpretation undermines the Legislature's intent, no deference is required." *N.J. Tpk. Auth. v. Am. Fed'n of State, Cty. & Mun. Emps.,*

[5] *See also Loper Bright Enterprises v. Raimondo*, -- U.S. --, 2024 WL 3208360 (June 28, 2024) (overruling *Chevron* and holding that federal courts need not defer to a federal agency's interpretation of an ambiguous statute).

Council 73, 150 N.J. 331, 351 (1997); *GE Solid State, Inc. v. Dir., Div. of Tax'n*, 132 N.J. 298, 306 (1993) ("[Courts] have invalidated regulations that flout the statutory language and undermine the intent of the Legislature."); *Eherenstorfer v. Div. of Pub. Welfare, Dep't of Hum. Servs. of State of N.J.*, 196 N.J. Super. 405, 412 (App. Div. 1984) ("There can be no doubt that 'any regulation which contravenes a statute is of no force.'"). Accordingly, where, as here, the administrative agency's rule contradicts the plain language of the statute, the Court must disregard the rule.

C. The Parole Board's Rule on Future Eligibility Term Conflicts With the Plain Language of the Statute

The 1979 version of N.J.S.A. 30:4-123.56 provides that when the Parole Board determines the future parole eligibility date, "[s]uch future parole eligibility date shall take into account *usual remissions* of sentence for good behavior[.]" P.L.1979, c.441, sec. 12 (emphasis added). The language is clear: The Parole Board is authorized to determine an FET, but the "usual remissions of sentence for good behavior" must be deducted. N.J.S.A. 30:4-140 sets forth how many credits for good behavior "shall be remitted."

Nothing in the statute authorizes the Parole Board to change how commutation credits would be calculated. To the contrary, the statute specified that the "usual" remissions should apply. This comports with the legislative purpose to promote uniformity in amending N.J.S.A. 30:4-140 in 1957 to provide for a "fixed and mandatory" schedule of progressive time credits based on the length of an

incarcerated person's sentence. *See* Att. Gen. Formal Op. 1976, No. 16. Regardless of whether an incarcerated person is up for parole for the first time or the second time—a distinction that the statute does not make—the person would receive the prescribed commutation credits based on the time he has actually served.

Yet, the Parole Board promulgated rules that changes how the commutation credit would be calculated and deducted from the FET:

> Where the inmate has been denied parole and required to serve a future eligibility term pursuant to N.J.A.C. 10A:71-3.21, a new book eligibility date shall be established by adding the additional term to the current actual eligibility date and by including, in the case of an adult inmate, commutation credits based on the additional term only.

N.J.A.C. 10A:71-3.2(c)(8). The Parole Board's rule deviates from "usual remissions" by disregarding the statutory scheme under N.J.S.A. 30:4-140 that provides progressive commutation credits based on the incarcerated person's actual sentence. Under N.J.S.A. 30:4-140, because Blackmon has served more than 30 years, 192 days "shall be remitted" for each additional year he serves, which means 1920 days in total for his FET. However, under the Parole Board's rule, Blackmon is treated as someone who just began his sentence and could only receive 996 days—a 2.5 year difference.

The Parole Board's rule, which could take away years from an incarcerated person, conflicts with the text of N.J.S.A. 30:4-123.56. Limiting the commutation credit a prisoner would receive during the FET to the duration of the FET, as opposed

to the actual sentence he has served, is not the "usual remissions" prescribed under N.J.S.A. 30:4-140. The rule also conflicts with the spirit of the statute, because it results in uneven and inconsistent commutation credits for different inmates and belies the purpose of the 1979 Parole Act to "make the parole process more consistent." *See* Assembly Judiciary, Law, Public Safety and Defense Committee, Statement to Assembly, No. 3093 (Dec. 3, 1979).

The 1979 Parole Act revamped the parole system and specifically instituted a scheme where both primary and future "parole eligibility" would no longer be determined by the Parole Board and would become "a judicial responsibility to be exercised at the time of sentencing and within the bounds set by the Legislature." *Trantino*, 89 N.J. at 368; *see Berta v. N.J. State Parole Bd.*, 473 N.J. Super. 284, 305 (App. Div. 2022) ("[T]he parole release decision is fundamentally different from the decision made by a trial court when imposing the initial sentence."). N.J.S.A. 30:4-123.51 sets forth how the primary parole eligibility date would be determined based on the sentence and the statutorily prescribed commutation credits. N.J.S.A. 30:4-123.56 sets forth how the future parole eligibility date would be determined based on the FET and the statutorily prescribed commutation credits, allowing only authority for the Parole Board to determine the length of the FET. However, the legislation provides no basis for the Parole Board to change how the statutorily prescribed commutation credits would be calculated.

D. *Alevras v. Delanoy* Was Wrongly Decided

The Parole Board relies on the decision in *Alevras v. Delanoy*, 245 N.J. Super. 32 (App. Div. 1990), which involved a *pro se* appellant and considered the same issue raised here. The Court should not follow *Alevras* because that panel decision misinterpreted the statute's language and, consequently, expanded the Parole Board's authority beyond what the statute had allowed.[6]

How did the *Alevras* panel get it wrong? They acknowledged N.J.S.A. 30:4-123.56's language that the Board must take into account "usual remissions" for good behavior, but then claimed that this language "does not [] direct the manner in which remission should be taken into account, but delegates that responsibility to the board." 245 N.J. Super. at 37. That reasoning is wrong. First, it disregards the statutory language that the "*usual*" remission of commutation credits should apply. Second, it grafts a delegation of authority to the Parole Board that is not found in the statute's plain language. We expand on both errors below.

The Legislature specified that the remission of credits should be "usual"; for the word "usual" to have any meaning, the remission must be consistent with N.J.S.A. 30:4-140, which governs how many commutation credits "shall be

[6] The Parole Board in its Final Agency Decision also cites *Auge v. New Jersey State Parole Bd.*, where the panel denied a *pro se* incarcerated person's appeal without providing a rationale in a written opinion. No. A-0395-07T2, 2008 WL 2939467 (N.J. Super. Ct. App. Div. July 31, 2008). Because the *per curiam* decision in *Auge* lacks any explanation for its conclusion, it should not be relied on as authority.

remitted." Allowing the Parole Board to determine "the manner in which remission should be taken into account" runs counter to the principle that each word in a statute should be given effect and not rendered superfluous. *See Med. Soc. of N.J. v. N.J. Dep't of L. & Pub. Safety, Div. of Consumer Affs.*, 120 N.J. 18, 26–27 (1990) ("[W]e should try to give effect to every word of the statute, and should not assume that the Legislature used meaningless language. Nor should we construe the statute to render part of it superfluous."); *State v. Reynolds*, 124 N.J. 559, 564 (1991) ("A construction that will render any part of a statute inoperative, superfluous, or meaningless, is to be avoided."). The reasoning in *Alevras*, and by extension that of the Parole Board, not only renders the word "usual" superfluous, but in fact envisions that the Parole Board would apply an "unusual" remission of commutation credits by devising its own calculation, separate and apart from the one already established in the applicable statute.

Moreover, the *Alevras* panel's, and the Parole Board's, assertion, that N.J.S.A. 30:4-123.56 "delegates [the] responsibility" of determining how commutation credits should be remitted is wholly unsupported by the statute's text. N.J.S.A. 30:4-123.56 states that "[t]he board shall develop a schedule of future parole eligibility dates for adult inmates denied release at their eligibility date. . . . Such future parole eligibility date shall take into account usual remissions of sentence for good behavior[.]" It does not direct the Parole Board to develop a method for the

calculation of commutation credits and only authorizes the Parole Board to develop a schedule of future parole eligibility dates, to which the usual commutation credits would apply.

The plain language of the statutes governs the application of commutation credits, irrespective of any potential policy arguments the Parole Board might have. The *Alevras* panel approvingly cited the Parole Board's rationale behind N.J.A.C. 10A:71–3.2, which is to promote uniformity and prevent two incarcerated persons who receive the same FET from benefiting from different commutation credits. *Alevras*, 245 N.J. Super. at 36–37. This rationale cannot prop up the Parole Board's decision when it conflicts with the plain language of a statute. Furthermore, this argument ignores the reality, reflected in N.J.S.A. 30:4-140, that incarcerated persons who have served a longer term should be incentivized and awarded with more commutation credits. *See In re Mahoney*, 17 N.J. Super. 99, 103 (Co. 1951) ("[S]hort-term prisoners derive from the statute less remission time on the obvious premise that they need less incentive for good conduct.").[7] The rationale also contradicts the legislative intent behind the Parole Act to make "parole eligibility . . .

[7] *Alevras* also notes that the Parole Board's rule is consistent with the legislative purpose that "short-term inmates receive less annual credit." 245 N.J. Super. at 38. In fact, the Parole Board's rule has the opposite effect: where two incarcerated persons with different sentences receive the same amount of FET, the shorter-term prisoner would receive the same amount of credit as the longer-term prisoner, not less.

a function of the sentence received" and calculated based on the length of the custodial sentence and not on terms set by the Parole Board. *Trantino*, 89 N.J. at 368.

The concluding note in *Alevras* demonstrates the inconsistency between the statute and the Parole Board's rule. It notes that "[o]f course, if defendant is not paroled he will be entitled to the full commutation credit authorized in N.J.S.A. 30:4–140 against his maximum sentence." 245 N.J. Super. at 38. When an incarcerated person is granted parole, he serves as a parolee the remainder of his sentence minus the commutation credits as calculated under N.J.S.A. 30:4–140 based on his entire sentence; when he is denied parole, he serves that amount of time in prison. It does not make sense to award an incarcerated person two different kinds of commutation credits for good behavior during the FET: one for the calculation of his entire sentence and one for the calculation of his future eligibility date.

E. Blackmon Should Receive 1920 Days for the Duration of His FET

Blackmon was sentenced to life imprisonment with a minimum parole ineligibility term of 32.5 years. When he became eligible for parole for the first time after having served 30 years, he was denied parole and given a 10-year FET. Under N.J.S.A. 30:4-123.56, Blackmon should receive the "usual remissions of sentence for good behavior," which means that he "shall be remitted" "at the rate of 192 days for each such additional year," as provided under N.J.S.A. 30:4-140. Accordingly,

he should receive 1920 days off the 10-year FET. The Parole Board's decision to award him only 996 days as calculated based on the 10-year FET only should be reversed.

CONCLUSION

For the reasons stated in Point I, the Court should reverse the Parole Board's decision and award Blackmon 1920 days in commutation credits as required under N.J.S.A 30:4-140.

Respectfully submitted,

Dated: July 12, 2024

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Re: Craig Blackmon v. New Jersey State Parole Board
Docket No. A-3766-22T1

Civil Action: On Appeal from a Final Decision of the State Parole Board

Letter Brief on the Merits on Behalf of Respondent New Jersey State Parole Board

Dear Mr. Orlando:

Please accept this letter brief on the merits of the appeal on behalf of respondent New Jersey State Parole Board.

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ARGUMENT

PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS[1]

Appellant, Craig Blackmon, a former inmate, appeals the Board's June 28, 2023 decision denying his appeal of his parole eligibility date (PED) calculation in which he sought additional commutation credit to reduce his PED. (Aa7-8).[2]

Blackmon was convicted of murder, and sentenced to a term of life imprisonment with a mandatory-minimum term of thirty-two and one-half years. (Ab3). Blackmon had an initial PED of November 17, 2017. (Aa7). The Board denied Blackmon parole, and on January 18, 2018, the Board established a ten-year future eligibility term (FET). Ibid. The ten-year FET was added to the PED of November 17, 2017, and, based solely upon the ten-year FET, the Board, in accordance with the commutation credit statute, N.J.S.A. 30:4-140, applied 996

[1] Because the Procedural History and Counterstatement of Facts are closely related, they are combined for efficiency and the court's convenience.

[2] "Ab" refers to appellant's brief, and "Aa" refers to appellant's appendix.

days' commutation credit to the FET. Ibid. The ten-year FET was further reduced by 282 days' earned work credit. (Aa7-8). This resulted in a revised PED of May 18, 2024, as of April 28, 2023. (Aa8).

On April 4, 2018, Blackmon wrote a letter to the Board challenging the accuracy of his PED calculation, contending that he is entitled to "progressive" commutation credit on FET, where the amount of commutation credit increases for each additional year of incarceration, which would further reduce his PED. (Aa1-3). He claimed that the Board's PED calculation is inconsistent with N.J.S.A. 30:4-140, and its reduction schedule for minimum-maximum sentences. Ibid. According to Blackmon, the Board, in calculating his PED, failed to provide statutorily-mandated progressive commutation credits, and that, because his sentence was in excess of thirty years, he was entitled under the statute to additional commutation credit in the amount of 192 days for each additional year of incarceration that the Board imposed in establishing his FET. Ibid.

On April 12, 2023, the Board responded to Blackmon's letter (which was postmarked April 5, 2023), and his claim that he was entitled to additional commutation credit to reduce his PED, explaining that:

> the award of commutation credit on a progressive basis applies only to the calculation of the initial parole

> eligibility date and that upon denial of parole and establishment of a future eligibility term, a new parole eligibility term date is calculated by adding the future eligibility term to the revised book eligibility date and including commutation credit based on the future eligibility term only.
>
> [Aa4.]

In finding that Blackmon was not entitled to the application of progressive commutation credits to reduce his FET, the Board relied upon Alevras v. Delaney, 245 N.J. Super. 32 (App. Div. 1990), in which the court affirmed the Board's application of non-progressive commutation credits based on the offender's future eligibility term only, and not on the length of entire sentence. Ibid.

Blackmon administratively appealed the Board's denial of his request for progressive commutation credit in the amount of 192 days for each additional year of incarceration to reduce his FET, re-asserting his claim that he was entitled to progressive commutation credit to reduce his FET. (Aa5-6).

On June 28, 2023, the Board affirmed its initial decision, citing N.J.A.C. 10A:71-3.2(c)(8), which provides that, "where an inmate has been denied parole and [is] required to serve a future eligibility term, a new parole eligibility date shall be established by adding the additional term to the current actual eligibility date and by including . . . commutation credits based on the additional term only." (Aa7). The Board, relying upon Alevras, found that the calculation of Blackmon's PED date is

in accordance with the Board's administrative regulation, practice, and procedure. (Aa8).

This appeal followed on July 28, 2023. (Aa9). On August 5, 2024, the Board filed a motion to dismiss the appeal as moot due to the fact that Blackmon had been granted parole, which Blackmon opposed. On August 31, 2024, the court denied the motion. The Board submits the within brief addressing the merits of the appeal.

ARGUMENT

THE COURT SHOULD AFFIRM THE PAROLE BOARD'S DECISION DENYING BLACKMON'S REQUEST FOR ADDITIONAL COMMUTATION CREDITS BECAUSE HE IS NOT ENTITLED TO THE CREDITS HE SEEKS.

The court should affirm the Board's decision denying Blackmon's request to apply additional commutation credits to a PED because the law is clear that he is not entitled to progressive commutation credits to reduce an FET.

Unless a court finds that the agency's action is arbitrary, capricious, unreasonable, or unsupported by credible evidence in the record, the agency's ruling should not be disturbed. In re Taylor, 158 N.J. 644, 657 (1999); Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980); Barone v. Dep't of Human Servs., 210 N.J. Super. 276, 285 (App. Div. 1986). Here, the Board's decision

to deny Blackmon's request was not arbitrary because the law is well-settled that he is not entitled to progressive commutation credit to reduce an FET.

The commutation credit statute includes a schedule of credits earned for each year of a minimum-maximum sentence imposed. N.J.S.A. 30:4-140. The annual credit increases with the length of the sentence. Ibid. In the thirtieth year, the annual credit is 180 days, and any sentence in excess of thirty years shall be reduced at an annual rate of 192 days**.** Ibid. The statute "establishes mandatory credits to be applied against an inmate's sentence for the purpose of calculating his release date in the absence of parole." Alevras, 245 N.J. Super. at 37.

N.J.S.A. 30:4-140, and its companion regulation, N.J.A.C. 10A:9-5.1, limit eligibility for commutation credits to sentences that have both a minimum and maximum term. Thus, a life sentence, which is an indefinite term and by its inherent nature has no minimum or maximum term, cannot be reduced by commutation credits. Furthermore, commutation credit also cannot reduce a mandatory-minimum term. State v. Webster, 383 N.J. Super. 432, 435 (App. Div. 2006); Merola v. New Jersey Dep't of Corrs., 285 N.J. Super. 501, 509-10 (App. Div. 1995); N.J.A.C. 10A:9-5.1(a)(2).

The Board's authority to award commutation credits in calculating an FET derives from N.J.S.A. 30:4-123.56(b), which, prior to August 1997, permitted the

Board to apply commutation credits to reduce an FET.[3] Alevras, 245 N.J. Super. at 37. The statute did not dictate the manner in which the credits should be applied, but delegated that responsibility to the Board. Ibid. As noted, under N.J.A.C. 10A:71-3.2(c)(8), where an inmate has been denied parole, commutation credits are based on the FET only.

In Alevras, 245 N.J. Super. at 35, the court addressed the same issue raised in this appeal, where an inmate argued that his FET should be reduced by progressive commutation credit based upon the length of the total term, and not just the length of the FET.[4] The court rejected this argument, citing the Board's broad authority to promulgate a schedule of FETs and to limit the application of commutation credits to the FET. Id. at 36-37. The court further found that there was no conflict between N.J.S.A. 30:4-140 and N.J.A.C. 10A:71-3.2(c)(8), because N.J.S.A. 30:4-140 merely provides that commutation credits shall be applied against an inmate's sentence for the purpose of calculating the release date in the absence of parole.

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[3] In August 1997, the Parole statute was amended, which included the elimination of commutation credits to reduce an FET. N.J.S.A. 30:4-123.56(b); Alevras, 245 N.J. Super. at 34. However, because Blackmon was sentenced prior to August 1997, he was entitled to have his FET reduced by credits.

[4] When Alevras, 245 N.J. Super. at 35, was decided, the relevant regulation providing for the application of commutation credits to the FET was N.J.A.C. 10A:71-3.2(c)(7).

Alevras, 245 N.J. Super. at 37. N.J.A.C. 10A:71-3.2(c)(8), on the other hand, provides that the Board, under its broad authority, may, after denying parole, award commutation credits based on the FET only for purposes of determining subsequent parole eligibility. Ibid. In Blackmon's case, the Board, relying upon Alevras, found that the calculation of Blackmon's PED date was in accordance with the Board's administrative regulation, practice, and procedure. (Aa8).

Blackmon argues that Alevras was wrongly decided because, he claims, N.J.A.C. 10A:71-3.2(c)(8) conflicts with N.J.S.A. 30:4-140, and that the Board should have awarded progressive commutation credit based on his total term and not just on the FET. (Ab7-18). In so doing, he ignores the fact that he was sentenced to an indeterminate term of life imprisonment, which is not a minimum-maximum term, and therefore, under the plain language of the statute, cannot be reduced by commutation credit. N.J.S.A. 30:4-140. He is also not entitled to have his mandatory-minimum term reduced by credits. Webster, 383 N.J. Super. at 435; Merola, 285 N.J. Super. at 509-10; N.J.A.C. 10A:9-5.1(a)(2). Thus, since neither his maximum term of life imprisonment nor his mandatory-minimum term can be reduced by commutation credits, he is clearly not entitled to an award of progressive credits based on the length of his total term. To award such credits would, at least implicitly, violate the prohibition on awarding credits to reduce a life term and a

mandatory-minimum term.

Furthermore, contrary to his claim, Alevras was not wrongly decided because, as the court correctly found, the relevant statute and regulation are not in conflict. As discussed, N.J.S.A. 30:4-140 merely provides that commutation credits shall be applied against an inmate's sentence for the purpose of calculating the release date in the absence of parole. Alevras, 245 N.J. Super. at 37. In contrast, N.J.A.C. 10A:71-3.2(c)(8) provides that the Board may, under its broad authority, award commutation credits on the FET resulting from a denial of parole for purposes of determining subsequent parole eligibility. Ibid.

The Board's calculation of Blackmon's PED is correct, and it included all of the commutation credits to which Blackmon was entitled. Therefore, the Board's decision should be affirmed.

CONCLUSION

For these reasons, the Board's final decision should be affirmed.

Respectfully submitted,

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-003766-22

CRAIG BLACKMON,
Plaintiff-Appellant

v.

NEW JERSEY STATE PAROLE BOARD
Defendant-Respondent

CIVIL ACTION

REPLY LETTER-BRIEF ON BEHALF OF PLAINTIFF-APPELLANT

On Appeal from a Final Decision of the New Jersey Parole Board

Your Honors:

This letter-brief is respectfully submitted in lieu of a formal brief pursuant to R. 2:6-2(b).

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ARGUMENT

When the Parole Board denied Craig Blackmon parole in 2017 and concluded that he should serve another ten years in prison before being considered again, that was a proper exercise of its discretion under New Jersey law. But when it determined that Blackmon should receive commutation credits based only on the additional ten years *and not* the full length of the time he has served, the Parole Board defied New Jersey law and abused its authority. The statutory language is clear: N.J.S.A. 30:4-123.56, as applicable to Blackmon, required the Parole Board to "take into account usual remissions" for commutation credits. N.J.S.A. 30:4-140 sets the "usual remissions" for someone who has served more than thirty years as 192 days for each additional year.

The Parole Board's abuse of its discretion had real consequences for Blackmon. Instead of 1,920 days of good time credit, he received only 996—roughly 2.5 more *years* in state prison. While Blackmon served those extra years and has now been paroled, there are hundreds of other incarcerated individuals like him who are subject to the Parole Board's mistaken understanding of what New Jersey law permits. The Court should correct the board's error.

The Parole Board argues that the Court should defer to its judgment, relying on a New Jersey Administrative Code provision that commutation credits should be awarded "based on the additional term only," rather than the actual sentence. But a

law passed by the legislature beats a regulation penned by a state agency every time. Nothing in the applicable statutes gives the Parole Board the authority to adjust the "usual remissions" for commutation credits. Rather, its authority is specifically cabined to the accounting of the "usual remissions" in the determination of the date a person would become eligible again. In short, the Parole Board got it wrong, and an administrative code provision cannot rescue them when it conflicts with a statute.

The Parole Board's other argument is even more troubling. It takes the unprecedented position that because Blackmon was sentenced to life imprisonment, he is not entitled to any commutation credits under any circumstances. Wrong. New Jersey law provides explicitly for the provision of such credits. And the Parole Board itself has awarded them, including to Blackmon (albeit in the wrong amount), for the calculation of future eligibility date. The Parole Board's decision should be reversed.

A. Blackmon Was Entitled to Commutation Credits

The Parole Board argues that its decision should be accorded deference. As explained in the Appellant's Brief, the Court need not defer to the Parole Board's decision, because its "statutory interpretation is contrary to the statutory language." *See N.J. Tpk. Auth. v. Am. Fed'n of State, Cty. & Mun. Emps., Council 73*, 150 N.J. 331, 351 (1997). Not only does the Parole Board's regulation conflict with the

applicable statutes, the Parole Board's interpretation of the statutes, as detailed in its response, in fact subverts the statutes completely.

The Board argues that because N.J.S.A. 30:4-140 references a "maximum and minimum term" and because a life imprisonment sentence does not have a "maximum and minimum term," N.J.S.A. 30:4-140 does not apply to Blackmon and other people with life imprisonment at all. This position is not only contrary to its practice of calculating commutation credits for the FET of people with life imprisonment sentences, but is entirely omitted in its decision denying Blackmon's request to apply 1920 days to his FET, in which the Board explained its "administrative regulation, practice, and procedure" to award some commutation credits to people in Blackmon's position. (Aa-7)

More importantly, the Board's position is directly contradicted by N.J.S.A. 30:4-123.51, which states that

> Each adult inmate sentenced to a term of life imprisonment shall become primarily eligible for parole after having served any judicial or statutory mandatory minimum term, or 25 years where no mandatory minimum term has been imposed less commutation time for good behavior pursuant to R.S. 30:4-140 . . . .

The statute plainly considers people with life imprisonment to be entitled to commutation credits in the calculation of their parole eligibility date and specifically references N.J.S.A. 30:4-140 for how the commutation credits should be calculated. An incarcerated person with a life imprisonment sentence and no mandatory

minimum term would become primarily eligible for parole after serving 25 years minus commutation credits and other credits and that person would receive, under N.J.S.A. 30:4-140, commutation credits for someone who has served 25 years. This is also consistent with how the commutation credits are calculated for people with a term sentence. Under N.J.S.A. 30:4-123.51, people with a term sentence and without a mandatory minimum sentence are "primarily eligible for parole" after having served one-third of the sentence imposed minus commutation credits and other credits and commutation credits are calculated under N.J.S.A. 30:4-140 based on the one-third of the sentence, which is *actual* length of sentence that person would have served.

The Board's discussion about whether commutation credits could reduce the life imprisonment sentence itself is besides the point. The statute is clear that commutation credits are awarded to inmates for the determination of their primary parole eligibility date, regardless of whether they are serving a term sentence or a life imprisonment sentence. The statute is also clear that when parole is denied on the primary eligibility date, the future eligibility date "*shall* take into account *usual remissions*" of commutation credits. *See* N.J.S.A. 30:4-123.56 (emphasis added). For the calculation of both the primary eligibility date and the future eligibility date, the commutation credits are calculated based on the length of time the person has served so far: one-third of the sentence for a term-sentence prisoner, 25 years for a

life imprisonment prisoner, and actual time served for the future eligibility date for all prisoners.

The Parole Board's position subverts the explicit system for the calculation of commutation credits and parole eligibility dates that the statutes set out. It also creates an unreasonable and unjust situation where people with life imprisonment sentences are excluded from earning commutation credits, despite clear statutory intent to incentivize good behavior by awarding more commutation credits for longer sentences. *See In re Mahoney*, 17 N.J. Super. 99, 103 (Co. 1951) ("[S]hort-term prisoners derive from the statute less remission time on the obvious premise that they need less incentive for good conduct."). The Court should make clear that every incarcerated individual should receive the number of commutation credits in accordance with the length of time they have served.

B. The Parole Board's Other Arguments Are Wrong

The Board primarily relies on its argument that Blackmon, as someone with a life imprisonment sentence, was not entitled to any commutation credits at all under N.J.S.A. 30:4-140. Its other arguments, which are related, similarly disregard the statutory language.

The Board argues that N.J.S.A. 30:4-123.56 delegated the Board the authority to "dictate the manner in which the credits should be applied." As explained in Blackmon's opening brief, that interpretation is wholly ungrounded in statutory

language. Rather than delegating to the Board to dictate how commutation credits are applied, N.J.S.A. 30:4-123.56 specifically required the Board to apply the "usual remissions" of commutation credits. The Board does not attempt to explain what "usual remissions" could mean other than how commutation credits are calculated under N.J.S.A. 30:4-140, which is based on the length of time a person has served. The Court should construe the statute so that the word "usual" has its intended meaning.

The Board relies on *Alevras v. Delanoy*, 245 N.J. Super. 32 (App. Div. 1990) to support its decision. But as detailed in Blackmon's opening brief, the *Alevras* panel got it wrong. The Board notes that the court found that N.J.S.A. 30:4-140 "merely provides that commutation credits shall be applied against an inmate's sentence of the purpose of calculating the release date in the absence of parole," implying that N.J.S.A. 30:4-140 is not relevant to the calculation of commutation credits for parole eligibility dates at all. (Db-7–8)[1] However, as explained above, N.J.S.A. 30:4-123.51, which governs the determination of the primary parole eligibility date, specifically references N.J.S.A. 30:4-140 for how commutation should be applied for the purposes of setting a parole eligibility date. Likewise, N.J.S.A. 30:4-123.56 references the "usual remissions" of commutation credits, which could have no other meaning than the computation formula under N.J.S.A.

[1] The "Db" citation refers to Defendant-Respondent's brief.

30:4-140. That court's reasoning that N.J.S.A. 30:4-140 does not concern parole eligibility date and only concerns the release date in the absence of parole demonstrates the panel's misunderstanding of the applicable statutes. This Court should reject *Alevras* so that the Parole Board can no longer rely on its mistaken reasoning.

CONCLUSION

For the reasons stated above and in the Appellant's Brief, the Court should reverse the Parole Board's decision and award Blackmon 1920 days in commutation credits as required under N.J.S.A 30:4-140.

Respectfully submitted,

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