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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1011-15T2

IFE JAMES,

Appellant,

v.

NEW JERSEY STATE PAROLE BOARD,

Respondent.

Submitted March 22, 2017 – Decided April 7, 2017

Before Judges Carroll and Gooden Brown.

On appeal from the New Jersey State Parole Board.

Ife James, appellant pro se.

Christopher S. Porrino, Attorney General, attorney for respondent (Lisa A. Puglisi, Assistant Attorney General, of counsel; Gregory R. Bueno, Deputy Attorney General, on the brief).

PER CURIAM

Ife James appeals from a final decision of the New Jersey State Parole Board (Board) revoking his release status on a mandatory five-year term of parole supervision imposed pursuant

to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2, and setting a twelve-month future eligibility term (FET). We affirm.

I.

In February 2008, James was convicted of robbery and weapons offenses and sentenced to an aggregate eleven-year prison term with an eighty-five percent parole ineligibility period pursuant to NERA. On September 16, 2014, James completed his custodial sentence and began serving his mandatory parole supervision term. As conditions of his parole supervision, James was required, among other things, to refrain from using controlled dangerous substances and complete the Stages to Enhanced Parolee Success (STEPS) treatment program.

On November 18, 2014, James tested positive for marijuana use. On January 4, 2015, he was discharged from the STEPS program at Kintock House for refusing to provide a urine sample. When parole officers arrived at the program to apprehend him, he ran from them and grabbed a fire extinguisher. Consequently, in addition to the parole violation, he was arrested for aggravated assault and resisting arrest.

Pertinent to this appeal, James was charged with violating two conditions of his parole supervision. The first charge specified that James violated general condition number 10, "to refrain from the use, possession or distribution of a controlled

dangerous substance, controlled dangerous substance analog, or imitation controlled dangerous substance as defined in N.J.S.A. 2C:35-2 and N.J.S.A. 2C:35-11[,] [a]s evidenced by you testing positive for [m]arijuana [on] 11/18/14. Positive lab results for THC are attached." The second charge alleged that James

failed to complete the KINTOCK NEWARK STEPS program, as evidenced by you being unsuccessfully discharged on 01/04/2015, after you refused to void a urine, and subsequently resisted [] being arrested when parole officers arrived in the facility. This resulted in you being charged with resisting arrest, eluding officer and aggravated assault on police.

At his parole violation hearing, James admitted to using marijuana. Accordingly, the hearing officer sustained the first charge. James contested the second charge. He acknowledged he did not provide the urine sample when requested to do so. However, he testified "he didn't feel comfortable giving his urine" in the presence of a homosexual staff member because "he was worried what could happen to him" and "he didn't feel safe because of his religion." The hearing officer rejected this defense, and found the charge was established by clear and convincing evidence. The hearing officer determined that the violations were of a serious nature, and recommended that James's mandatory supervision be revoked.

On February 25, 2015, a two-member Board Panel adopted the hearing officer's findings, revoked his mandatory supervision status, and established a twelve-month FET. James filed an administrative appeal, and on August 26, 2015, the full Board affirmed the panel's decision. After reviewing the record in detail, the Board agreed "that clear and convincing evidence exists that [James] seriously violated the conditions of [his] mandatory supervision status and revocation is desirable." The Board denied James's request for reinstatement of mandatory supervision to a community release program, finding he was "not a suitable candidate for release and, as such, placement in a program is not appropriate."

On appeal, James argues that: (1) the Board disregarded "the unreasonableness and impact the order for him to expose himself to a homosexual staff member had on his psyche, religious beliefs, and reputation[;]" (2) he was not given a reasonable opportunity to comply with the order to provide a urine sample as the two-hour time frame to void had not elapsed; and (3) the Board failed to give him credit for his post-parole accomplishments.

II.

We recently recounted in detail the statutory framework that guides our review of parole revocation proceedings, as follows:

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

The Board must exercise its authority to revoke release status "in accordance with the procedures and standards" codified in N.J.S.A. 30:4-123.59 through N.J.S.A. 30:4-123.65. N.J.S.A. 30:4-123.51b(a). The statutory standards referenced permit revocation only on proof by clear and convincing evidence that the person "has seriously or persistently violated the conditions," N.J.S.A. 30:4-123.60(b) and N.J.S.A. 30:4-123.63(d), or that the person has been "convicted of a crime" while released, N.J.S.A. 30:4-123.60(c); see also N.J.A.C. 10A:71-7.12(c)(1)-(2).

The Legislature did not further define the type of conduct it intended to capture within the statutory standard – "seriously or persistently violated." And 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.

The Legislature also codified procedures for revocation that require the Board to afford persons facing revocation of release status significant procedural protections. In addition to requiring proof by clear and convincing evidence, the Legislature has mandated notice of the alleged violation, a probable cause hearing, and a subsequent revocation hearing, at which the parolee has

a right to confront his or her accusers, testify, present evidence, subpoena witnesses and have counsel appointed. N.J.S.A. 30:4-123.62 to -123.63.

Revocation hearings are conducted by a hearing officer, who must make a record and provide reasons for his or her recommendation to a two-member Panel of the Board in writing. N.J.S.A. 30:4-123.63. The hearing officer's written summary is given to the two-member Panel and the parolee's attorney, who may file exceptions with the Panel within seven days. N.J.A.C. 10A:71-7.16. The Panel makes its decision after reviewing the hearing officer's summary, the exceptions and the record. N.J.S.A. 30:4-123.63(d),(e); N.J.A.C. 10A:71-7.16 to -7.17B. If the Panel revokes parole it must either establish a specific release date or a future eligibility date. N.J.S.A. 30:4-123.63(d); N.J.S.A. 30:4-123.64; N.J.A.C. 10A:71-7.17B. The Panel also must issue a written decision stating its "particular reasons . . . and the facts relied upon," N.J.A.C. 10A:71-7.18.

Where parole is revoked, the two-member Panel's decision is appealable to the Board on several grounds. Among the available grounds are the Panel's failure to consider material facts; its failure to document the clear and convincing evidence of serious or persistent violations; and its entry of a decision "contrary to written Board policy or procedure." N.J.A.C. 10A:71-4.1(e)(1)-(3). Pursuant to Rule 2:2-3(a)(2), appeal to this court is from the agency's final decision.

[Hobson v. N.J. State Parole Bd., 435 N.J. Super. 377, 382-83 (App. Div. 2014).]

III.

Our scope of review is limited. We recognize the Board "has broad but not unlimited discretionary powers" in rendering parole decisions. Trantino v. N.J. State Parole Bd., 166 N.J. 113, 173 (2001) (quoting Monks v. N.J. State Parole Bd., 58 N.J. 238, 242 (1971)). Generally, the Board's actions are presumed valid and reasonable, In re Vey, 272 N.J. Super. 199, 205 (App. Div. 1993), aff'd, 135 N.J. 306 (1994), as its decisions are considered highly "individualized discretionary appraisals." Trantino, supra, 166 N.J. at 173 (quoting Beckworth v. N.J. State Parole Bd., 62 N.J. 348, 359 (1973)). Despite the Board's broad discretion, we review the decision as we do those of other administrative agencies to determine whether the Board has exercised its power arbitrarily or capriciously. Trantino, supra, 166 N.J. at 172-73. In conducting that review, we must consider:

(1) whether the agency's action violates express or implied legislative policy, i.e., did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[Id. at 172 (quoting Trantino v. N.J. State Parole Bd., 154 N.J. 19, 24 (1998)).]

"A court may not substitute its judgment for that of the agency[.]" McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 563 (App. Div. 2002) (citation omitted). Therefore, we accord the Board's decision a presumption of validity, and the burden is on the challenging party to show that an action was arbitrary, unreasonable, or capricious. An administrative agency's decision will only be set aside if there is, "a definite conviction that the determination below went so far wide of the mark that a mistake must have been made." N.J. State Parole Bd. v. Cestari, 224 N.J. Super. 534, 547 (App. Div.) (citation omitted), certif. denied, 111 N.J. 649 (1988).

Applying these standards, we find no basis to disturb the Board's decision to revoke James's parole supervision and set a twelve-month FET. The revocation hearing in this case comported with all statutory and due process requirements. It is undisputed that James first tested positive for marijuana, which he conceded, and later refused to submit a urine sample when directed to do so in accordance with a urine collection procedure that was properly administered. There was adequate evidence to support a finding, by clear and convincing evidence, that James violated the conditions of his parole supervision, and that those violations were serious and not merely technical or insignificant in nature.

Thus, we hold that the Board's decision was not arbitrary,
capricious, or unreasonable.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION