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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1410-15T2

PAUL WILLIAMS,

Appellant,

v.

NEW JERSEY STATE PAROLE BOARD,

Respondents.

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Submitted June 6, 2017 – Decided July 21, 2017

Before Judges Reisner and Sumners.

On appeal from the New Jersey State Parole Board.

Paul Williams, appellant pro se.

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

PER CURIAM

Appellant Paul Williams is serving a life sentence after being found guilty by a jury of first-degree murder in 1972, arising from his participation in the robbery of a tavern, during

the course of which an accomplice fatally shot the tavern owner. He appeals from the final agency decision of the New Jersey State Parole Board (Board) denying him parole and imposing a thirty-six month future eligibility term (FET). We affirm.

On June 25, 2015, appellant became eligible for parole for the ninth time. A hearing officer referred his case to a two-member Board panel, which denied parole and set a thirty-six month FET. The panel, relying upon an updated confidential psychological assessment, determined there was a substantial likelihood that appellant would commit a new crime if released. Among other things, the panel cited: (1) serious nature of offense; (2) prior criminal record; (3) prior probation revoked for commission of new offense; (4) prior incarceration did not deter criminal behavior; (5) demonstrated lack of insight into criminal behavior; (6) risk assessment score of thirty, indicating a medium risk of recidivism. The panel found that those considerations outweighed the mitigating factors of appellant's participation in various institutional programs specific to behavior, being infraction-free since his last panel appearance, favorable institutional adjustment, and achievement of medium custody status.

The Board issued a final agency decision on September 23, 2015, affirming the panel's denial of parole and establishment of the thirty-six month FET. In doing so, the Board rejected

appellant's contention that the denial of his parole eight previous times was unreasonable and not supported by the record. It reasoned

that the Parole Act of 1979 was amended in 1997 and pursuant to those amendments; the Board is no longer restricted to considering only new information, at each time of parole consideration. Most of the information in your case remains the same, for example, your prior criminal history and adjustment on community supervision. However, other information pertaining to your institutional adjustment has changed to reflect your recent institutional developments, such as your infraction free status since your last panel review and your program participation. In addition, pursuant to N.J.A.C. 10A:71-3.11, the Board panel is required to consider and base its decision on the aggregate of factors.

Thus, the Board concurred with the panel's determination that "a preponderance of the evidence indicates that there is a substantial likelihood that [appellant] would commit a crime if released on parole at this time."

On appeal, appellant argues that, based upon the record, the Board acted unreasonably and arbitrarily in denying his parole and imposing a FET. He also contends that the Board violated the Ex Post Facto Clause of the United States Constitution by reviewing his entire parole file pursuant to N.J.S.A. 30:4-123.56(c) (1979), as amended by L. 1997, c. 213, § 2, instead of limiting its review to new information, which was the standard prior to the 1997

amendment. Further, appellant argues that the Board improperly considered "on-the-spot" minor institutional infractions requiring minor sanctions. See N.J.A.C. 10A:4-7.3(a); N.J.A.C. 10A:4-7.5(a).

Under our standard of review, we must accord considerable deference to the Board and its expertise in parole matters. Our standard of review is whether the Board's decision was arbitrary and capricious. Acoli v. N.J. State Parole Bd., 224 N.J. 213, 222-23 (2016). Parole Board decisions are "highly 'individualized discretionary appraisals.'" Trantino v. N.J. State Parole Bd., 166 N.J. 113, 173 (2001) (quoting Beckworth v. N.J. State Parole Bd., 62 N.J. 348, 359 (1973)). We will not disturb the Board's fact-findings if they "could reasonably have been reached on sufficient credible evidence in the whole record." J.I. v. N.J. State Parole Bd., 441 N.J. Super. 564, 583 (App. Div.) (quoting Hare v. N.J. State Parole Bd., 368 N.J. Super. 175, 179 (App. Div.), certif. denied, 180 N.J. 452 (2004)), certif. granted, 223 N.J. 555 (2015). The burden is on the challenging party to demonstrate that the Board's actions were arbitrary, capricious or unreasonable. Bowden v. Bayside State Prison, 268 N.J. Super. 301, 304 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994).

A Board decision to grant or deny parole for crimes committed before August 1997, turns on whether there is a "substantial

likelihood" the inmate will commit another crime if released. N.J.S.A. 30:4-123.53(a) (1979), amended by L. 1997, c. 213, § 1; N.J.S.A. 30:4-123.56(c) (1979), amended by L. 1997, c. 213, § 2; Williams v. N.J. State Parole Bd., 336 N.J. Super. 1, 7 (App. Div.), certif. denied, 165 N.J. 523 (2000); N.J.A.C. 10A:71-3.10(a). The Board must consider the enumerated factors in N.J.A.C. 10A:71-3.11(b)(1)-(23), in making its decision. The Board, however, is not required to consider each and every factor; rather, it should consider those applicable to each case. McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 561 (App. Div. 2002).

Guided by these standards and considering the record, including the materials in the confidential appendix, we discern no basis to disturb the Board's decision. The Board considered the relevant factors in N.J.A.C. 10A:71-3.11, and adopted the determinations made by the two-member panel which found that there was a substantial likelihood that appellant would commit a new crime if released. We are mindful that appellant has been in prison for over forty-five years. The Board's decision, however, is supported by sufficient credible evidence in the record and is entitled to our deference.

We are also satisfied that the thirty-six month FET imposed by the Board is consistent with the Board's guidelines. In

accordance with N.J.A.C. 10A:71-3.21(d), when an inmate serving a life sentence is denied parole, the Board may increase the presumptive twenty-seven month FET "due to the inmate's lack of satisfactory progress in reducing the likelihood of future criminal behavior[.]" We find nothing arbitrary or capricious about the thirty-six month FET because it was supported by sufficient credible evidence in the record.

Turning to appellant's ex post facto argument, our court and the United States District Court have previously addressed and rejected this argument. See, e.g., Trantino v. N.J. State Parole Bd., 331 N.J. Super. 577, 610-11 (App. Div. 2000) (holding the use of the 1997 amendment to the Parole Act and its removal of the "new information" limitation did not violate the Ex Post Facto Clause), aff'd in part, modified in part, and remanded, 166 N.J. 113 (2001); Royster v. Fauver, 775 F.2d 527, 533-35 (3d Cir. 1985) (holding that the 1979 Parole Act did not violate the prohibition against Ex Post Facto laws when applied to an offender sentenced under the Parole Act of 1948).

Finally, there is no merit to the argument that the Board considered "on-the-spot" infractions in denying parole. In fact, the Board noted as a mitigating factor that appellant has been infraction-free since his last parole hearing.

Affirmed.

