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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2597-15T2

ANTWAN MALONE,

Appellant,

v.

NEW JERSEY STATE PAROLE BOARD,

Respondent.

Submitted May 9, 2017 – Decided July 20, 2017

Before Judges Sumners and Mayer.

On appeal from the New Jersey State Parole Board.

Antwan Malone, appellant pro se.

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

PER CURIAM

Appellant Antwan Malone appeals from the final agency decision of the New Jersey State Parole Board (Board), denying

parole and imposing a twenty-three month future eligibility term (FET). We affirm.

On July 25, 2005, appellant was sentenced to prison after pleading guilty under two separate indictments. Under one indictment, he pled to second-degree aggravated assault – serious bodily injury, and was sentenced to a seven-year prison term subject to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. Under the other, he pled to first-degree robbery, second-degree conspiracy to commit robbery, second-degree aggravated assault and third-degree unlawful possession of a weapon – a handgun, and was sentenced to a consecutive ten-year prison term subject to NERA.

On September 12, 2013, appellant was released on mandatory parole supervision. Approximately nine months later, his parole was revoked for committing the offense of hindering apprehension.

After appellant became eligible for parole again, a hearing officer referred his case to a two-member panel of the Parole Board. On March 6, 2015, the panel denied parole and set a twenty-three month FET. It determined there was a reasonable expectation that appellant would violate conditions of parole if released. Among other things, the panel cited appellant's: (1) extensive prior criminal record; (2) prior mandatory parole supervision which failed to deter his criminal behavior; (3) prior incarceration which failed to deter his criminal behavior; (4)

demonstrated lack of insight into his criminal behavior; (5) recent institutional infractions for assault and disruption of the security or orderly running of the correctional facility; and (6) risk assessment score of thirty-three, indicating a high risk of recidivism. The panel found that those considerations outweighed the mitigating factors of appellant's participation in various institutional programs and attempted enrollment in certain programs.

The full Board issued a final agency decision on July 29, 2015, affirming the denial of parole and establishment of the twenty-three month FET. The Board concurred with the two-member panel that "a preponderance of the evidence indicates that there is a reasonable expectation that [appellant] would violate the conditions of parole if released on parole at this time."

On appeal, appellant argues that the Board failed to demonstrate that he would violate conditions of parole if released, and that the Board erred in considering institutional infractions that were pending appeal before this court when it considered his parole request. We have considered these contentions in light of the record and applicable legal principles and conclude they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We affirm substantially for the

reasons expressed in the Board's comprehensive written decision. We add only the following brief comments.

Under our standard of review, we must accord considerable deference to the Board and its expertise in parole matters. Our standard of review of the Board's decisions is limited, and "grounded in strong public policy concerns and practical realities." Trantino v. N.J. State Parole Bd., 166 N.J. 113, 200 (2001) ("Trantino V"). "The decision of a parole board involves 'discretionary assessment[s] of a multiplicity of imponderables [.]'" Id. at 201 (alteration in original) (quoting Greenholtz v. Inmates of Neb. Penal & Corr. Complex, 442 U.S. 1, 10, 99 S. Ct. 2100, 2105, 60 L. Ed. 2d 668, 677 (1979)).

"To a greater degree than is the case with other administrative agencies, the Parole Board's decision-making function involves individualized discretionary appraisals." Ibid. (citing Beckworth v. N.J. State Parole Bd., 62 N.J. 348, 358-59 (1973)). Consequently, our courts "may overturn the Parole Board's decisions only if they are arbitrary and capricious." Ibid. We will not disturb the Board's factual findings if they "could reasonably have been reached on sufficient credible evidence in the whole record." Id. at 172 (quoting Trantino v. N.J. State Parole Bd., 154 N.J. 19, 24 (1998) ("Trantino IV") (quoting N.J. State Parole Bd. v. Cestari, 224 N.J. Super. 534, 547 (App. Div.),

certif. denied, 111 N.J. 649 (1988)); see also McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 563 (App. Div. 2002) (applying that standard).

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. Its decision is supported by sufficient credible evidence in the record and is entitled to our deference. The twenty-three month FET imposed by the Board is the presumptive term based upon defendant's ten-year prison term as set forth in N.J.A.C. 10A:71-3.21(a)(2).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION