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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4181-14T4

EUGENE BELTON,

Appellant,

v.

NEW JERSEY STATE
PAROLE BOARD,

Respondent.

Submitted December 20, 2016 — Decided August 3, 2017

Before Judges Suter and Guadagno.

On appeal from the New Jersey State Parole
Board.

Eugene Belton, 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

Eugene Belton, an inmate currently incarcerated in New
Jersey State Prison (NJSP), appeals from an April 15, 2015 final
decision of the Parole Board affirming the denial of his request

for parole, and the establishment of a one-hundred forty-four month future eligibility term (FET). We affirm.

In 1976, Belton pled non vult¹ to murder and guilty to breaking and entering with intent to steal. He was sentenced to life imprisonment on the murder charge and a concurrent seven-year sentence on the breaking and entering charge.

In August 1990,² while serving his sentence in NJSP, Belton and other inmates rioted at the prison and assaulted several corrections officers. Belton and six other inmates were charged. In our opinion affirming the conviction of one of Belton's co-defendants, we described the injuries suffered by the officers:

In a sudden, unprovoked and planned attack on the morning of August 10, 1990, armed inmates at the New Jersey State Prison (then known as Trenton State Prison) turned on their guards. In the ensuing melee, numerous officers were injured. Captain James Johnston was repeatedly stabbed in the chest, face and arm. He was also beaten in the head

¹ When defendant entered his plea, N.J.S.A. 2A:113-4 required a sentence of death for first-degree murder convictions, but N.J.S.A. 2A:113-3 permitted a life sentence or a sentence consistent with second-degree murder of thirty years, if a non vult or nolo contendere plea was entered. A non vult plea is equivalent to a guilty plea. State v. Ramseur, 106 N.J. 123, 273 (1987).

² We note a discrepancy between our prior published opinion, which indicates that the incident occurred on August 10, 1990, and the pre-sentence report which refers to August 12, 1990. This is not material to our decision.

with a weight. He spent a week in the hospital with a collapsed lung as a result of the stab wounds. Officer Wilson was struck in the head, stabbed and kicked repeatedly, and had his cheekbone crushed by a weight. The attack rendered him unconscious. He was hospitalized for four days. Officer Ayala was beaten and stabbed. He suffered multiple broken facial bones, a sprained wrist, and tooth damage. He spent seven days in the hospital. Officer Rivera was treated for a puncture wound of his wrist. Other officers suffered minor injuries.

[State v. Mance, 300 N.J. Super. 37, 44-45 (App. Div. 1997).]

In June 1993, after trial by a jury, Belton was convicted of four counts of aggravated assault and one count of possession of a weapon for an unlawful purpose. On July 30, 1993, Belton was sentenced to twenty-one and one-half years to run consecutively to the life term he was serving.

After an initial hearing on May 8, 2014, a hearing officer referred Belton's matter to a two-member Board panel for a hearing. On June 12, 2014, the panel denied parole based on Belton's prior extensive criminal history; his prior criminal record; his prior opportunities on probation and parole as well as his prior incarcerations have failed to deter his criminal behavior; his prior opportunities on probation and parole have been violated in the past; his numerous, serious in nature institutional disciplinary infractions (101 infractions) which

resulted in confinement in detention and administrative segregation; his insufficient problem resolution, specifically, his lack of insight into his criminal behavior, and failure to sufficiently address his substance abuse problem, as demonstrated by the panel interview, documentation in the case file, and confidential materials and professional reports; "the lack of an adequate parole plan to assist in successful reintegration into the community;" and the results of an objective risk assessment instrument.

As mitigating factors, the panel found Belton had participated in institutional programs and programs specific to his behavior; had average to above average institutional reports; had no disciplinary infractions since 2003; and had attempted to enroll in institutional programs.

The panel referred the matter to a three-member Board panel to establish an FET, with a recommendation that the FET be beyond administrative guidelines. On November 5, 2014, the three-member panel established a one-hundred forty-four month FET, adopting the same aggravating and mitigating factors.

On appeal, Belton presents the following arguments:

POINT I

BY IGNORING AND UNDERVALUING SUBSTANTIAL
EVIDENCE THE NEW JERSEY STATE PAROLE BOARD
ERRED IN THEIR RULING TO DENY PAROLE, AS

THEY RELIED ON THE SAME ERRONEOUS REASONING,
WHICH THE COURT FOUND TO BE ARBITRARY IN
STATE V. TRANTINO^[3].

POINT II

THE PAROLE BOARD FAILED TO CONSIDER
APPELLANT'S AGE AT THE TIME OF THE OFFENSE.

POINT III

THE PAROLE BOARD FAILED TO ASSESS
APPELLANT'S SUITABILITY FOR PAROLE TO A
RESIDENTIAL PROGRAM.

POINT IV

THE PAROLE BOARD VIOLATED LEGISLATIVE INTENT
IN THE ARBITRARY SETTING OF A PUNITIVE FET.

Our review of administrative agency determinations is limited. Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980). The Parole Board is "charged with the responsibility of deciding whether an inmate satisfies the criteria for parole release under the Parole Act of 1979." Acoli v. N.J. State Parole Bd., 224 N.J. 213, 222 (quoting In re Hawley, 98 N.J. 108, 112 (1984)), cert. denied, ___ U.S. ___, 137 S. Ct. 85, 196 L. Ed. 2d 37 (2016). Our "review of the Parole Board's decisions is guided by the arbitrary and capricious standard that constrains other administrative action." Id. at 222-23 (citing Hawley, supra, 98 N.J. at 112-13). The Board's decision regarding

³ In Re Trantino Parole Application, 89 N.J. 347 (1982).

parole will not be disturbed unless it is "arbitrary, capricious or unreasonable, or . . . not supported by substantial credible evidence in the record as a whole." In re Stallworth, 208 N.J. 182, 194 (2011) (quoting Henry, supra, 81 N.J. at 579).

Belton claims the Board overlooked or undervalued crucial evidence such as his favorable institutional adjustment and unfairly focused on the aggravated assault convictions as opposed to the murder. We have considered these arguments and find they lack merit. R. 2:11-3(e)(1)(E).

The Board carefully considered all relevant evidence, including Belton's extensive criminal record, the serious nature of his crimes, and that prior probation and parole opportunities have failed to deter his criminal behavior. The Board concluded that Belton lacks sufficient insight into his criminal conduct:

Instead of confronting who you were and what led to your choice to participate in this offense you repeatedly cited your use of narcotics prior to this event as the leading reason for your poor choices and violent behavior that day.

The Board acknowledged that, pursuant to N.J.A.C. 10A:71-3.21(a)(1), the standard FET for an inmate denied parole who is serving a sentence for murder is twenty-seven months, but justified exceeding the guidelines based on Belton's inability "to identify any more than the superficial causes of [his]

criminal behavior," has not benefitted from the narcotic program he participated in and "continue[s] to present as someone who is a threat for future narcotics/alcohol use if released[.]"

When parole is denied for an inmate serving a life sentence, the standard eligibility term is twenty-seven months. N.J.A.C. 10A:71-3.21(a)(1). The Board, however, may exceed the FET guidelines if it determines that the presumption of twenty-seven months is "inappropriate due to the inmate's lack of satisfactory progress in reducing the likelihood of future criminal behavior." N.J.A.C. 10A:71-3.21(d).

We are satisfied that the Board's decision to deny parole and set an extended FET was supported by the record and was neither arbitrary nor capricious.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION