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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-4236-14T1

RAFIQ SALEEM,

Appellant,

v.

NEW JERSEY STATE PAROLE
BOARD,

Respondent.

Submitted April 24, 2017 – Decided May 3, 2017

Before Judges Sabatino and Geiger.

On appeal from the New Jersey State Parole
Board.

Rafiq Saleem, 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 Rafiq Saleem appeals from the February 4, 2015
final administrative 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 March 9, 1976, following a thirteen-day jury trial, appellant was convicted of first-degree murder and armed robbery. On April 2, 1976, appellant was sentenced to life in prison for the murder, with the robbery count being merged with the murder for sentencing purposes.

Appellant had three prior adult convictions for shoplifting, robbery and armed robbery. Appellant also had an extensive juvenile record. As an adult, appellant had six prior parole opportunities and in every instance violated parole. However, he has not had any institutional infractions.

On October 2, 2014, appellant became eligible for parole for the first time since his most recent parole violation in 2013. At his initial hearing, the hearing officer referred the matter to a Board panel for a hearing. A two-member panel of the Board recommended that appellant be denied parole and he receive a thirty-six-month FET, which is nine months longer than the presumptive twenty-seven-month FET prescribed by N.J.A.C. 10A:71-3.21(a)(1) for murder.

Appellant filed an appeal with the full Board. On February 4, 2015, the full Board upheld the recommendation of the two-

member panel to deny parole and impose a thirty-six-month FET, and this appeal ensued.

In its decision, the Board noted several mitigating factors, including: being infraction free; participation in institutional programs; average to above average institutional reports; attempts made to enroll and participate in programs but not admitted; and minimum custody status achieved and maintained. However, the Board found that appellant had been paroled six times since being sentenced for murder, with each parole period being revoked for technical violations.

The Board further found that: prior opportunity on probation has failed to deter criminal behavior; prior probation violations had occurred; appellant exhibited insufficient problem resolution; appellant lacked insight into his criminal behavior; appellant minimized his conduct; and appellant had an insufficiently addressed substance abuse problem. The Board also found that despite numerous parole supervision opportunities, appellant continues to exhibit criminal thinking and behavior without insight or remorse. The Board also considered appellant's risk assessment evaluation and score, which indicated a high risk of recidivism.

The presumptive twenty-seven-month FET for murder may be increased or decreased by up to nine months "when, in the opinion

of the Board panel, the severity of the crime for which the inmate was denied parole and the prior criminal record or other characteristics of the inmate warrant such adjustment." N.J.A.C. 10A:71-3.21(c).

On appeal, appellant contends that the Board's decision is arbitrary and capricious and should be set aside. We disagree.

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).

Having reviewed the record in light of these well-settled standards, including the psychological evaluation and other materials in the confidential appendix, we conclude that appellant's arguments are without merit. The Board considered the entire record and stated sufficient reasons for its decision. The record amply supports the Board's conclusion that there is "a reasonable expectation" that appellant would violate conditions of parole if released. See N.J.S.A. 30:4-123.53(a). Appellant's six prior parole violations and unfavorable psychological evaluation provided sufficient credible evidence for the Board's decision. Therefore, we discern no basis for disturbing the Board's decision to deny parole. We are likewise satisfied that the thirty-six-month FET imposed by the Board is supported by the record and is 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