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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4362-15T2

SAMUEL PETTAWAY,

Appellant,

v.

NEW JERSEY STATE PAROLE
BOARD,

Respondent.

Submitted November 8, 2017 – Decided December 22, 2017

Before Judges Gilson and Mayer.

On appeal from the New Jersey State Parole
Board.

Samuel Pettaway, appellant pro se.

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

PER CURIAM

Appellant Samuel Pettaway is a State inmate serving an eighty-seven year sentence for numerous crimes, including aggravated sexual assault, kidnapping, and robbery. He appeals from an April

27, 2016 final administrative decision by the State Parole Board (Board) denying his request for parole and establishing a 160-month future eligibility term (FET). We affirm because the Board's decision was not arbitrary, capricious, or an abuse of its discretion.

I.

Pettaway's convictions arose out of events that occurred on November 14, 1981, when Pettaway was nineteen years old. On that night, Pettaway and two co-defendants found a nineteen-year-old man and a seventeen-year-old woman in a parked car in Hamilton Township. Pettaway and his companions forcefully removed the victims from their car, assaulted the young man by pistol-whipping him, and threw the man in the trunk of a stolen vehicle. The young man later escaped by kicking out the back seat of the car.

Pettaway and his co-defendants then forced the young woman back into the car, threatened her with a gun, and drove her to a secluded location, where they repeatedly raped and assaulted her. Eventually, the young woman was released. The victims' car was later found stripped and burned.

A jury convicted Pettaway of six counts of first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a)(3) to (5); second-degree aggravated assault, N.J.S.A. 2C:12-1(b)(1); two counts of first-degree robbery, N.J.S.A. 2C:15-1; two counts of first-degree

kidnapping, N.J.S.A. 2C:13-1(b); second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a); third-degree theft, N.J.S.A. 2C:20-3(a); and second-degree aggravated arson, N.J.S.A. 2C:17-1(a)(2). He was sentenced to serve an aggregate term of eighty-seven years in prison with twenty-five years of parole ineligibility.

In June 2014, Pettaway made a second application for parole. A two-member Board panel denied parole and a three-member Board panel established a 160-month FET. In making those rulings, the panels cited Pettaway's prior criminal record, the increasingly serious nature of his criminal record, his present incarceration for multi-crimes convictions, his juvenile record reflecting that he committed new offenses while on probation, his institutional infractions, and a risk assessment evaluation reflecting a score of thirty-eight, which denoted a high risk of recidivism.

In establishing the 160-month FET, the three-member Board panel issued a written decision detailing its reasoning for extending the FET beyond the recommended standard of twenty-seven months. Specifically, the panel found that Pettaway remained a substantial threat to public safety because he had superficial insight into the root causes of his criminal activity; he still failed to demonstrate that he could follow the rules of society; and he had an ongoing substance abuse problem.

Pettaway administratively appealed the panels' decisions. The full Board considered Pettaway's arguments, his written submissions, and the administrative record, which included mitigating materials submitted by and on behalf of Pettaway. The Board then adopted the recommendations of the two- and three-member Board panels. Accordingly, on April 27, 2016, the Board issued its final agency decision denying Pettaway's request for parole and establishing a 160-month FET.

II.

On this appeal, Pettaway, who is self-represented, makes two arguments. First, he contends that there was insufficient evidence to show that he had a substantial likelihood of committing a new crime if released on parole. Second, he challenges the adequacy of the reasons for imposing a 160-month FET.

We accord considerable deference to the Board and its expertise in parole matters. Our standard of review is whether the Board's decision was arbitrary or 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 factual findings if they are supported by substantial credible evidence in the record. In

re Tukes, 449 N.J. Super. 143, 156 (App. Div. 2017). "[W]e accord substantial deference to the agency's fact-finding and legal conclusions, acknowledging 'the agency's special expertise and superior knowledge of a particular field.'" Ibid. (quoting Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 10 (2009)). "We will not substitute our judgment for the agency's even though we might have reached a different conclusion." Id. at 156-57 (citing In re Stallworth, 208 N.J. 182, 194 (2011)).

A Board decision to grant or deny parole for crimes committed before August 1997, turns on whether there is a "substantial likelihood" that 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. 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) in making its decision. The Board, however, is not required to consider each and every factor; rather, it should consider those applicable to the present case. McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 561 (App. Div. 2002).

Having reviewed the record, including the material in the confidential appendix, in light of these well-established standards, we affirm the Board's denial of parole. Pettaway's

parole eligibility was evaluated by the full Board. The Board considered the relevant factors enumerated in N.J.A.C. 10A:71-3.11(b), and found that there was a substantial likelihood that Pettaway would commit a new crime if released. We find nothing arbitrary or capricious about that decision because it is supported by substantial credible evidence in the record.

We likewise are satisfied that the 160-month FET imposed by the Board is neither arbitrary nor capricious and, again, is supported by the substantial credible evidence in the record. Following denial of parole, the Board must establish an FET. N.J.A.C. 10A:71-3.18(a)(2). When parole is denied for an inmate serving a sentence for aggravated sexual assault or kidnapping, the standard FET 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). The 160-month FET, while lengthy, will be substantially less than thirteen years because it will be reduced by application of commutation, work, and custody credits. In short, the Board exercised its legislative mandate and determined that the appropriate FET was 160 months.

Affirmed.

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

