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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4503-14T3
A-5541-14T3

DOUGLAS DRIFT,

Appellant,

v.

NEW JERSEY STATE
PAROLE BOARD,

Respondent.

RICHARD FERRARIE,

Appellant,

v.

NEW JERSEY STATE
PAROLE BOARD,

Respondent.

Argued November 10, 2016 — Decided May 5, 2017

Before Judges Hoffman and O'Connor.

On appeal from the New Jersey State Parole
Board.

Michael C. Woyce argued the cause for appellants (Murphy & Woyce, attorneys; Joseph S. Murphy, on the brief; Mr. Woyce, on the brief).

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

PER CURIAM

These matters are listed back-to-back and addressed in a single opinion. Appellant Douglas Drift appeals from the April 15, 2015 final decision of the New Jersey State Parole Board (Board), which revoked his parole supervision for life (PSL), see N.J.S.A. 2C:43-6.4, and imposed a fourteen-month term of incarceration. Appellant Richard Ferrarie appeals from the Board's June 24, 2015 final decision, which also revoked his PSL and imposed a fourteen-month term of incarceration.

After reviewing the record of each appellant and the applicable legal principles, we affirm both final decisions.

I

A

We first address Drift's appeal. The salient facts are as follows.

In July 2012, Drift pled guilty to third-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a), and in December

2012, he was sentenced to a three-year suspended sentence and PSL. In January 2013, Drift signed a PSL certificate, which set forth all conditions of PSL. One condition was that he "refrain from initiating, establishing or maintaining contact with any minor[,]" unless the minor is in the physical presence of his or her parent or legal guardian.

In April 2013, Drift's parole was revoked because he had been having contact with a minor, J.T.;¹ had used a computer to access Facebook; left the state without authorization; and used marijuana. As a result, the Board imposed a twelve-month term of incarceration.

On June 2, 2014, Drift was arrested for violating a condition of PSL after his parole officer discovered him in J.T.'s home, who was then seventeen years of age. Also present was J.T.'s nineteen-year-old half-sister, J.H. Drift was twenty-one years of age at the time. Following a hearing at which probable cause was established, the matter was then scheduled for a revocation hearing.

At the revocation hearing, Drift's parole officer testified she received information from a confidential informant Drift was having contact with J.T. On June 2, 2014, the parole officer

¹ We use initials to protect the privacy of J.T. and a member of her family, J.H.

went to and discovered Drift in J.T.'s home, along with J.T. and J.H. The following day, J.T. executed a hand-written statement in which she wrote she "asked for [Drift's] number maybe in March [2014]. We were not a thing. Maybe May I started talking to him more. Asking to see him. I broke up with him June 2[,] [2014]."

The parole officer concluded Drift had been having contact with J.T., in addition to his visit to her home on June 2, 2014. The parole officer acknowledged an Adult Diagnostic and Treatment Center evaluation stated Drift was not considered a pedophile. She also conceded she had no reports Drift has an affinity for minors.

The hearing officer noted Drift's PSL status was previously revoked because of having contact with J.T.; thus, Drift was aware of the PSL condition he not have contact with a minor unless the minor's parent or legal guardian were present. The officer further noted Drift had not only been in the minor's presence on June 2, 2014, but also had been in communication with her over a prolonged period, having resumed contact with the minor soon after he had been paroled for the same violation. The officer determined Drift has "an attraction and affinity to minors" and, despite having been previously incarcerated for having contact with J.T., "gained no insight" from that

experience. Thus, the officer recommended Drift's parole be revoked, concluding there was clear and convincing evidence he violated a condition of PSL and that such violation was serious.

After reviewing the hearing officer's summary of the revocation hearing, on November 6, 2014, a two-member panel of the Board found by clear and convincing evidence Drift violated the subject condition of parole. The panel revoked PSL because the violation was serious, and imposed a fourteen-month term of incarceration. The panel noted:

According to the pre-sentence investigation, in November of 2011, while 18-years-old, you had consensual sexual relations with a girl, age 13, and touched her vagina through her clothing. Subsequent to your arrest you continued to call and text the victim. . . . Your previous PSL . . . was revoked on 04/17/13 and a 12-month period of confinement was imposed. The basis for that [revocation was] due to you . . . having contact with a minor ([J.T.]). You were re-paroled on 02/18/17, but, soon thereafter, contacted [J.T.], thus, resulting in the issuance of a parole warrant.

Accordingly, the [panel] finds that your commission of the above-noted violation is serious and that revocation is desirable.

On December 15, 2014, Drift appealed the panel's decision to the full Parole Board. In a detailed opinion, on April 15, 2015, the Board concurred with the panel's factual findings and determination Drift's violation of the subject condition was

serious and revocation desirable. The Board directed Drift serve a fourteen-month term of incarceration.

B

On appeal, Drift contends:

POINT I — THE DELEGATION OF AUTHORITY BY THE LEGISLATURE TO THE STATE PAROLE BOARD UNDER N.J.S.A. 2C:43-6.4 VIOLATES THE SEPARATION OF POWERS DOCTRINE OF THE STATE AND FEDERAL CONSTITUTIONS.

POINT II — THE STATUTORY ENACTMENT FOR PAROLE SUPERVISION FOR LIFE, CODIFIED AT N.J.S.A. 2C:43-6.4, IS UNCONSTITUTIONAL AS IT DENIES THE RIGHT TO A JURY TRIAL GUARANTEED UNDER THE STATE AND FEDERAL CONSTITUTIONS.

POINT III — DRIFT'S CHALLENGE IS NOT JUST ABOUT THE DUE PROCESS STANDARD OF MORRISSEY V. BREWER, BUT IS ABOUT DRIFT'S RIGHT TO A JURY TRIAL WHEN CHARGED WITH A NEW CRIME

POINT IV — THE DECISION OF THE BOARD WAS ARBITRARY CAPRICIOUS AND UNREASONABLE AS IT MADE FINDINGS NOT SUPPORTED BY THE RECORD.

POINT V — THE BOARD'S DELAY BEYOND THE 90 DAY TIME LIMIT CODIFIED IN N.J.A.C. 10A:71-4.2 DENIED DRIFT MEANINGFUL ACCESS TO THE COURTS UNDER THE DUE PROCESS CLAUSE OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION.

Since the filing of his appeal, the same arguments he raises in his first three argument points were addressed and decided in a complaint he filed seeking declaratory relief against the Board concerning the within matter. See Sapio v. Davis, No. A-2132-14 (App. Div. July 5, 2016). The trial court

rejected these arguments and we affirmed the trial court. Id. at 30-31. Thus, we do not again address these same arguments.

If an issue raised in an appeal has been determined on the merits in a prior appeal, it cannot be re-litigated in a later appeal of the same case. State v. Cusick, 116 N.J. Super. 482, 485 (App. Div. 1971). Although the Law Division action and the within matter are separate actions, Drift's Law Division complaint sought specific relief, requesting declaratory rulings regarding the Board's authority to take certain action against Drift in the administrative matter.

Thereafter, the trial court ruled on and resolved those questions. Disappointed in the outcome, Drift appealed, and we affirmed those rulings. Here, under the guise of appealing the Board's decision, Drift seeks to have us revisit and decide the same issues between the same parties arising out of the same operative facts. Under these particular factual circumstances, Drift's first three argument points were determined on the merits in the appeal from the Law Division matter.

We turn to the fourth and fifth argument points. Our scope of review of Parole Board decisions is narrowly circumscribed. In re Taylor, 158 N.J. 644, 656 (1999). Our role is to determine "'whether the findings made could reasonably have been reached on sufficient credible evidence present in the record'

considering 'the proofs as a whole.'" Ibid. (quoting Close v. Kordulak Bros., 44 N.J. 589, 599 (1965)). We "may not 'engage in an independent assessment of the evidence.'" Ibid. (quoting State v. Locurto, 157 N.J. 463, 471 (1999)).

Further, we accord a strong presumption of reasonableness to the decision of an administrative agency, Smith v. Ricci, 89 N.J. 514, 525 (1982), and give great deference to administrative decisions. See In re Taylor, supra, 158 N.J. at 657. An administrative decision will be reversed only when it is found to be "arbitrary, capricious or unreasonable or it is not supported by substantial credible evidence in the record as a whole." Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980).

Pursuant to N.J.S.A. 30:4-123.60(b), "[a]ny parolee who has seriously or persistently violated the conditions of his parole, may have his parole revoked and may be returned to custody."

Moreover, N.J.A.C. 10A:71-7.12(c) provides in part:

If the parolee has not been convicted of a crime committed while on parole . . . the purpose of the revocation hearing shall be to determine:

1. Whether, by clear and convincing evidence, the parolee has seriously or persistently violated the conditions of parole; and
2. Whether revocation of parole is desirable.

[(Emphasis added).]

Drift asserts his alleged violation did not rise to the level of being "serious" and "persistent"; therefore, the Board's decision to revoke his parole was arbitrary, capricious, and unreasonable. It is true "[t]he Legislature [has] not further define[d] the type of conduct it intended to capture within the statutory standard - 'seriously or persistently violated.' And the Board has not adopted a regulation to guide exercise of its expertise to distinguish cases in which parole should and should not be revoked." Hobson v. N.J. State Parole Bd., 435 N.J. Super. 377, 382 (App. Div. 2014). Thus, the determination of whether a parolee's violations are serious or persistent, and whether revocation of parole is desirable, necessarily involves "individualized discretionary appraisals." Acoli v. N.J. State Parole Bd., 224 N.J. 213, 222 (2016) (quoting Beckworth v. N.J. State Parole Bd., 62 N.J. 348, 359 (1973)).

Here, the evidence before the Board established Drift's violation of the subject special condition of his parole was serious. He was prohibited from having contact with a minor, unless the minor's parent or legal guardian were present. There is clear and convincing evidence Drift was interacting

with J.T. between March and June 2014, and there is no evidence his contacts with J.T. were supervised by a parent or legal guardian.

Drift argues but provides no authority for the premise J.T.'s nineteen-year old half-sister was her legal guardian the day his parole officer found him in J.T.'s company. Even if J.T.'s sister held the status of legal guardian, there is no evidence J.T.'s parents or a legal guardian were present when Drift and J.T. were communicating between March and June 2014.

Drift argues there was no finding his contact with J.T. was persistent. However, the Board was not required to find the violation was both serious and persistent. A finding a violation was either serious or persistent is sufficient. N.J.A.C. 10A:71-7.12(c). Drift's continued contact with J.T., especially on the heels of being incarcerated for twelve months because of the same kind of conduct, justified the Board's finding the violation was serious.

Drift complains there was no competent evidence to support the hearing officer's finding he has an affinity for minors. However, there is no indication the Board relied upon this finding or determined Drift was in violation of his special PSL conditions because of an affinity for minors.

To the extent we have not addressed any other argument Drift asserts, it is because we are satisfied it lacked sufficient merit to warrant consideration in a written decision. R. 2:11-3(e)(1)(E).

II

As for Ferrarie, we discern the following facts from the record.

A

In 2005, Ferrarie pled guilty to one count of second-degree sexual assault, N.J.S.A. 2C:14-2(c), and was sentenced to a four-year term of imprisonment, subject to the No Early Release Act, N.J.S.A. 2C:43-7.2, three years of mandatory parole supervision, and PSL. Ferrarie completed his custodial sentence and commenced PSL on February 8, 2008.

On July 27, 2011, Ferrarie was enrolled into the Electronic Monitoring Program because he moved out of an approved residence without notifying his parole officer. On February 29, 2012, his parole was revoked when he failed to register as a sex offender, and was incarcerated for twelve months. When released on February 27, 2013, he resumed PSL.

Ferrarie executed a PSL certificate, which set forth the conditions of his PSL. One condition required he

refrain from using any computer and/or device to create any social networking profile or to access any social networking service or chat room (including, but not limited to, MySpace, Facebook, Match.com, Yahoo 360) in [his] name or any other name for any reason unless expressly authorized by the District Parole Supervisor.

During a meeting with his parole officer in September 2014, Ferrarie denied accessing any online social networking websites but, when pressed, admitted doing so. A parole warrant was issued as a result of violating the above condition of PSL. At the probable cause hearing, Ferrarie, who was represented by counsel, agreed to convert the hearing into a final parole revocation hearing.

Ferrarie admitted to accessing Facebook, Twitter, Fetlife, Badoo.com, and other social networking sites under two aliases, Aiden Equinus and Aiden Tremayne. He testified Fetlife is a site that focuses on fetishes ranging from "leather fixations to the dominance/submission community." Ferrarie stated he commenced using social networking websites after the death of his sister in April 2013.

Based upon his admission, the hearing officer found there was clear and convincing evidence Ferrarie violated the subject condition of PSL. In the hearing officer's opinion, the violation was serious because Ferrarie had been accessing

several social networking websites for an extended period of time. In addition, the hearing officer noted "it was discovered during diagnostics of [Ferrarie's] device" that some of the websites Ferrarie visited were "extreme and deviate," "particularly Fetlife." The hearing officer also found Ferrarie engaged in deceit by employing aliases, and initially had not been candid with his parole officer about accessing social networking websites. Given the totality of the circumstances and the fact "[t]his is [his] third exposure to PSL," the hearing officer recommended Ferrarie's parole be revoked.

A two-member panel of the Board reviewed the hearing summary and exceptions to the summary Ferrarie had submitted. The panel found there existed clear and convincing evidence Ferrarie violated the subject condition of PSL. The panel also found the violation was serious and persistent, and revocation desirable. The panel ordered a fourteen-month term of incarceration.

Ferrarie appealed to the full Parole Board. On June 24, 2015, the Board determined clear and convincing evidence existed to support the revocation of parole, and imposed a fourteen-month future eligibility term.

B

On appeal, Ferrarie contends:

POINT I — THE REVOCATION DECISION MUST BE OVERTURNED AND FERRARIE RELEASED BECAUSE THE LEGISLATURE'S GRANT OF AUTHORITY TO THE DIVISION OF PAROLE TO SENTENCE INDIVIDUALS TO ADDITIONAL TERMS OF IMPRISONMENT UNDER N.J.S.A. 2C:43-6.4 IS AN UNCONSTITUTIONAL DELEGATION OF AUTHORITY VIOLATING THE SEPARATION OF POWERS CLAUSE OF THE NEW JERSEY CONSTITUTION.

POINT II — THE REVOCATION DECISION MUST BE REVERSED BECAUSE THE PROCEEDING VIOLATED DEFENDANT'S RIGHT TO A JURY TRIAL; HIS RIGHT TO A PUBLIC HEARING; AND HIS RIGHT TO THE PRESUMPTION OF INNOCENCE.

POINT III — THE FINAL AGENCY DECISION TO REVOKE PSL AND INCARCERATE FERRARIE FOR FOURTEEN MONTHS WAS ARBITRARY, CAPRICIOUS, AND UNREASONABLE.

POINT IV — THE SOCIAL NETWORKING CONDITION AS APPLIED IS ARBITRARY, CAPRICIOUS, AND UNREASONABLE.

We address Ferrarie's first two argument points in reverse order. First, he alleges the Legislature improperly posited the authority to process PSL violations with the Parole Board, and should have instead delegated such function to the court.

Ferrarie reasons one charged with violating a condition of PSL is charged with a crime under N.J.S.A. 2C:43-6.4(d). Therefore, the Legislature should have placed with the court the authority to decide when a parolee has violated a condition of PSL and, if so, the appropriate disposition. Concomitantly, as a parolee is charged with a crime when alleged to have violated a condition

of parole, he or she is entitled to the presumption of innocence, bail, indictment by a grand jury, a public jury trial, and sentencing by the court.

Second, Ferrarie argues the Legislature violated the separation of powers clause in the New Jersey Constitution by vesting in the Parole Board the authority to impose additional terms of imprisonment. See N.J.S.A. 2C:43-6.4. We reject all of the arguments advanced under the first two argument points.

PSL commences upon release from incarceration, and those serving PSL remain in the legal custody of the Commissioner of Corrections. A person serving PSL is supervised by the Division of Parole of the State Parole Board. N.J.S.A. 2C:43-6.4(b). PSL is "deemed to be a term of life imprisonment[,]" N.J.S.A. 2C:43-6.4(b), and is intended to be a penal, not remedial, post-sentence supervisory program, State v. Perez, 220 N.J. 423, 441 (2015), which is a provision of the original criminal sentence. See State v. Schubert, 212 N.J. 295, 314 (2012).

N.J.S.A. 30:4-123.51b(c) also provides a parolee is "subject to the provisions and conditions set by the appropriate board panel in accordance with the procedures and standards set forth in [N.J.S.A. 30:4-123.59 to -.63 and -.65]." N.J.S.A. 30:4-123.51b(c). N.J.S.A. 30:4-123.51b(c) further states, "[i]f the parolee violates a condition of a special sentence of parole

supervision for life, the parolee . . . may be returned to prison." Ibid. Where "revocation and return to custody [is] desirable[,] . . . the appropriate board panel shall revoke parole and return the parolee to prison for a specified length of time between 12 and 18 months." Ibid.

Significantly, it has been settled "the revocation of parole is not part of a criminal prosecution and thus the full panoply of rights due a defendant in such a proceeding does not apply to parole revocations." Morrissey v. Brewer, 408 U.S. 471, 480, 92 S. Ct. 2593, 2600, 33 L. Ed. 2d 484, 494 (1972). In Morrissey, the majority held parole "[r]evocation deprives an individual, not of the absolute liberty to which every citizen is entitled, but only of the conditional liberty properly dependent on observance of special parole restrictions." Ibid.

Applying Morrissey, the New Jersey Supreme Court held because parole "deprives an individual of conditional, not absolute, liberty dependent on observance of the special parole restrictions . . . the 'full panoply of rights' due a defendant in a criminal proceeding does not apply to parole revocations."²

² Notwithstanding, Morrissey held the following due process protections must be afforded a parolee when parole is revoked: written notice of the parole violation charges, disclosure of the evidence to be used against the parolee, an opportunity for him to be heard and to present evidence, the right to cross-

State v. Black, 153 N.J. 438, 448-49 (1998) (quoting Morrissey, supra, 408 U.S. at 480, 92 S. Ct. at 2600, 33 L. Ed. 2d at 494). Accordingly, due process challenges to the parole revocation process have been put to rest. See Hobson, supra, 435 N.J. Super. at 382. In a parole revocation proceeding, a parolee is not entitled to the presumption of innocence, bail, indictment by a grand jury, a public jury trial, and sentencing by the court. See N.J. State Parole Bd. v. Byrne, 93 N.J. 192, 211 (1983).

That said, we note a violation of the conditions of PSL may be prosecuted as a criminal offense pursuant to N.J.S.A. 2C:43-6.4(d). In that instance, judicial adjudication is required. See Perez, supra, 220 N.J. at 441. But a violation of a condition of PSL may also be handled as a parole violation under N.J.S.A. 2C:43-6.4(b). Ibid. In the latter instance, a parole violation may be administratively reviewed. See ibid.; N.J.S.A. 2C:43-6.4(d).

examine witnesses, a neutral hearing officer or tribunal, and a written statement of reasons for the Board's decision. Morrissey, supra, 408 U.S. at 485-89, 92 S. Ct. at 2602-04, 33 L. Ed. 2d at 496-99. These requirements are provided for in the regulations governing the parole revocation process in New Jersey, which applies to those sentenced to PSL. See N.J. State Parole Bd. v. Byrne, 93 N.J. 192, 208-12 (1983) (defining due process protections required in parole revocation hearings under the State Constitution).

Here, Ferrarie was not charged with a new crime pursuant to N.J.S.A. 2C:43-6.4(d), but with a violation of a condition of PSL. The Legislature vested in the Parole Board the authority of determining if and the consequences of violating the conditions of PSL, subject to the applicable statutes and regulations. Thus, because Ferrarie was not charged with a crime, it was appropriate for the Board to determine whether he violated a condition of PSL and the appropriate disposition. See generally Morrissey, supra, 408 U.S. at 480, 92 S. Ct. at 2600, 33 L. Ed. 2d at 494; Black, supra, 153 N.J. at 448-49.

Ferrarie argues the Legislature violated the separation of powers doctrine in the State constitution when it provided the Board with the authority to impose additional terms of imprisonment under N.J.S.A. 2C:43-6.4. Before addressing this precise argument, we address Ferrarie's underlying concern for the alleged violation of the separation of powers clause.

Ferrarie asserts a judge cannot sentence a defendant to jail time beyond the statutory maximum unless the defendant admits to or a jury finds there are new facts to justify the extension of a sentence. Therefore, he argues, an executive agency should not have the authority to extend a criminal defendant's period of incarceration absent either an admission

or a jury's determination of the facts underlying the PSL violation.

As previously noted, when PSL is imposed, it is part of a defendant's original sentence and provides for lifetime parole supervision. By its nature, PSL includes the possibility of incarceration if the conditions of PSL are violated. PSL does not end when an offender concludes the maximum jail term imposed for the criminal conviction.

Thus, because the facts which led to the court imposing PSL were established when Ferrarie was sentenced for the underlying offense, no additional facts must be established to lengthen his sentence. The imposition of PSL means he is subject to the consequences if he violates a condition of PSL, which includes possible parole violation and a return to incarceration.

Therefore, the parole revocation provisions in N.J.S.A. 2C:43-6.4(b), when read in conjunction with the Parole Act, N.J.S.A. 30:4-123.59(b), and the PSL statute and its regulations, N.J.A.C. 10A:71-6.12, do not violate due process protections.

We turn to the argument the Legislature violated the separation of powers clause when it vested the Parole Board with the authority to impose additional terms of imprisonment. The New Jersey Constitution provides as follow:

The powers of the government shall be divided among three distinct branches, the legislative, executive, and judicial. No person or persons belonging to or constituting one branch shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution.

[N.J. Const. art. III, § 1.]

In State v. Bond, 365 N.J. Super. 430 (App. Div. 2003), we explained:

The purpose of the separation of powers is to create a system of checks and balances among the three branches of government. State v. Leonardis, 73 N.J. 360, 370 (1977). It is not intended, however, to create an absolute division of powers among the three branches of government, thereby preventing cooperative action among them. Ibid. Only when the challenged statute impairs the integrity among the branches should the doctrine's effect on a branch's constitutional limits be recognized. Bullet Hole, Inc. v. Dunbar, 335 N.J. Super. 562, 574 (App. Div. 2000). We have observed that "[t]he separation of powers prevents any one branch from aggregating unchecked power, which might lead to oppression and despotism." Ibid.

[Bond, supra, 365 N.J. Super. at 441.]

In Bond, we rejected the premise the Board's promulgation of Community Supervision for Life (CSL) regulations, N.J.A.C. 10A:71-6.11, violated the separation of powers doctrine. Id. at 443. We noted the Legislature vested the Board with supervisory

authority over persons subject to CSL, the predecessor to PSL, in N.J.S.A. 2C:43-6.4(b). Id. at 440. We concluded:

[T]he Legislature's use of the language "shall be supervised as if on parole" can be reasonably viewed as enabling the executive branch to promulgate rules and regulations to further this purpose. Moreover, we should take into consideration the executive's "specialized expertise" in these matters. See League of Municipalities[v. Dep't of Cmty. Affairs], 158 N.J. [211,] 222 [(1999)].

[Id. at 442.]

We also analyzed the Legislature's role in authorizing agency action, quoting the Court in Cammarata v. Essex Cty. Park Comm'n, 26 N.J. 404, 410 (1958), which observed:

[I]t is settled beyond controversy that the Legislature may enact statutes setting forth in broad design its intended aims, leaving the detailed implementation of the policy thus expressed to an administrative agency. Here, the Legislature's intent to create a policy whereby CSL would mirror the conditions of parole is clear, and N.J.S.A. 2C:43-6.4(b) plainly comports with the principle expressed in Cammarata.

We do not determine in a factual vacuum whether a violation of the separation of powers doctrine has occurred, but instead must consider the accompanying "surroundings and objectives." The Legislature necessarily was fully aware of the Parole Board's supervisory scheme when it delegated authority to the Board to set forth the conditions of CSL. It follows then that defendant's argument that N.J.S.A. 2C:43-6.4(b) failed to provide the proper

guidelines is unpersuasive. In our view, a reasonable interpretation of the legislative purpose behind the statute is that the Legislature took notice of a pre-existing supervisory scheme. In this context, as the State contends, the CSL conditions set forth in N.J.A.C. 10A:71-6.11 are consistent with the general parole conditions found in N.J.S.A. 30:4-123.59 and N.J.A.C. 10A:71-6.4. In short, N.J.S.A. 2C:43-6.4(b) does not constitute a violation of the separation of powers doctrine and defendant's contentions to that effect are without merit.

[Bond, supra, 365 N.J. Super. at 442-43 (citations omitted).]

By analogy, the reasoning in Bond applies here. "[A] reasonable interpretation of the legislative purpose behind the statute is that the Legislature took notice of a pre-existing supervisory scheme." Id. at 443. The conditions imposed by N.J.S.A. 30:4-123.51b(c) accord with general parole conditions found in N.J.S.A. 30:4-123.59 and N.J.A.C. 10A:71-6.4. Therefore, we reject Ferrarie's claim the Legislature violated the separation of powers clause when it vested in the Board the authority to provide additional terms of incarceration.

In his third argument, Ferrarie contends the Board's decision to revoke parole and incarcerate him for fourteen months was not supported by the evidence, because his violation was not "serious and persistent." Therefore, Ferrarie claims

the Board's decision was arbitrary, capricious, and unreasonable. We disagree.


We need not repeat the standards governing our review, which are presented at length above when discussing Drift's similar challenge. By his own admission, Ferrarie had been accessing Facebook, Twitter, Fetlife, Badoo.com, and other social networking sites from April 2013 to September 2014. This activity was a clear violation of his conditions for PSL. In addition, his use of this form of media was persistent. The Board was not required to find the violation was both serious and persistent. A finding of either serious or persistent is sufficient. N.J.A.C. 10A:71-7.12(c). The Board's decision to revoke parole and impose a term of imprisonment is more than adequately supported by the record.

Ferrarie notes there was no evidence the website he visited was "extreme" or "deviate." Even if Ferrarie is correct, the outcome is the same. Ferrarie admitted to accessing social networking websites for many, many months, and it is that conduct that qualifies as a persistent violation.

After carefully examining the record and we are satisfied Ferrarie's remaining arguments are without sufficient merit to warrant consideration in a written decision. R. 2:11-3(e)(1)(E).

Affirm.

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


CLERK OF THE APPELLATE DIVISION