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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-3027-16T1

A.M.,

Appellant,

v.

NEW JERSEY STATE PAROLE BOARD,

Respondent.

Argued January 30, 2018 — Decided May 4, 2018

Before Judges Fasciale and Sumners.

On appeal from the New Jersey State Parole Board.

Michael C. Woyce argued the cause for appellant (Murphy & Woyce, attorneys; Michael C. Woyce, on the brief).

Christopher C. Josephson, Deputy Attorney General, argued the cause for respondent (Gurbir S. Grewal, Attorney General, attorney; Melissa Dutton Schaffer, Assistant Attorney General, of counsel; Christopher C. Josephson, on the brief).

PER CURIAM

A.M., who pled guilty to third-degree endangering the welfare of a child and was placed on Parole Supervision for Life under

Megan's Law, appeals from a final agency decision by the New Jersey State Parole Board (Board) upholding the general condition prohibiting him from using social media and the special parole condition restricting his internet use. We affirm.

In a thorough and cogent written decision, the Board stated:

The Board finds that [A.M.]'s willful disregard of the social networking condition, despite being warned and questioned on his compliance with this condition on multiple occasions by the parole officer, is both serious and concerning. Of additional concern was [A.M.]'s attempt to be deceptive when presented with the evidence of his violations. The Board finds that the imposition of the computer/Internet special condition was reasonable given the nature of [A.M.]'s violation, especially in light of the facts and circumstances of his instant offense. The Board also finds that upon request, the Division of Parole granted [A.M.] various accommodations to allow him to utilize the Internet to further his education and pursue a career. Contrary to your assertions, the Board finds that the Division of Parole carefully considered [A.M.]'s circumstances and made allowances deemed to be consistent with his rehabilitative efforts while prudently balancing the Division's obligation to provide for public safety. The Board finds that the record does support that the Division of Parole and the Board panel have acted in a reasonable manner. Therefore, your contention is without merit.

In regards to your requests for an evidentiary hearing, the Board finds that the New Jersey Supreme Court ruled that when significant burden on an individual's liberty interest exists, such as curfew that requires an individual to remain in his residence, every

day for an eleven hour period, and the under such circumstances when there is a factual issue to be resolved, the Board should consider due process rights, such as an opportunity to review evidence, to confront and cross-examine witnesses and the opportunity to present witnesses and evidence. Jamgochian v. State Parole Board, 196 N.J. 222 (2008). The Board finds that restrictions pertaining to computer/Internet and social networking use do not constitute an infringement on [A.M.]'s liberty interest that would warrant the conducting of a hearing. Moreover, the Board finds that there is no factual issue to be resolved in [A.M.]'s case, as the basis for the imposition of computer/Internet restrictions ([A.M.]'s violation of the social networking condition) was sustained at a revocation hearing. Accordingly, the Board finds that the . . . evidentiary hearing is not warranted.

Before us, A.M. argues:

POINT I: [A.M.]'S DUE PROCESS RIGHTS, PROTECTED UNDER THE STATE AND FEDERAL CONSTITUTIONS, WERE VIOLATED BY THE BOARD'S REFUSAL TO GRANT HIM A HEARING PRIOR TO IMPOSING AN ABSOLUTE INTERNET PROHIBITION AND THE REQUIREMENT THAT ALL ACCESS BE MONITORED.

POINT II: THE BOARD'S DECISION TO AFFIRM THE IMPOSITION OF AN ABSOLUTE INTERNET PROHIBITION, INCLUDING ALL SOCIAL NETWORKING, AS APPLIED TO [A.M.]

A. IS A VIOLATION OF FREE SPEECH AND ASSOCIATION UNDER THE FIRST AMENDMENT TO THE FEDERAL CONSTITUTION AND ART. 1, PARA. 6 OF THE NEW JERSEY CONSTITUTION OF 1947.

B. IT IS A VIOLATION OF DUE PROCESS UNDER THE VOID FOR VAGUENESS DOCTRINE.

POINT III: THE IMPOSITION OF SOFTWARE MONITORING ON ALL INTERNET CAPABLE DEVICES

USED BY [A.M.] AMOUNTS TO A CONTINUOUS WARRANTLESS SEARCH IN VIOLATION OF THE NEW JERSEY AND FEDERAL CONSTITUTIONS, AS WELL AS THE RULES AND REGULATIONS GOVERNING THE NEW JERSEY STATE PAROLE BOARD.

Having considered A.M.'s contentions, we conclude they are without sufficient merit to warrant discussion in this opinion. R. 2:11-3(e)(1)(E). We affirm substantially for the reasons expressed by the Board. We add the following remarks.

Judicial review of a parole decision is limited to whether the Board acted arbitrarily, unreasonably, or capriciously in reaching its decision. McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 563 (App. Div. 2002). "A strong presumption of reasonableness attaches to the actions of administrative agencies," In re Vey, 272 N.J. Super. 199, 205 (App. Div. 1993), and the burden of proof is on the challenging party to show that the Board's actions were unreasonable, Bowden v. Bayside State Prison, 268 N.J. Super. 301, 304 (App. Div. 1993). Reviewing courts should not substitute their own judgment for that of the agency and should only decide whether the findings could reasonably have been reached on the credible evidence in the record. Ibid.

In reviewing a final decision of the Board, we consider: (1) whether the Board's action is consistent with the applicable law; (2) whether there is substantial credible evidence in the record as a whole to support its findings; and (3) whether in applying

the law to the facts, the Board erroneously reached a conclusion that could not have been reasonably made based on the relevant facts. See Trantino v. N.J. State Parole Bd., 154 N.J. 19, 24 (1998).

The Board must consider the enumerated factors in N.J.A.C. 10A:71-3.11(b)(1)-(23) in making its decision. The Board, however, is not required to consider every factor; rather, it should consider those applicable to each case. McGowan, 347 N.J. Super. at 561.

Based upon our review of the record and legal arguments, we are satisfied that the Board had ample factual and legal basis to determine that the general conditions barring A.M. from using social media and the special condition restricting A.M.'s use of the internet shall continue as parole conditions.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION