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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-3726-16T2

ARNETT THOMAS,

Appellant,

v.

NEW JERSEY STATE PAROLE  
BOARD,

Respondent.

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Submitted March 20, 2018 – Decided April 12, 2018

Before Judges Hoffman and Gilson.

On appeal from the New Jersey State Parole  
Board.

Arnett Thomas, appellant pro se.

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

PER CURIAM

Parolee Arnett Thomas appeals from the October 26, 2016 final  
decision of the New Jersey State Parole Board (Board) denying his

request for early discharge from parole supervision. On appeal, he presents the following arguments:

POINT ONE

THE PAROLE BOARD IN THE SEVENTEEN YEARS APPELLANT HAS BEEN ON PAROLE HAS REFUSED TO AVAIL HIM OF THE INFORMATION CONTAINED IN THE GUIDELINES AND CRITERIA SPELLED OUT IN THE DIVISION OF PAROLE ADMINISTRATIVE MANUAL N.J.A.C. [10A:71-6.9] WHICH GOVERN PAROLE DISCHARGE AND HAS THEREFORE DENIED APPELLANT ANY MEANINGFUL PATH TO UNDERSTANDING THE RIGHTS, PRIVILEGES AND IMMUNITIES HE RETAIN[S] AS SPELLED OUT IN THOSE GUIDELINES AND CRITERIA THUS VIOLATING A VITAL LIBERTY INTEREST WHICH IS PROTECTED BY THE CONSTITUTION[.]

POINT TWO

THE TRANSCRIPTS OF THE FULL BOARD HEARING CONDUCTED AUGUST 26, 2015, WILL REFLECT THAT AT THE TIME APPELLANT APPEARED BEFORE THE FULL PANEL HE WAS NEVER CONFRONTED ABOUT ANY OF THE REASONS THE PAROLE BOARD RECITED IN ITS NOTICE OF FINAL AGENCY DECISION WRITTEN OCTOBER [26], 2016 WHICH WAS USED AS THE BASIS FOR DENYING HIS PAROLE DISCHARGE REQUEST[.]

POINT THREE

DISTRICT PAROLE OFFICE [NINE] VIOLATED THE GUIDELINES AND PROCEDURES FOR PAROLE DISCHARGE AS PROVIDED IN THE DIVISION OF PAROLE ADMINISTRATIVE MANUAL[.]

Following our review of the record, we conclude these arguments lack merit. We therefore affirm.

I

In February 1980, a jury convicted Thomas of murder, kidnapping and armed robbery; the court sentenced him to life imprisonment plus a consecutive term of nine to ten years. While incarcerated, Thomas attempted to escape, and was sentenced to a consecutive three-year prison term in October 1980. During his time in prison, Thomas wrote the Crime Anonymous Program, a handbook for institutional and community services for recovering criminals.

The Board released Thomas from prison in November 2000. In April 2004, the police arrested Thomas and charged him with uttering a forged instrument. He pled guilty to the charge and the court sentenced him to a suspended five-year prison term.

On January 20, 2006, Thomas' parole officer granted him a travel pass to drive his grandson to Wisconsin. On January 26, 2006, the parole officer determined Thomas had relocated to Wisconsin without permission. Thomas allegedly admitted to obtaining the travel pass under false pretenses; however, he currently denies that allegation. Thomas also admitted to smoking marijuana at that time.

In March 2007, the police arrested Thomas and charged him with forgery, credit card fraud, and conspiracy; however, those

charges were later dismissed. According to Thomas, another person admitted responsibility for the crimes.

In September 2009, Thomas again admitted to smoking marijuana. Thomas contends he joined NA and AA<sup>1</sup> following that incident and has regularly attended meetings since then.

In May 2013, Thomas' parole officer found a pair of nunchucks in his home. Thomas gave conflicting stories about the ownership of the nunchucks, initially claiming he owned them, then stating his wife owned them. The parole officer ordered Thomas to remove the nunchucks because possession of a weapon was a parole violation.

In March 2013, Thomas received a motor vehicle citation for driving while using a hand-held wireless device. Although the citation was later dismissed, Thomas failed to inform his parole officer of the police contact.

Between May 2002 and June 2011, Thomas made five written requests for "the guidelines and criteria for parole discharge." In response, the Board directed Thomas to N.J.A.C. 10A:71-6.9, which sets forth the criteria for granting parole discharge. The Board also informed Thomas the Division of Parole Administrative

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<sup>1</sup> Although Thomas does not specify, we presume NA and AA refer to Narcotics Anonymous and Alcoholics Anonymous.

Manual "is deemed confidential"; as a result, the Board denied his requests.

Thomas requested early parole discharge several times. Thomas last requested early parole discharge on September 15, 2014. On April 22, 2015, Thomas' parole officer and his supervisor, Captain Rauth, recommended Thomas for parole discharge. The recommendation recounted the history summarized above; nevertheless, it concluded, "Thomas has demonstrated an overall positive adjustment while on parole. . . . While it is recognized that there may be some negative events during his supervision, in totality he has been compliant for the past several years and he has demonstrated that continued parole supervision is no longer required."

On August 26, 2015, the Board conducted a hearing. Captain Rauth retired before the hearing, and therefore Sergeant LaRue appeared in his place. Thomas alleges Sergeant LaRue gave an unfavorable recommendation during the hearing. While Sergeant LaRue recounted Thomas' criminal history, he nevertheless recommended him for parole discharge, citing his compliance with parole conditions since 2007. Thomas' parole officer also testified to Thomas' recent compliance and to his work in the Crime Anonymous Program.

Thomas also testified during the hearing. The Board allowed Thomas to speak freely. He started by explaining his criminal history and stating that he is a "recovering criminal." He then explained his Crime Anonymous Program and his desire to assist other recovering criminals. He claimed that his continued "parole served as an impediment" to the success of his program. The Board members questioned him about his program and his self-certification as a "Criminalization Recovery Specialist." Thomas concluded by expressing his remorse for the murder victim.

The Board issued a final decision on October 26, 2016. The Board denied parole discharge reasoning Thomas has "not made a satisfactory adjustment while on parole." The Board listed Thomas' arrests and new conviction, use of controlled dangerous substances (CDS), move to Wisconsin without permission, possession of nunchucks, and failure to report police contact as the reasons for the denial. In its decision, the Board also denied Thomas' request for a copy of the Division of Parole Administrative Manual.

## II

Thomas first argues he was entitled to receive a copy of the Division of Parole Administrative Manual, an internal Board

document designed to aid the Board in making parole decisions.<sup>2</sup> The Board argues the manual is a confidential document not subject to public access.

"New Jersey prisoners have a protected liberty interest, rooted in the language of our parole statute, in parole release, and a resulting constitutional right to due process of law." Thompson v. N.J. State Parole Bd., 210 N.J. Super. 107, 120 (App. Div. 1986) (citing N.J. State Parole Bd. v. Byrne, 93 N.J. 192 (1983)). "Although parole is not a constitutional right, the prisoner's liberty interest is sufficient to invoke certain procedural protections . . . among which is a limited right to disclosure of prison records in parole proceedings." Id. at 121 (internal citation omitted). In Thompson, we described the steps for determining whether denial of disclosure of adverse information based on confidentiality violates due process:

When any document in a parole file is administratively removed from the prisoner's copy of the file, N.J.A.C. 10A:71-2.1(c)<sup>[3]</sup> requires the document to be identified as confidential and the reason for nondisclosure to be noted in the Board's file. We will require the Board, after making a parole decision adverse to the prisoner, to state in its decision whether any document marked

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<sup>2</sup> The record does not contain the manual nor the criteria from the manual.

<sup>3</sup> N.J.A.C. 10A:71-2.1 was recodified as N.J.A.C. 10A:71-2.2 in 2012.

confidential played any substantial role in producing the adverse decision, and, if so, to record in its file which of them did so. In the event of an appeal, the Attorney General will include in the Statement of Items Comprising the Record the Board's statement on the matter, which may be worded in such a way as to effectively preserve the confidentiality of the withheld materials.

[Id. at 126.]

In December 2016, N.J.A.C 10A:71-2.2 was amended; relevant to this appeal, the amended regulation added a new provision, which provides the following records shall be deemed confidential and not subject to public access:

Standard operating procedures, manuals, and training materials, that may reveal the Board's surveillance, security, tactical, investigative, or operational techniques, measures, or procedures, which, if disclosed, would create a risk to the safety of persons, property, electronic data, or software, or compromise the Board's ability to effectively conduct investigations[.]

[N.J.A.C 10A:71-2.2(a)(6).]

The purpose of the new provision was to "clarif[y] which State Parole Board standard operating procedures and training materials are considered confidential." 48 N.J.R. 769(a) (May 16, 2016). The regulation further states, "[t]his provision is to be narrowly construed to prevent disclosure of information that could risk jeopardizing safety or compromising the ability to conduct investigations." Ibid.



Here, in its final decision, the Board denied disclosure of the manual. The Board explained, "the internal procedures governing early discharge from parole . . . pertain to the administrative operations of the Board and were deemed confidential." The Board also pointed out that Thomas' parole officer directed him to N.J.A.C. 10A:71-6.9 for criteria for early parole discharge. The Board did not, however, specifically state that disclosure of the manual "could risk jeopardizing safety or compromising the ability to conduct investigations," as clarified in the new (a)(6) provision. See 48 N.J.R. 769(a) (May 16, 2016).

Thompson also provides guidance on deeming documents confidential. 210 N.J. Super. at 126. Although Thompson addressed confidentiality of adverse information used against a parolee under N.J.A.C. 10A:71-2.2(c), we draw an analogy with N.J.A.C. 10A:71-2.2(a) regarding general confidentiality. Thompson held that when information is deemed confidential and disclosure refused, the Board must identify the document and note the reason for non-disclosure. Ibid. Here, the Board identified the manual; however it gave only cursory reasoning, stating that, "said procedures pertain to the administrative operations of the Board . . . ."

We find the Board should have provided further explanation as to how the release of the manual would jeopardize safety or

compromise investigations. However, we conclude the omission here was a harmless error because of the overwhelming reasons for denying parole discharge as reflected in the Board's final decision and discussed below. Furthermore, Thomas' parole officer discussed with him the criteria for parole discharge and directed him to N.J.A.C. 10A:71-6.9, which provides the applicable criteria.

### III

Thomas next argues the Board violated his due process rights because the Board failed to provide him an opportunity to respond to the reasons for denying his request for parole discharge. We disagree.

Our review of the Board's decisions is limited. Hare v. N.J. State Parole Bd., 368 N.J. Super. 175, 179 (App. Div. 2004). "'Parole Board decisions are highly individualized discretionary appraisals' . . . and should only be reversed if found to be arbitrary or capricious." Id. at 179-80 (internal citation omitted) (quoting Trantino v. N.J. State Parole Bd., 166 N.J. 113, 173 (2001)). According to our Supreme Court, a reviewing court must determine

(1) whether the agency's action violates express or implied legislative policy, i.e., did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based

its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[Trantino, 166 N.J. at 172 (quoting Trantino v. N.J. State Parole Bd., 154 N.J. 19, 24 (1998) (Trantino IV)).]

N.J.S.A. 30:4-123.66 governs discharge from parole prior to the expiration of a parolee's full maximum term.

Except as otherwise provided in [N.J.S.A. 2C:43-6.4], the appropriate board panel may give any parolee a complete discharge from parole prior to the expiration of the full maximum term for which he [or she] was sentenced . . . provided that such parolee has made a satisfactory adjustment while on parole, provided that continued supervision is not required, and provided the parolee has made full payment of any fine or restitution.

[N.J.S.A. 30:4-123.66.]

Additionally, N.J.A.C. 10A:71-6.9(a) provides:

The appropriate Board panel may grant any parolee a complete discharge from parole prior to the expiration of the maximum term for which he or she was sentenced, provided that:

1. Such parolee has made a satisfactory adjustment while on parole; and
2. Continued supervision is not required;
3. The parolee has made full payment of any assessment, fine, penalty, lab fee or restitution or the parolee has in good faith established a satisfactory payment schedule; or

4. In the opinion of the Board panel continued supervision is not warranted or appropriate based upon a review of the facts and circumstances considered pursuant to N.J.A.C. 10A:71-7.10, 7.11, 7.12, 7.16 and 7.17, 7.17A or 7.17B.

Inmates possess a liberty interest that entitles them to due process protection of their right to a fair decision. See Byrne, 93 N.J. at 210-11.

In Byrne, the Court held:

[T]he joint interests of society and the prisoner in basic fairness require some measure of protection from gross miscarriages of justice and totally arbitrary action. . . .

Only a few, basic procedures are required to deal with the risks of erroneous or arbitrary determinations in this context.

[Id. at 211.]

The process required in Byrne consisted of notice of the pendency of a disposition on the issue of parole eligibility, a statement of the reasons for any unfavorable decision, and an opportunity for a response. 93 N.J. at 211.

Here, the Board informed Thomas of the parole discharge hearing and Thomas testified at that hearing on August 26, 2015. The Board also provided Thomas with the reasons for denial in its final decision, specifically his (1) multiple arrests, (2) a new criminal conviction, (3) admitted use of CDS, (4) move to Wisconsin without permission, (5) possession of nunchucks and false

statements about the owner, and (6) failure to report police contact when ticketed for a driving violation. All of those reasons, except the move to Wisconsin, were listed in the parole officer's recommendation, therefore Thomas was aware of most of the reasons prior to the final decision. Accordingly, Thomas should have known the Board would use the information in its final parole discharge decision.

Furthermore, the Board gave Thomas an opportunity to speak at the hearing. Although the Board did not specifically ask Thomas about any of the reasons for denial in the final report, the Board did give Thomas ample opportunity to address any and all issues. Thomas was aware of the issues from the recommendation report and could have provided further explanations.

The Board followed the process in Byrne by informing Thomas of the parole discharge hearing, informing Thomas of the information used against him via the parole officer's recommendation, and giving Thomas an opportunity to speak at the hearing; therefore, the Board did not violate Thomas' due process rights. Accordingly, we affirm the Board's decision denying Thomas early parole discharge.

#### IV

Finally Thomas argues the Board violated procedures by replacing one of Thomas' supervisors at the hearing with a

replacement who offered an unfavorable recommendation. We reject Thomas' contention that the Board violated procedures in denying his parole discharge.

Thomas asserts parole discharge procedures require a favorable recommendation from the parolee's parole officer and supervisor. Thomas contends Captain Rauth initially gave him a favorable recommendation, but his replacement, Sergeant LaRue, gave an unfavorable recommendation during the hearing in violation of procedure.

Thomas offers no evidence that Sergeant LaRue gave an unfavorable recommendation and the Board did not list an unfavorable recommendation as a reason for denial. Sergeant LaRue's testimony essentially tracked the favorable recommendation from Captain Rauth and Thomas' parole officer that the Board also considered. Therefore, we reject Thomas' argument that the Board violated procedure because there is no evidence of an unfavorable recommendation.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION