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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-4153-14T2

FREDDIE DEAN,

Appellant,

v.

NEW JERSEY STATE  
PAROLE BOARD,

Respondent.

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Argued October 12, 2017 — Decided January 26, 2018

Before Judges Haas and Gooden Brown.

On appeal from the New Jersey State Parole Board.

Richard Wolf argued the cause for appellant (Blank Rome LLP, attorneys; Adrienne C. Rogove and Richard Wolf, on the briefs).

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

PER CURIAM

Appellant Freddie Dean appeals from the March 25, 2015 final decision of the New Jersey State Parole Board (Board), revoking his parole and imposing a fifteen-month future eligibility term (FET). Having considered the arguments in light of the record and applicable legal principles, we affirm.

We derive the following facts from the record. On January 15, 2010, Dean pled guilty to aggravated manslaughter and was sentenced to thirteen years of imprisonment, subject to serving eighty-five percent before parole eligibility followed by a five-year period of mandatory parole supervision pursuant to the No Early Release Act, N.J.S.A. 2C:43-7.2. On March 2, 2013, Dean was released on parole,<sup>1</sup> conditioned upon him abiding by twenty general conditions, including random drug testing, as well as two special conditions of mandatory parole supervision.

Five days later, on March 7, 2013, Dean tested positive for marijuana and signed an admission of use form on March 8, 2013, admitting to using marijuana while incarcerated. Subsequently, on May 28, 2013, a home visit at Dean's approved parole address revealed that Dean had stayed at an unknown location the night before. On May 30, 2013, Dean again tested positive for marijuana and signed another admission of use form on the same date admitting

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<sup>1</sup> Dean was credited for time served as he had been incarcerated since February 14, 2002.

to using marijuana on May 27, 2013 when he had failed to stay at his approved address. His parole officer, Timothy Healy, did not seek to revoke his parole at that time.

On June 7, 2013, Dean received a motor vehicle summons for driving without a license. Dean reported the ticket to Officer Healy the following day, as required by his conditions of parole. Dean was convicted of the motor vehicle violation on June 26, 2013, but claimed his friend was double parked and, in an attempt to avoid a ticket, he moved the vehicle for him. Again, no parole warrant issued.

Subsequently, at approximately 2:11 a.m. on July 8, 2013, Dean was arrested and charged with weapons- and drug-related offenses following a motor vehicle stop. Dean was a passenger in a car operated by Kalisha Cheston. Two state troopers, Troopers Anthony and Milkowski, conducted a motor vehicle stop after observing the vehicle traveling at a high rate of speed and pass a tractor trailer on the right-hand side. Upon approaching the vehicle, Cheston informed the troopers that Dean's mother rented the vehicle and authorized her to drive it. Both Cheston and Dean were asked to provide identification and they complied.

Upon performing a database search on each occupant, the troopers discovered that Dean had an active bench warrant out of

Trenton.<sup>2</sup> As a result, Trooper Anthony placed Dean under arrest and read him his Miranda<sup>3</sup> rights. A search incident to arrest uncovered a small amount of marijuana and a clear plastic bag containing white powder in Dean's pockets.<sup>4</sup> When Trooper Anthony questioned Dean and Cheston about their whereabouts prior to the stop, they gave conflicting accounts. Wary about the conflicting accounts, Trooper Anthony performed a Criminal History check on both parties and discovered that Cheston had been previously arrested for distribution of narcotics, and Dean had an extensive history involving narcotics and weapons offenses.

After obtaining authorization from his supervisor, Trooper Anthony read Cheston a Consent to Search Form, which she ultimately refused to sign. Thereafter, a K-9 Unit was called to the scene to conduct an exterior sniff of the vehicle with negative results. Meanwhile, Dean's mother arrived at the scene and Trooper Anthony obtained her consent to search the vehicle. During the search, Trooper Anthony found a partially burnt, hand-rolled cigar

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<sup>2</sup> The warrant was issued for careless driving on December 19, 2007, while Dean was still incarcerated.

<sup>3</sup> Miranda v. Arizona, 384 U.S. 436 (1966).

<sup>4</sup> The white powder was later tested and identified as talcum powder.

containing suspected marijuana on the rear passenger-side floor and a red suitcase in the trunk.

After vacillating, Dean ultimately admitted that the suitcase belonged to him and consented to a search. Inside the suitcase, Trooper Anthony uncovered a revolver with ammunition, including one hollow-point round. After Dean and Cheston were transported to the Hamilton police station, Trooper Anthony re-Mirandized Dean and questioned him about the firearm. Dean stated "he was fed up with getting robbed for his money and drugs so he got the gun for protection." Dean declined, however, to provide a written statement or a taped interview.

A State Police arrest notification in connection with Dean's arrest was issued on the same date. Two days later, on July 10, 2013, a parole warrant was issued for Dean, charging him with seven parole violations for: (1) failing to obey all laws and ordinances evidenced by his June 7, 2013 conviction for driving without a license; (2) failing to notify his parole officer immediately after his July 8, 2013 arrest; (3) failing to obtain his parole officer's approval for a change in residence by staying at an unknown location the night of May 27, 2013; (4) failing to refrain from owning or possessing a firearm evidenced by his July 8, 2013 arrest; (5) failing to refrain from possessing a controlled dangerous substance (CDS) as evidenced by his July 8, 2013 arrest;

(6) failing to refrain from using CDS as evidenced by two positive drug tests on March 7 and May 30, 2013, and two signed admission of use forms; and (7) failing to refrain from operating a motor vehicle without a driver's license on June 7, 2013.

A probable cause hearing was held on October 22, 2013, during which Trooper Anthony and Officer Healy testified. After hearing their testimony, the hearing officer recommended a finding of probable cause on all the violations, except Dean's alleged failure to obtain approval for a change of address. On November 13, 2013, a two-member Board panel reviewed the hearing officer's report and adopted his recommendations.

On June 24, 2014, a parole revocation hearing was conducted during which Trooper Anthony and Officer Healy again testified. Dean admitted violating two parole conditions in connection with his June 7, 2013 conviction for driving without a license, but contested the remaining violations. After the hearing, the hearing officer determined that the violation for drug use on March 7, 2013 was not sustained because "[Dean] admitted to using marijuana while incarcerated and not while on parole . . . ." However, the hearing officer found by clear and convincing evidence that, in addition to the admitted violations, the remaining violations were sustained.

The hearing officer "found Trooper Anthony to be credible in that he provided consistent testimony which was corroborated by the evidence presented and was not contradicted or discredited." The hearing officer recommended Dean's parole be revoked based on "the serious violation for weapons possession" as well as "the totality of [his] record" consisting of prior "CDS related offenses, prior periods of incarceration, and opportunities on parole supervision resulting in one prior parole violation."

On August 13, 2014, a two-member Board panel reviewed the Revocation Hearing Summary Report as well as the opposition submitted by Dean's attorney and concurred with the findings of the hearing officer. The Board panel revoked Dean's parole for "serious" and "persistent" violations and imposed a fifteen-month FET. On February 25, 2015, after reconsidering Dean's case, the same two-member Board panel determined that there was insufficient evidence to sustain the violation that Dean failed to notify his parole officer immediately after his July 8, 2013 arrest. The remaining violations and penalty remained unchanged.<sup>5</sup>

Dean appealed the Board panel's decision to the full Board. On March 25, 2015, the Board issued a Notice of Final Agency Decision "concur[ring] with the findings and conclusions in the

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<sup>5</sup> On March 2, 2015, the indictment returned in connection with Dean's July 8, 2013 arrest was dismissed on the State's motion.

Hearing Summary [Report]" as well as "the determination of the Board panel . . . ." The Board affirmed the Board panel's decision to revoke Dean's parole and establish a fifteen-month FET, "find[ing] that the Board panel has fully documented and supported its decision pursuant to N.J.A.C. 10A:71-7.18(b)."

The Board expressly rejected Dean's arguments that "[his] admission that the firearm and the red bag belong[ed] to him was made under physical and/or medical duress," and that "the evidence relied upon by the Parole Board was obtained in violation of [Dean's] rights to be free of illegal search and seizure." The Board also rejected Dean's assertion that "he was being falsely accused by Parole Officer Healy of positive drug tests and that no lab reports or documentation was presented regarding an alleged positive test." The Board noted that "[Dean's] statements and evidence in mitigation of the cited violations were considered by the Board panel" and "Dean was afforded a parole revocation hearing before a neutral and detached hearing officer . . . ." This appeal followed.

On appeal, Dean argues that the Board acted "arbitrarily and capriciously" by relying on "evidence that should have been excluded because it was obtained in violation of [his] constitutional rights[,]" and by attributing "the firearm to [him] despite a lack of clear and convincing evidence that the gun



belonged to him[.]" Dean continues that without the evidence gathered in connection with his July 8, 2013 arrest, "a single failed drug test and a single traffic ticket" do not amount "to 'serious' violations of parole[.]" We disagree.

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. 554, 563 (App. Div. 2002). "A strong presumption of reasonableness attaches to the actions of administrative agencies[,]" Matter of 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.

A parolee's parole may only be revoked if it is proven by clear and convincing evidence that the parolee "has seriously or persistently violated the conditions of his parole[]" or has been "convicted of a crime while released . . . ." Hobson v. N.J. State Parole Bd., 435 N.J. Super. 377, 382, 391 (App. Div. 2014). See N.J.A.C. 10A:71-7.12(c)(1); 7.15(c). Clear and convincing evidence is that

upon which the trier of fact can rest "a firm belief or conviction as to the truth of the allegations sought to be established." It must be "so clear, direct and weighty and convincing as to enable either a judge or jury to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue."

[In Re Registrant R.F., 317 N.J. Super. 379, 384 (App. Div. 1998) (citation omitted) (first quoting Matter of Purrazzella, 134 N.J. 228, 240 (1993); then quoting Matter of Seaman, 133 N.J. 67, 74 (1993)).]


In assessing the proffered evidence, credibility determinations of witnesses made by those who heard the testimony are entitled to "due regard[.]" Clowes v. Terminiz Int'l, Inc., 109 N.J. 575, 587 (1988).

Here, the clear and convincing evidence in the record established that Dean seriously and persistently violated the conditions of his parole. Relying on "the exclusionary rule[,]" Dean argues that "[w]ithout the unconstitutional search of Dean's person and the luggage found in the trunk of the vehicle, the Parole Board could not have found by clear and convincing evidence" that Dean violated conditions of his parole. While acknowledging that application of the exclusionary rule in parole revocation hearings is not required by the Fourth Amendment, Pa. Bd. of Prob. & Parole v. Scott, 524 U.S. 357, 364 (1998), Dean invites us to apply the rule here as a matter of New Jersey constitutional law,

an invitation we decline. R. 2:11-3(e)(1)(E). Thus, we are satisfied that the Board did not act arbitrarily or capriciously in relying on the compelling evidence gathered in connection with Dean's July 8, 2013 arrest. Accordingly, the decision to revoke Dean's parole and impose a fifteen-month FET was not arbitrary, capricious or unreasonable.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION