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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-4229-15T4

JOHN BLAND,

Appellant,

v.

NEW JERSEY STATE PAROLE
BOARD,

Respondent.

Submitted December 20, 2017 – Decided January 22, 2018

Before Judges Currier and Geiger.

On appeal from the New Jersey State Parole
Board.

John Bland, appellant pro se.

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

PER CURIAM

Appellant John Bland appeals from a March 23, 2016 final
agency decision denying his petition for parole and establishing
a thirty-six month future eligibility term (FET). We affirm.

These are the facts. On August 13, 1982, Bland committed a burglary and robbery of a residence where J.M., age 89, P.M., age 56, and L.W., age 60, resided. During the course of the robbery, Bland inflicted blunt force trauma to the head of P.M. resulting in his death the following day. J.M. was severely beaten about the head and remained hospitalized for eight weeks. L.W. was also beaten in the head and chest area, suffered a fractured jaw, and remained hospitalized for a week.

On December 6, 1983, Bland pled guilty to first-degree felony murder, N.J.S.A. 2C:11-3(a)(3). On June 8, 1984, Bland was sentenced to a term of life imprisonment subject to a thirty-year period of parole ineligibility. This was not Bland's first conviction. Bland had been previously convicted of three counts of burglary, distribution of a controlled dangerous substance, and disorderly conduct. He had prior opportunities on parole and probation, and served a prior term of incarceration.

During his incarceration, Bland has committed twenty-three institutional disciplinary infractions, including six "asterisk" infractions. Asterisk infractions "are considered the most serious and result in the most severe sanctions." N.J.A.C. 10A:4-4.1. His most recent infraction was committed on May 28, 2002.

On January 20, 2016, Bland became eligible for parole a third time. On October 22, 2015, he received an initial hearing. The

hearing officer referred the case to a Board panel for a hearing. The two-member Board panel denied parole on November 16, 2015, and established a thirty-six month FET. Aggravating factors noted were: (1) his prior offense record; (2) his prior opportunity on probation failed to deter criminal behavior; (3) his numerous, serious institutional infractions resulting in loss of commutation time and confinement in detention and administrative segregation; (4) his insufficient problem resolution, with "an unrealistic view of how he would function if he were released" without "appear[ing] to recognize the difficulty of [everyday] life," and "[h]is health issues could complicate his ability to deal with challenges [and] he could easily lose control of his behavior;" and (5) his failure to complete a recommended program. Bland also had a risk assessment score of twenty-seven, indicating a medium risk of recidivism.

The panel did note some mitigating factors. Specifically, (1) while Bland had an offense record, it was minimal; (2) Bland had been infraction free since the last panel; (3) Bland had participated in institutional programs; and (4) Bland had attained gang minimum custody status.

Bland administratively appealed the two-member Board panel's decision. On March 9, 2016, the Board affirmed the Board panel's decision but amended the Notice of Decision to include

"institutional reports reflect favorable institutional adjustment" as a mitigating factor and deleted "recommended programs not completed" as a reason for denial. On March 23, 2016, after considering all materials in the administrative record, the Board issued its final agency decision denying Bland parole and establishing a thirty-six month FET.

This appeal followed. Bland argues:

SUMMARY DISPOSITION REMAND SHOULD BE GRANTED TO SEND THIS MATTER BACK TO THE FULL NEW JERSEY STATE PAROLE BOARD. CURRENTLY, THE PANELS HAVE AFFIRMED THEMSELVES WITH NO SUPERVISORY ATTENTION TO THE ERRORS GIVEN BY THE FULL BOARD. THE PANELS HAVE BEEN INATTENTIVE TO SUCH MATTERS AS THE INCREASE OF THE FET AND THE LATENESS OF DECIDING THE APPEAL, IN VIOLATION OF THE N.J. ADMINISTRATIVE CODE AND DIRECTIVES OF THE COURT.

Bland contends that given the remoteness of his crimes and the last inmate disciplinary infraction being over twelve years old, the Board acted arbitrarily and capriciously in considering them as evidence that defendant is likely to commit a crime in the future as a basis for imposing the thirty-six-month FET.

Bland suffered a stroke some years ago, leaving him partially disabled and limiting his physical mobility. He argues the record does not support the Board's conclusion that his health challenges could alter his behavior and result in him committing future crimes.

Our review of the Board's decisions is deferential. That is so because the Board's decisions are "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)), and are presumed to be reasonable, In re Vey, 272 N.J. Super. 199, 205 (App. Div. 1993). We will not disturb a Board's determination unless: it is arbitrary, capricious, or unreasonable; it is unsupported by sufficient credible evidence on the record; or it violates legislative policies. Trantino v. N.J. State Parole Bd., 154 N.J. 19, 24-25 (1998). The burden is on the appellant to demonstrate the Board's actions were unreasonable. Bowden v. Bayside State Prison, 268 N.J. Super. 301, 304 (App. Div. 1993).

Here, we find no basis on which to conclude the Board's decision was arbitrary, capricious, or unreasonable, that it lacked fair support in the evidence, or that it otherwise violated any legislative policies. Under N.J.S.A. 30:4-123.53(a):

An adult inmate shall be released on parole at the time of parole eligibility, unless information supplied in the report . . . or developed or produced at a hearing . . . indicates by a preponderance of the evidence . . . that there is a reasonable expectation that the inmate will violate conditions of parole imposed . . . if released on parole at that time.

The Board panel based its decision on a multitude of aggravating factors, most notable of which were Bland's numerous, serious institutional infractions and the serious nature of his offense. Bland's insufficient problem resolution and unrealistic view of how he would function if released are also significant. The Board's decision was further supported by Bland's risk assessment score of twenty-seven, indicating a medium risk of recidivism.

Although the Board recognized some mitigating factors—such as Bland's favorable institutional adjustment and absence of infractions since his last panel hearing—it acted well within its bounds in finding by a preponderance of evidence that Bland, if released on parole, would likely violate conditions of parole by committing a crime.

Concerning the FET, when an inmate is serving a sentence for murder, upon denial of parole, the inmate shall serve another twenty-seven months before being considered again for parole. N.J.A.C. 10A:71-3.21(a)(1). However, in cases where an ordinary FET is "clearly inappropriate due to the inmate's lack of satisfactory progress in reducing the likelihood of future criminal behavior," the Board may impose an FET in excess of administrative guidelines. N.J.A.C. 10A:71-3.21(d). The Board may increase or decrease the FET by up to nine months when the Board believes based on "the severity of the crime . . . and the

prior criminal record or other characteristics of the inmate" that an adjustment is warranted. N.J.A.C. 10A:71-3.21(c). The thirty-six month FET imposed by the Board is neither arbitrary nor capricious. The Board considered all applicable mitigating and aggravating factors when coming to the FET determination and acted well within its authority in increasing defendant's FET.

Bland contends there is no basis for the Board's determination that his health issues "could complicate his ability to deal with challenges and he could easily lose control of his behavior." The Board's determination is amply supported by the findings and conclusions of the evaluator who performed an in-depth psychological evaluation of Bland.


Bland argues the confidential psychological evaluation should be declassified so that he can respond to its contents. Reports "concerning an offender's medical, psychiatric or psychological history, diagnosis, treatment or evaluation" are deemed confidential. N.J.A.C. 10A:71-2.2(a). Confidential reports shall not "be reviewed by any person except a Board member or employee or individual or law enforcement agency authorized by the Board or by the Chairperson." N.J.A.C. 10A:71-2.2(b). Inmates are not afforded disclosure of confidential reports. N.J.A.C. 10A:71-2.2(c). We deem the nondisclosure of the psychological evaluation

to be proper. See Thompson v. N.J. State Parole Bd., 210 N.J. Super. 107, 126 (App. Div. 1986).

Having reviewed the record in light of the well-accepted standards, including the psychological evaluation and other materials in the confidential appendix, we conclude Bland's remaining arguments are without sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION