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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1047-21**

HENRY QUAGLIANI,

Appellant,

v.

NEW JERSEY STATE
PAROLE BOARD,

Respondent.

Submitted January 23, 2023—Decided January 31, 2023

Before Judges Mawla and Smith.

On appeal from the New Jersey State Parole Board.

Henry Quagliani, appellant pro se.

Matthew J. Platkin, Attorney General, attorney for respondent (Donna Arons, Assistant Attorney General, of counsel; Michael Vomacka, Deputy Attorney General, on the brief).

PER CURIAM

Appellant Henry Quagliani appeals from an October 27, 2021 final agency decision by the New Jersey State Parole Board (Board) denying parole and imposing a ninety-six-month future eligibility term (FET). We affirm.

In 1993, appellant was tried and convicted by a jury for first-degree murder, N.J.S.A. 2C:11-3(a)(1)(2), and third-degree possession of a weapon for unlawful purpose, N.J.S.A. 2C:39-4(d). In 1991, appellant gruesomely murdered his wife Kathleen by repeatedly striking her in the head with a baseball bat. The incident was witnessed by the parties' then twelve-year-old son, who called the police. An ambulance transported appellant's wife to the hospital where she later died. According to the son, the couple was arguing during dinner and into the evening. He heard his mother scream, then he ran into the kitchen and heard appellant state: "I'm sorry, Kathy, I have to do this" before he began striking her. After the murder, appellant fled to Canada, but was apprehended when he later returned to New Jersey. Following his conviction, appellant was sentenced to life imprisonment with a thirty-year period of parole ineligibility. This appeal arises from appellant's first parole proceeding.

Prior to the parole hearing, appellant had a psychological exam, which concluded he "appear[ed] to be a moderately low risk for future violence. However, caution is noted given [the] extent of [the] prior violence exhibited in

[the underlying] crime with noted difficulties managing emotions in the context of perceived betrayal in domestic matters." The evaluation concluded "[t]he likelihood of this inmate successfully completing a projected term of parole is generally considered fair" Although appellant "had well above average to excellent institutional adjustment, programmatic and work accomplishments, he has not addressed [the] emotional considerations surrounding his crime." The psychological testing noted appellant had "[a] distinct tendency toward avoiding self-disclosure . . . [and also had] possible . . . broad deficits in introspectiveness . . . owing to emotional impoverishment or thought vagueness."

In addition to the evaluation, a two-member panel considered appellant's mitigating factors, including that he: had no prior offense record; was infraction free; participated in behavioral programs; had institutional reports reflecting favorable adjustment; had attempted to enroll in programs but was not admitted; had a risk assessment evaluation; and had achieved and maintained minimum custody. However, the panel denied parole because of the facts and circumstances of appellant's offense, his incarceration for multiple offenses, and insufficient problem resolution due to a lack of insight into his criminal behavior, a lack of adequate parole plan to assist in successful reintegration, and minimization of his conduct. The panel noted appellant "demonstrates little to

no meaningful remorse for the victim . . . and further points to the conduct of the victim as the root cause of his violent behavior." The panel referred appellant's case to a three-member board panel to establish an FET outside of the Board's guidelines under N.J.A.C. 10A:71-3.21(d).

Appellant filed an administrative appeal and submitted documents disputing the panel's findings. He argued the panel: did not explain its decision; failed to consider his institutional record, risk assessment, and the psychological evaluation; a female panel member was gender biased because she took offense to his comments regarding the victim's conduct; and failed to document there was a substantial likelihood he would reoffend if released.

Following the incident, appellant claimed he was "extremely remorseful and returned to face justice" and was "still intensely remorseful." If paroled, he would donate blood, volunteer in a community shelter and find "a job to supplement [his] income to buy food and clothes for the needy." He claimed he was not blaming the victim, but instead explaining her conduct, and he "alone [was] totally responsible for [his] actions and crime." He blamed his offenses on "previous anger and controlling behavior issues, which [he had] since resolved through institutional programming." He argued the panel erred when

it concluded he lacked a parole plan because his plan was to be released to a half-way house until he found work.

Appellant also submitted a letter of mitigation with an addendum, asserting he never discussed the victim's "self-destructive behavior" with anyone. The addendum detailed the victim's "serious alcohol and prescription medication problem" Appellant alleged the victim had affairs with three men between 1979 and 1985 and insinuated one of his sons was the product of one of her affairs. He alleged the victim wanted a divorce, but when confronted, she denied it. He claimed she filed "false charges of domestic abuse" and secretly retained a divorce lawyer. According to appellant, the victim confessed "her affairs because she was drunk" Appellant stated he assaulted the victim in "a rush of adrenalin" after she told him about an alleged affair. The mitigation letter concluded as follows:

I endured Kathy's [adultery], her alcohol and drug abuse because it is a sickness, and now I had become emotionally and mentally overwhelmed by her treachery of filing false charges of domestic abuse to have me removed from our home and family.

I could have divorced Kathy for adultery, but I didn't want to shame her or hurt her or alienate her from the children; I wanted to help her and keep our family together. I failed Kathy as a husband, I failed [my sons] as a father, and I failed myself as a man. I destroyed the very family I was trying to save. I am very sorry.

The three-member panel issued a detailed written decision addressing appellant's arguments, and explained why appellant had insufficient problem resolution, lacked insight into his criminal history, and minimized his conduct. It noted the "theme to [the] hearing was that [appellant was] driven to a violent act . . . by the victim" The three-member panel stated:

The Board panel finds that you do not truly grasp the enormity of the violence of the murder. You portrayed the event as a black out type reaction, where you committed the act but you were not in . . . control of your faculties. You also blamed your wife for provoking you. Blaming your wife and portraying your actions as a disconnection from reality ("psychosis") results in you not taking full responsibility of your actions. Because of that, you have not conducted an accurate introspection into your personality defects. The Board panel finds that you must conduct an introspection so that you can identify those personality defects that impelled you to exacerbate confrontational situations, in the end infusing deadly violence.

The three-member panel imposed a ninety-six-month FET, reasoning that after thirty years of incarceration appellant was unable or unwilling to address his personality defects. Further, regarding the events leading up to the murder, appellant portrayed himself as the non-aggressor and the victim as "a philandering wife" and the catalyst for his actions. The panel set appellant's parole eligibility date at February 19, 2026, after applying commutation, work, and minimum custody credits.

Appellant appealed to the Board and reiterated the arguments presented to the three-member panel. He disputed the panel's findings and claimed members violated the Board's code of conduct and conflict of interest rules. He alleged the three-member panel misrepresented the facts and his statements at the hearing.

Appellant's submission reprised the argument with the victim prior to the murder. Notably, he wished to "clarify" the record and then stated the following:

I did not bludgeon my wife to death; she was admitted to the hospital awake and talking and her vital signs were stable; she was given a barbiturate sedative, [pentothal], and had to be resuscitated because of her abnormally high blood alcohol level; she was subsequently intubated, placed on a respirator and in no acute distress. . . . She was hospitalized for seven . . . days, extubated herself on July 18th, off life support, coherent, conscious, talking, interacting with the hospital staff and her family when she succumbed to complications on July 24th as recorded in the hospital medical records.

The Board issued a detailed written decision addressing each of appellant's claims. It found the three-member panel reviewed the entire record, considered the risk assessment, appellant's infraction-free history, and the courses he took during incarceration. Further, the panel questioned appellant at length about the circumstances of his offenses and appellant's contention otherwise lacked merit. The Board noted appellant's parole plan was properly

rejected because "there is no Board policy that requires inmates serving lengthy terms to be released to a halfway house for a specified period of time." Although appellant was involved in treatment, his answers to the three-member panel's questions showed he "gained insufficient insight from these programs." Moreover, program participation was "one factor of many considered[,] . . . not the only indicator of rehabilitation" and did not negate the lack of insight or minimization of his conduct. Appellant's acknowledgment of the consequences of his crimes "represent[ed] only an initial effort at rehabilitation . . . [and did] not equate to a change in . . . behavior."

The Board further concurred with the three-member panel that appellant relied upon defects in the victim's character and conduct to justify his actions. Appellant's "statements made at the time of the hearing and in . . . written submissions . . . attempt to portray [her] in a negative light and assign[ed] the blame for [appellant's] actions onto the victim."

The Board reviewed the electronic recording of the hearing before the three-member panel and concluded there was no evidence a panel member acted unprofessionally or violated the Board's code of conduct or conflict of interest rules. It found appellant's claim the three-member panel misrepresented the facts of appellant's offenses lacked merit.

The Board upheld the three-member panel's decision and concluded there was a substantial likelihood appellant could commit a crime if paroled. Further, an FET "established pursuant to N.J.A.C. 10A:71-3.21(a), (b)[,] and (c) is clearly inappropriate due to [appellant's] lack of satisfactory progress in reducing the likelihood of future criminal behavior" Pursuant to N.J.A.C. 10A:71-3.21(d)(4), the Board concluded the ninety-six-month FET was appropriate for the reasons expressed in the three-member panel's decision.

Appellant raises the following arguments on appeal:

[POINT I] THE PAROLE BOARD FALSIFIED STATEMENTS AND MISREPRESENTED THE FACTS OF THE OFFENSE AND THE CIRCUMSTANCES SURROUNDING THE OFFENSE[.]

[POINT II] THE PAROLE BOARD FAILED TO DOCUMENT AND SUPPORT [ITS] CLAIM THAT THE APPELLANT HAS NOT MADE SATISFACTORY PROGRESS IN REDUCING THE LIKELIHOOD OF COMMITTING ANOTHER OFFENSE IF PAROLED[.]

[POINT III] THE PAROLE BOARD FAILED TO DOCUMENT AND SUPPORT BY A PREPONDERANCE OF THE EVIDENCE IN THE WHOLE RECORD THAT THE APPELLANT WILL COMMIT A CRIME IF PAROLED[.]

"Appellate review of parole determinations 'focuses upon whether the factual findings made by the Parole Board could reasonably have been reached

on sufficient credible evidence in the record.'" Perry v. N.J. State Parole Bd., 459 N.J. Super. 186, 193 (App. Div. 2019) (quoting Trantino v. N.J. State Parole Bd., 166 N.J. 113, 199 (2001)). The Board makes more "individualized discretionary appraisals" than other state agencies. Ibid. (quoting Trantino, 166 N.J. at 173). Therefore, Board decisions may only be reversed if "arbitrary and capricious." Ibid. A parole decision is arbitrary and capricious if it is "willful and unreasoning . . . without consideration and in disregard of circumstances." Ibid. (quoting Trantino, 166 N.J. at 201). "The burden of showing the agency's action was arbitrary, unreasonable or capricious rests upon the appellant." Bowden v. Bayside State Prison (Dep't of Corr.), 268 N.J. Super. 301, 304 (App. Div. 1993). Board decisions are "accorded a strong presumption of reasonableness." McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 563 (App. Div. 2002). Questions of law are reviewed de novo. See Perry, 459 N.J. Super. at 193-94.


Having thoroughly reviewed the record pursuant to these principles, we affirm substantially for the reasons expressed in the Board's final agency decision. We add the following comments to address an assertion in Point III that the ninety-six-month FET was arbitrary and capricious.

After denying parole, the Board must establish an FET. N.J.S.A. 10A:71-3.21(a). The standard FET for an inmate serving a sentence for murder is twenty-seven months. N.J.A.C. 10A:71-3.21(a)(1). The FET "may be increased or decreased by up to nine months when, in the opinion of the Board panel, the severity of the crime for which the inmate was denied parole and the prior criminal record or other characteristics of the inmate warrant such adjustment." N.J.A.C. 10A:71-3.21(c). The Board can also exceed FET guidelines if the presumptive term "is clearly inappropriate due to the inmate's lack of satisfactory progress in reducing the likelihood of future criminal behavior." N.J.A.C. 10A:71-3.21(d).

The Board's finding there was a substantial likelihood appellant would commit another crime if granted parole is amply supported by the record. The facts and circumstances of the offense and appellant's repeated attempts to recast them, despite three decades in prison, convince us he has no meaningful understanding of the severity of his offenses and that the Board's decision was not arbitrary, unreasonable, or capricious.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION