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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3676-20**

IMARA KASIMU,

Appellant,

v.

NEW JERSEY STATE
PAROLE BOARD,

Respondent.

Submitted May 9, 2023 – Decided July 28, 2023

Before Judges Susswein and Chase.

On appeal from the New Jersey State Parole Board.

Imara Kasimu, appellant pro se.

Matthew J. Platkin, Attorney General, attorney for
respondent (Sookie Bae-Park, Assistant Attorney
General, of counsel; Dorothy M. Rodriguez, Deputy
Attorney General, on the brief).

PER CURIAM

State prison inmate Imara Kasimu was convicted of robbery and murder in 1984 and was sentenced to life imprisonment with a mandatory thirty-year period of parole ineligibility and a consecutive fifteen-year term with a seven-year, six-month period of parole ineligibility. He appeals from a decision of the New Jersey State Parole Board (the Board) denying parole and establishing a 120-month future eligibility term (FET). Kasimu raises numerous contentions in his main appeal and reply briefs. After carefully reviewing the record in light of the governing legal principles, we affirm.

I.

Kasimu became eligible for parole on September 25, 2020. The initial hearing officer referred the matter to a two-member Board panel on July 1, 2020. On August 17, 2020, the two-member panel denied parole and referred the matter to a three-member panel to establish an FET in excess of the administrative guidelines.

The two-member panel based its decision on the following factors: the "facts and circumstances" of the offenses; "[n]ature of criminal record increasingly more serious"; "[c]ommitted to incarceration for multiple offenses"; his commission of numerous, persistent, and serious disciplinary

infractions,¹ resulting in loss of commutation time and confinement in detention or administrative segregation; and "insufficient problem[] resolution."

After considering an interview, pre-parole report, and the results of an objective risk assessment evaluation, the panel found insufficient problem resolution, noting that Kasimu "lack[s] insight into [his] criminal behavior," "minimizes" his violent conduct, and has not "sufficiently addressed" his substance abuse problem. The panel found the following mitigating factors: "[m]inimal offense record"; "[p]articipation in institutional program(s)"; "[i]nstitutional reports reflect favorable institutional adjustment"; "[a]ttempt made to enroll and participate in program(s) but was not admitted"; and "[m]inimum custody status achieved/maintained."

On October 28, 2020, the two-member panel issued an amended decision reflecting its consideration of additional mitigating factors, including that Kasimu's lost commutation time had been restored. That panel also clarified and amplified its findings with respect to Kasimu's insufficient problem

¹ Kasimu committed fifty-two infractions between February 1984 and July 2016, including eleven "asterisk" infractions, which are considered the most serious offenses in prison. See Hetsberger v. N.J. Dep't of Corr., 395 N.J. Super. 548, 556 (App. Div. 2007). The sanctions for the infractions included confinement in detention, confinement in administrative segregation, and the loss of 1,020 days of commutation credits.

resolution, noting that he "has no insight into the decision-making demonstrated by committing a robbery that resulted in him murdering the victim. Expresses little remorse for the victim, downplays his numerous infractions and has taken no programming geared toward behavioral issues." The two-member panel's amended notice of decision also reflected Kasimu's objective risk assessment evaluation, which included a "Level of Service Inventory-Revised" (LSI-R) score of twenty-one, indicating he poses a "moderate risk of recidivism."

On December 2, 2020, a three-member Board panel convened and established a 120-month FET. That panel explained the reasons for its decision in a ten-page decision, focusing largely on Kasimu's insufficient problem resolution. The three-member panel also considered two letters of mitigation submitted by Kasimu. The panel explained its specific reasons for imposing a 120-month FET, which included Kasimu's lack of understanding of the underlying causes that motivate his criminal thinking and conduct; his inadequate progress in the rehabilitative process; his institutional infraction records that reflects his noncompliant behavior; and his consistent minimization of his criminal conduct by attributing it to his youth and peer pressure.

Kasimu administratively appealed both panels' decisions to the full Board. On July 8, 2021, the full Board affirmed the denial of parole and imposition of a 120-month FET. This appeal follows.

Kasimu raises the following contentions for our consideration in his appeal brief:

POINT I

APPELLANT WAS DENIED DUE PROCESS WHEN THE NEW JERSEY STATE PAROLE BOARD STATED APPELLANT WAS NOT ENTITLED TO A PAROLE HEARING IN COMPLIANCE WITH THE AMENDED PAROLE PROVISIONS OF N.J.A.C. 30:4-123.53 OR N.J.A.C. 30:4-123.55(d) ENACTED ON FEBRUARY 1, 2021.

POINT II

THE NEW JERSEY STATE PAROLE BOARD'S FINDING THAT THE BOARD PANEL DID NOT BELIEVE[] THEY WERE IMPOSING A 120[-]MONTH[] F.E.T. ON A COMPLETED THIRTY[-]YEAR[] SENTENCE IS CONTRADICTED BY SAID PANEL STATING SUCH.

POINT III

BECAUSE THE NEW JERSEY STATE PAROLE BOARD HAS ASSERTED THE CALCULATION OF THE FUTURE ELIGIBILITY TERM SHOWS LACK OF A PAROLE PLAN WAS NOT A FACTOR IN SAID CALCULATION MEANS RESPONDENTS HAVE TO ACKNOWLEDGE THAT THE

CALCULATION OF THE FUTURE ELIGIBILITY ALSO DOES NOT SHOW APPELLANT HAVING SERVED [THIRTY-SEVEN AND ONE HALF] YEARS OF INCARCERATION AS A FACTOR IN CALCULATING THE F.E.T.

POINT IV

BECAUSE RESPONDENTS' REPORTS "REFLECTS FAVORABLE INSTITUTIONAL ADJUSTMENTS" BY APPELLANT, COUPLED WITH HIM RECEIVING [ONE] MINOR DISCIPLINARY INFRACTION IN THE PAST [NINETEEN] YEARS MEANS IT WAS ARBITRARY, CAPRICIOUS AND UNREASONABLE FOR RESPONDENTS TO AFFIRM THE BOARD PANEL'S DECISION TO DENY APPELLANT REFERRAL FOR PAROLE AND IMPOSE A 120[-]MONTH[] F.E.T. ON THE GROUNDS THAT APPELLANT HAS BEHAVIOR ISSUES TODAY.

POINT V

BECAUSE APPELLANT HAS RELIED ON CREDIBLE UNDEVELOPED BRAIN SCIENCE EVIDENCE, THE CIRCUMSTANCES OF HIS CRIME AND HIS EXPERIENCES OF BEING BULLIED TO DEMONSTRATE HE HAS INSIGHT INTO WHY HE PARTICIPATED IN THE CRIME MEANS RESPONDENTS' DECISION WAS ARBITRARY, CAPRICIOUS AND UNREASONABLE THAT APPELLANT LACKS INSIGHT INTO HIS CRIMINAL BEHAVIOR.

POINT VI

A PROPER BEHAVIOR ANALYSIS OF APPELLANT'S THIRTY-SEVEN AND A HALF

YEARS DISCIPLINARY HISTORY SHOWS THAT SINCE APPELLANT HAS RECEIVED ONLY [ONE] MINOR DISCIPLINARY INFRACTION IN THE LAST [NINETEEN] YEARS MEANS HIS INSTITUTIONAL RECORD OVER THE PAST [NINETEEN] YEARS DOES NOT REFLECT TODAY THAT APPELLANT HAS A PROPENSITY FOR CRIMINAL BEHAVIOR. THEREFORE, IT WAS ARBITRARY, CAPRICIOUS AND UNREASONABLE FOR RESPONDENTS TO RELY ON DISCIPLINARY INFRACTIONS THAT ARE [NINETEEN] TO [THIRTY-SEVEN] YEARS OLD TO ASSERT SAID INFRACTIONS SHOW[] HIS "CRIMINAL BEHAVIOR IS DEEPLY ROOTED."

POINT VII

A PROPER ANALYSIS OF APPELLANT'S DISCIPLINARY HISTORY SHOWS IT WAS ARBITRARY, CAPRICIOUS AND UNREASONABLE FOR RESPONDENTS TO HAVE AGREED WITH THE BOARD PANEL'S FINDING THAT APPELLANT RECEIVING [ONE] MINOR DISCIPLINARY INFRACTION IN [NINETEEN] YEARS REPRESENTS CONCERNING EVIDENCE OF APPELLANT PERSISTENTLY VIOLATING PRISON RULES/REGULATIONS IN DETERMINING WHETHER HE STILL POSE[S] A SUBSTANTIAL RISK FOR CRIMINAL BEHAVIOR.

POINT VIII

BECAUSE RESPONDENTS HAVE FAILED TO ACKNOWLEDGE APPELLANT'S CLAIM THAT PARTICIPATING IN A PROGRAM TO CORRECT A BEHAVIORAL DEFECT AND/OR DRUG ADDICTION IS AN ADMISSION TO SUCH MEANS IT WAS ARBITRARY, CAPRICIOUS AND

UNREASONABLE FOR RESPONDENTS TO DENY APPELLANT REFERRAL TO PAROLE AND IMPOSE A 120[-MONTH] F.E.T. ON THE GROUNDS THAT APPELLANT DID NOT PARTICIPATE IN PROGRAMS TO CORRECT BEHAVIOR/PERSONALITY DEFECTS NOT DIAGNOSED PURSUANT TO N.J.S.A. 10A:71-3.11(b).

POINT IX

BECAUSE RECEIVING [ONE] DISCIPLINARY CHARGE IN THE PAST [NINETEEN] YEARS REFLECTS A SELF-BEHAVIORAL ADJUSTMENT BY APPELLANT MEANS IT WAS ARBITRARY, CAPRICIOUS AND UNREASONABLE FOR RESPONDENTS TO DENY APPELLANT REFERRAL TO PAROLE AND IMPOSE A 120[-MONTH] F.E.T. ON THE GROUNDS THAT APPELLANT'S "BEHAVIOR CONTINUES TO REFLECT POOR CHOICES."

POINT X

RESPONDENTS['] FINDING THAT THE BOARD PANEL DID NOT EXHIBIT[] A BIAS AGAINST APPELLANT'S PRE-2016 VOCATIONAL PROGRAMS BY REFERRING TO APPELLANT'S TYPING PROGRAM AS NOT A REAL PROGRAM IS CONTRADICTED BY THE RECORD.

POINT XI

BECAUSE THE BOARD PANEL FAILED TO IDENTIFY WHICH OF THE TWELVE PERSONALITY DEFECTS/DISORDER[S] "PLAYED A ROLE IN . . . [HIS] . . . POOR CONDUCT" MEANS IT WAS ARBITRARY,

CAPRICIOUS AND UNREASONABLE FOR RESPONDENTS TO AFFIRM THE BOARD PANEL'S DECISION TO DENY APPELLANT REFERRAL TO PAROLE AND IMPOSE A 120[-]MONTH[] F.E.T. ON THE GROUNDS THAT APPELLANT HAS NOT ADDRESSED HIS PERSONALITY DEFECTS.

POINT XII

IT WAS ARBITRARY, CAPRICIOUS AND UNREASONABLE FOR RESPONDENTS TO FIND APPELLANT'S INSIGHT INTO HIS CRIME [AS] HIM MINIMIZ[ING] HIS CONDUCT.

POINT XIII

BECAUSE APPELLANT HAS MAINTAINED A LOW CUSTODY STATUS FOR OVER TWO YEARS, RECEIVED [ONE] MINOR DISCIPLINARY INFRACTION IN THE LAST [NINETEEN] YEARS, NO DISCIPLINARY INFRACTIONS FOR WEAPONS, NO EVIDENCE OF PAST CRIMINAL BEHAVIOR DUE TO A DRUG/ALCOHOL DEPENDENCY OR MENTAL DEFECT, NO PRIOR JUVENILE OR ADULT CONVICTIONS, EMPLOYED AT THE TIME OF THE CRIME, NO EVIDENCE OF RELIANCE ON CRIME AS A FINANCIAL MEANS, HAS COMPLETED EDUCATIONAL, VOCATIONAL AND SOCIAL PROGRAMS AND A RECOMMENDATION TO PARTICIPATE IN STARS WOULD SUGGEST HIS RISK ASSESSMENT SCORE OF [TWENTY-ONE] IS HIGH.

POINT XIV

BECAUSE THE BOARD PANEL SPECIFICALLY CITED LACK OF A PAROLE PLAN AS ONE OF ITS REASONS TO DENY APPELLANT REFERRAL FOR PAROLE AND TO IMPOSE A[N] F.E.T. OUTSIDE OF THE PRESUMPTIVE TERM MEANS IT WAS ARBITRARY, CAPRICIOUS AND UNREASONABLE FOR RESPONDENTS TO ASSERT THE BOARD PANEL DID NOT RELY ON SAID REASON TO DENY APPELLANT PAROLE.

POINT XV

APPELLANT SHOULD BE GRANTED A NEW PAROLE HEARING BECAUSE THE THREE[-]MAN PANEL'S NOTICE OF DECISION INCORRECTLY ASSOCIATED APPELLANT WITH TEN ADDITIONAL WEAPONS THAT DIDN'T EXIST. THERE WAS ONLY ONE WEAPON[,] A .22 CALIBER REVOLVER[,] RETRIEVED FROM A CO-DEFENDANT'S RESIDENCE.

POINT XVI

RESPONDENTS AND/OR THE BOARD PANEL DENIED APPELLANT DUE PROCESS WHEN THEY FAILED TO INFORM APPELLANT THAT HE HAD THE RIGHT PURSUANT TO N.J.A.C. 10A:7-3.13(g) TO BE AIDED [B]Y A BOARD REPRESENTATIVE PURSUANT TO N.J.A.C. 10A:71-2.11. APPELLANT ASK[S] THAT A NEW PAROLE HEARING BE ORDERED.

POINT XVII

BECAUSE APPELLANT'S THIRTY-EIGHT FACTORS REPRESENTS EVIDENCE THAT

DEMONSTRATES THE RECORD AS A WHOLE SHOWS THERE EXISTS NO PREPONDERANCE OF EVIDENCE TODAY TO SHOW A SUBSTANTIAL LIKELIHOOD EXISTS THAT APPELLANT WOULD COMMIT A CRIME OR VIOLATE PAROLE IF RELEASED MEANS IT WAS ARBITRARY, CAPRICIOUS AND UNREASONABLE FOR RESPONDENTS TO AFFIRM THE BOARD PANEL'S DECISION TO DENY APPELLANT REFERRAL TO PAROLE AND INSTEAD GO OUTSIDE THE GUIDELINES TO IMPOSE AN 120[-]MONTH[] F.E.T.

He raises the following additional contentions in his reply brief:

POINT I

BECAUSE THE APPELLATE DIVISION'S DECISION IN BERTA^[2] HAS A GENERAL APPLICATION AS TO WHAT DOES NOT CONSTITUTE A SUBSTANTIAL LIKELIHOOD THAT AN INMATE WILL COMMIT ANOTHER CRIME, MEANS THE REASONS THE PAROLE [BOARD] RELIED ON TO DENY APPELLANT PAROLE AND/OR TO IMPOSE A 120[-]MONTH[] F.E.T. OUTSIDE OF THE GUIDELINES DOES NOT HOLD UP UNDER BERTA.

POINT II

BECAUSE THE PSYCHOLOGICAL ASSESSMENT SHOWS APPELLANT IS A MODERATE RISK TO REOFFEND, NO PSYCHOLOGICAL ASSESSMENT THAT THERE IS A SUBSTANTIAL LIKELIHOOD OF RECIDIVISM AND THE ONLY RECOMMENDATION BY THE PSYCHOLOGIST

² Berta v. N.J. State Parole Bd., 473 N.J. Super. 284 (App. Div. 2022).

WAS FOR APPELLANT TO PARTICIPATE IN [A] TRANSITIONAL PROGRAM DID NOT REPRESENT EVIDENCE TO SUPPORT DENIAL OF PAROLE AND/OR A 120[-]MONTH[] F.E.T.

POINT III

RESPONDENTS' CLAIM THAT THE EVIDENCE SHOWED IT WAS APPELLANT'S GOAL TO COMMIT A CRIME IS CONTRADICTED BY THEIR DOCUMENTS[,] WHICH SHOW[] THE ROBBERY OF THE VICTIM WAS A SPONTANEOUS, IMPULSIVE ACT. AND SAID ACT SUPPORTS APPELLANT'S INSIGHT INTO HIS CRIMINAL BEHAVIOR AND CONTRADICTS RESPONDENTS' CLAIM THAT APPELLANT LACKS INSIGHT INTO [HIS] CRIMINAL BEHAVIOR.

POINT IV

RESPONDENTS' CLAIM THAT THE BOARD RELIED ON THE PRESENTENCE REPORT[,] WHICH SHOWED TEN OTHER WEAPONS WERE RECOVERED[,] IS FALSE.

POINT V

RESPONDENTS' ARGUMENT THAT APPELLANT COULD HAVE SOUGHT "ASSISTANCE FROM A PARALEGAL IN SEEKING ASSISTANCE FROM THE BOARD REPRESENTATIVE" IS UNDERMINED BY THE FACT THAT RESPONDENTS NEITHER INFORMED APPELLANT THAT PURSUANT TO N.J.A.C. 10A:71-3.13(g) HE HAD "THE RIGHT TO BE AIDED BY A BOARD REPRESENTATIVE" NOR INFORMED APPELLANT TO SEEK ASSISTANCE

FROM A PARALEGAL TO ACQUIRE ASSISTANCE
FROM A BOARD REPRESENTATIVE.

II.

We begin our analysis by acknowledging the governing legal principles, including the limited scope of our review. "As a general matter, we will disturb an agency's adjudicatory decision only if we determine that the decision is 'arbitrary, capricious or unreasonable' or is unsupported 'by substantial credible evidence in the record as a whole.'" Berta, 473 N.J. Super. at 302 (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579–80 (1980)). In making that determination, we examine:

(1) whether the agency's action violates express or implied legislative policies, that is, 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.

[Id. at 302–03 (quoting In re Carter, 191 N.J. 474, 482–83 (2007)).]

"When an agency's decision meets those criteria, then a court owes substantial deference to the agency's expertise and superior knowledge of a particular field." In re Herrmann, 192 N.J. 19, 28 (2007). "With respect to the Parole Board's expertise, . . . one of its core functions is to evaluate inmates and to make

reasoned predictions as to how they will perform if released from prison under the Board's supervision." Berta, 473 N.J. Super. at 302.

Kasimu's offenses were committed in 1983,³ and therefore, the applicable standard provides the inmate "shall be released on parole at the time of parole eligibility, unless [it is shown] by a preponderance of the evidence that there is a substantial likelihood that the inmate will commit a crime . . . if released on parole at such time." Id. at 304 (quoting Acoli v. N.J. State Parole Bd. (Acoli II), 250 N.J. 431, 455 (2022)); see also N.J.S.A. 30:4-123.53(a)(1979).

The Board's specialized expertise is critical in applying that standard because it must make "highly predictive and individualized discretionary appraisals" in assessing an inmate's suitability for parole. Acoli v. N.J. State Parole Bd. (Acoli I), 224 N.J. 213, 222 (2016) (quoting Beckworth v. N.J. State Parole Bd., 62 N.J. 348, 359 (1973)). Those appraisals are "inherently imprecise." Ibid. Indeed, the Board's "discretionary assessment[s]" turn on "a multiplicity of imponderables." Ibid. (alteration in original) (quoting Greenholtz v. Inmates of Neb. Penal & Corr. Complex, 442 U.S. 1, 10 (1979)).

³ We note the Parole Act of 1979 was significantly revised in 1997. See id. at 304; L. 1997, c. 213, § 1.

When rendering a parole decision, the Board must consider "the aggregate of all pertinent factors" enumerated in the regulation as well as "any other factors deemed relevant." N.J.A.C. 10A:71-3.11; see also Beckworth, 62 N.J. at 360 ("Common sense dictates that [the Board's] prediction as to future conduct . . . be grounded on due consideration of the aggregate of all of the factors which may have any pertinence.").

In this instance, the Board considered the facts and circumstances of the offense; the nature of the Kasimu's criminal record; his numerous and persistent institutional infractions, which resulted in confinement in detention and administrative segregation; his insufficient problem resolution based on his interview and pre-parole report; and his objective risk assessment evaluation, with an LSI-R score of twenty-one.

With respect to his insufficient problem resolution, the Board found that Kasimu failed to acknowledge and address his personality defects that motivated the violent criminal thinking that resulted in him robbing and killing a man. Specifically, the Board noted, "[i]nmate has no insight into the decision[-]making he demonstrated by committing a robbery that resulted in him murdering the victim. Expresses little remorse for the victim, downplays his numerous infractions and has taken no programming geared to behavioral

issues." In addition, the Board noted that despite Kasimu's assertion that he was under the influence of drugs and alcohol at the time he robbed and killed the victim, he has not participated in programs to help address substance abuse.

At his hearing, the Board questioned Kasimu about his "criminal-thinking, negative behavior[,] and about the programs [he has] participated in that could have possibly provided insight into that thinking." Based on his responses to those questions, the Board found that Kasimu had not taken responsibility for his conduct and instead attributed the crime to his age, peer pressure, and his misconception about the lethality of the .22-caliber gun he used. Specifically, Kasimu asserted, "[w]ell the reason why I shot [the victim] is because it was . . . to perpetrate the robbery, but it was also I didn't appreciate that little .22 revolver could cause death, and I lacked the sensitivity toward being willing to cause someone harm." Kasimu continued, "I wasn't able to understand the consequences of my actions at that age." Based in part on those responses, the Board found that Kasimu has yet to conduct an introspection into the factors that resulted in his criminal behavior and on how he will confront stress and peer pressure in the future.

The Board also expressed concern with Kasimu's "minimal participation in programming" during the course of his lengthy incarceration. While

acknowledging his participation in vocational programs, the Board asked Kasimu why he had not taken programs addressing behavioral issues. Kasimu responded that he did not have a behavioral problem. That answer is belied by his institutional infractions for fighting and refusing to obey. The Board found that Kasimu's decision to not participate in behavior-related programs "demonstrates an inadequate interest in addressing the underlying motivations to [his] violent criminal behavior." The Board thus concluded that Kasimu failed to adequately participate in the rehabilitative process and must still develop an understanding of his personality defects.

The Board carefully considered the relevant circumstances that militate in favor of granting parole. In mitigation, the Board considered the following factors: "minimal offense record"; "participation in institutional programs"; "institutional reports reflect favorable institutional adjustment"; "attempt made to enroll and participate in programs but was not admitted"; "minimum custody status achieved and maintained"; and "commutation time restored."

We note that contrary to Kasimu's assertion, the Board did consider his favorable institutional reports and his participation in some institutional programs as mitigating factors. The Board carefully explained that the programs he participated in did not address the personality defects that motivated the

murder he committed and the subsequent negative behavior that resulted in fifty-two institutional infractions.

We also reject Kasimu's contentions that the Board failed to consider he was only twenty years old when he committed the robbery-murder, that he was bullied at a young age, that he lacked an understanding of the consequences of his actions, and that he was vulnerable to peer pressure. He also contends the Board ignored scientific evidence on brain development. In support of this argument, Kasimu relies on N.J.S.A. 2C:44-1(b)(14), which establishes a mitigating sentencing factor when the defendant is under twenty-six years old at the time of the offense. We need not address whether that sentencing factor has any bearing on parole decisions except to note that our Supreme Court has ruled that this mitigating factor does not apply retroactively. See State v. Lane, 251 N.J. 84, 97 (2022).

In any event, the record shows the Board at the hearing did in fact consider Kasimu's age at the time of the offense. In light of Kasimu's "youthful age" when he committed the crimes, the Board considered whether he had since "achieved a level of maturity that would have a positive impact on [his] suitability for parole release," as is required by N.J.A.C. 10A:71-3.11(b)(24). The Board determined that during his incarceration, Kasimu did not demonstrate

significant growth or maturity. The Board concluded he has not developed insight into his criminal behavior, his substance abuse issue, or the underlying issues that led him to his initial crime and thereafter to numerous disciplinary infractions.

Turning to the FET, when a panel denies parole to an inmate serving a sentence for murder, the standard FET is twenty-seven months under N.J.A.C. 10A:71-3.21(a)(1). The Board, in its discretion, may add or reduce the standard FET by nine months. N.J.A.C. 10A:71-3.21(c). Pursuant to N.J.A.C. 10A:71-3.21(d), a three-member Board panel may establish an FET outside the guidelines if the presumptive FET is "clearly inappropriate due to the inmate's lack of satisfactory progress in reducing the likelihood of criminal behavior." In making that determination, the Board must consider the same non-exhaustive list of factors enumerated in N.J.A.C. 10A:71-3.11(b) that are used to determine whether the inmate is suitable for release on parole.

In this instance, the three-member Board panel determined that imposing the standard FET would be inappropriate because Kasimu had not shown satisfactory progress in reducing the likelihood that he would engage in criminal activity if he were to be released on parole. We see no basis upon which we might overturn that decision.

We need only briefly address Kasimu's contention he was denied due process. Our Supreme Court has held that "the Parole Act 'creates a legitimate expectation of parole eligibility' . . . that invokes due process protections." In re Request to Modify Prison Sentence, 242 N.J. 357, 385 (2020) (quoting N.J. State Parole Bd. v. Byrne, 93 N.J. 192, 206 (1983)). "The requirements of due process are 'flexible' and are tailored to what the particular situation demands." Id. at 386 (quoting State in Int. of D.G.W., 70 N.J. 488, 502 (1976)). For instance, in the context of initial parole decisions, our Court has established that that prisoners must have an opportunity "to be heard and [be provided] an explanation as to why he fell short of qualifying for parole." Byrne, 93 N.J. at 210 (citing Greenholtz, 442 U.S. at 16). "In essence, this means notice, opportunity to be heard and a statement of reasons." Ibid.

As we have noted, Kasimu was afforded the opportunity to be heard. His claim that he failed to receive adequate notice of his parole hearing and information concerning the parole process is not supported by the record. In addition to appearing at his August 2020 parole hearing, Kasimu provided the three-member panel with letters of mitigation in support of his requests.

We likewise reject his claim that he was not informed about his right to the assistance of a parole counsel or Board representative. That contention is based on a misinterpretation of the relevant regulations. Under N.J.A.C.

10A:71-2.11, "a parole counselor or other Board representative" is assigned to each State correctional facility "to assist inmates on all parole procedures, including any appearances before a hearing officer, Board panel or the Board." An inmate "shall have the right to be aided by a Board representative pursuant to N.J.A.C. 10A:71-2.11." N.J.A.C. 10A:71-3.13(g).

Those regulations require that the Board provide an agency representative at each correctional facility to help inmates appearing before the Board. The regulations do not, however, mandate that a representative appears on the inmate's behalf at the parole hearing. They merely require that the Board make a representative available at each institution to assist inmates.

Moreover, we add that inmates are provided with a handbook on parole procedures and have access to trained inmate paralegals who are available to assist them in preparing for a hearing and in seeking assistance from the Board representative. N.J.A.C. 10A:6-2.2(a)(7); 10A:8-3.2(a) and -3.5. In addition to the information in the handbook, we presume Kasimu was familiar with the services provided by inmate paralegals based on his lengthy disciplinary record.

In sum, the Board considered Kasimu's entire record and acted well within its discretion in finding a substantial likelihood that he would commit another crime if released on parole. The Board's decision to deny parole and establish a

120-month FET is supported by sufficient credible evidence in the record and was not arbitrary, unreasonable, or capricious.

To the extent we have not specifically addressed them, any remaining arguments raised by Kasimu lack sufficient merit to warrant discussion. 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