



Peterson v. New Jersey State Parole Board

2009 | Cited 0 times | New Jersey Superior Court | May 18, 2009

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

Submitted April 27, 2009

Before Judges Sabatino and Simonelli.

Appellant Ricky Peterson appeals from the September 11, 2007 final decision of respondent New Jersey State Parole Board (Board) denying him parole and establishing a twenty-month future eligibility term (FET). We affirm.

In 1974, Peterson was indicted under Indictment No. 286-74 for robbery (counts one, two and three) and robbery while armed (counts four, five and six); under Indictment No. 285-74 for robbery (count one), robbery while armed (count two) and atrocious assault and battery (count three); and under Indictment No. 287-74 for robbery (counts one and two) and murder (count three). Defendant was convicted of the charges under Indictment Nos. 286-74 and 285-74. He pled guilty to the charges under Indictment No. 287-74.

On February 23, 1976, Peterson was sentenced on Indictment No. 286-74 to a minimum ten-year and a maximum twelve-year term of imprisonment on count one consecutive to the sentence imposed on Indictment No. 287-74; and to a concurrent minimum nine-year and a maximum ten-year term of imprisonment on counts two through six. Peterson also received a term of life in prison on count three of Indictment No. 287-74. On October 23, 1975, Peterson was sentenced on Indictment No. 285-74 to a minimum ten-year and a maximum fifteen-year term of imprisonment on count one; to a consecutive minimum three-year and a maximum five-year term of imprisonment on count two; and to a consecutive minimum of one-year and a maximum of two-year term of imprisonment on count three.

Peterson was released on parole in 1994. On September 2, 1998, the Board revoked his parole and established a one-year, three-month FET. Peterson was again paroled, but that parole was revoked on January 8, 2003. Peterson was again paroled on September 8, 2003.

On August 1, 2005, Peterson pled guilty to third-degree possession of a controlled dangerous substance (CDS). He received a three-year term of imprisonment concurrent with the FET the Board imposed for a parole violation.



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Peterson's sentence for possession of CDS expired on July 12, 2007. He was psychologically evaluated on August 19, 2007, and determined to be a "moderate risk for future violence." Upon becoming eligible for parole for the murder sentence, a hearing officer referred the matter to a Board Panel (Panel) pursuant to N.J.A.C. 10A:71-3.15(b). Because Peterson committed the murder offense in 1974, the applicable standard of parole prohibited his release if there is a substantial likelihood that he would commit a crime if released. N.J.S.A. 30:4-123.53(a).

After a hearing on September 11, 2007, the Panel denied parole and established a twenty-month FET, concluding that there was a substantial likelihood that Peterson would commit a new crime if released at that time. In rendering its decision, the Panel relied on a number of factors such as the serious nature of the offense, Peterson's extensive prior criminal record, his current opportunity on parole had been revoked, the failure of prior probation and parole opportunities to deter criminal behavior, the psychological evaluation, and his insufficient problem resolution, lack of insight into criminal behavior, minimization of his conduct, and his failure to address his substance abuse problem.

The Panel also considered mitigating factors such as Peterson's infraction-free record, participation in programs, average to above average institutional reports, and attempt to enroll and participate in programs to which he was not admitted. The Panel suggested that Peterson participate in substance abuse counseling, institutional programs geared toward criminal behavior, behavior modification, and one-to-one counseling. The Panel could have assessed a maximum twenty-seven month FET. N.J.A.C. 10A:71-3.21(a)(1), but it reduced the FET to twenty-months based on these mitigating factors.

Peterson administratively appealed to the Board. The Board affirmed, finding that the Panel considered the aggregate of information and supported its decision as required by N.J.A.C. 10A:71-3.11 and N.J.A.C. 10A:71-3.18(f). The Board concluded that the preponderance of evidence indicated that there is a substantial likelihood that Peterson would commit a crime if released on parole at that time.

The actions of the Board, as an administrative agency, are presumed valid and reasonable. In *re Vey*, 272 N.J. Super. 199, 205 (App. Div. 1993), *aff'd*, 135 N.J. 306 (1994); *Alevras v. Delanoy*, 245 N.J. Super. 32, 35 (App. Div. 1990), *certif. denied*, 126 N.J. 330 (1991). Parole Board decisions are considered "highly 'individualized discretionary appraisals.'" *Trantino v. N.J. State Parole Bd.*, 166 N.J. 113, 173 (2001) (*Trantino VI*) (quoting *Beckworth v. N.J. State Parole Bd.*, 62 N.J. 348, 359, *certif. denied*, 63 N.J. (1973)). Consequently, "the Board 'has broad but not unlimited discretionary powers'" in reviewing an inmate's parole record and rendering a release decision. *Ibid.* (quoting *Monks v. N.J. State Parole Bd.*, 58 N.J. 238, 242 (1971)). See also *Greenholtz v. Neb. Penal Inmates*, 442 U.S. 1, 9-10, 99 S.Ct. 2100, 2105, 60 L.Ed. 2d 668, 677 (1979) ("[t]he parole release decision . . . depends on an amalgam of elements, some of which are factual but many of which are purely subjective appraisals by the Board members based upon their experience with the difficult and sensitive task of evaluating the advisability of parole release.").



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Our review of the Board's decision is limited to determining whether its findings could reasonably have been reached on the credible evidence in the record. *N.J. State Parole Bd. v. Cestari*, 224 N.J. Super. 534, 547 (App. Div.), certif. denied, 111 N.J. 649 (1988). We will not set aside the Board's decision unless we are convinced "that the determination below went so far wide of the mark that a mistake must have been made." *Ibid.* (quoting *613 Corp. v. N.J. Div. of State Lottery*, 210 N.J. Super. 485, 495 (App. Div. 1986)).

Based on our careful review of the record, we are satisfied that the Board's denial of parole is amply supported by substantial evidence in the record. Based upon the aggregate factors considered by the Board, we agree that it is substantially likely that Peterson will commit a new crime if released on parole.

We are also satisfied that the Board's establishment of a twenty-month FET is amply supported by substantial credible evidence in the record. The twenty-month FET was appropriate under the circumstances and we perceive no basis for a downward adjustment. N.J.A.C. 10A:71-3.21(a)1; N.J.A.C. 10A:71-3.21(c).

Affirmed.

