

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

TIMOTHY L. AIKENS,
Petitioner,

v.

BOARD OF PAROLE AND
POST-PRISON SUPERVISION,
Respondent.

Board of Parole and Post-Prison Supervision
A166407

Submitted May 8, 2019.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and David O. Ferry, Deputy Public Defender, Office of Public Defense Services, filed the brief for petitioner.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Christopher A. Perdue, Assistant Attorney General, filed the brief for respondent.

Before Lagesen, Presiding Judge, and James, Judge, and Landau, Senior Judge.

PER CURIAM

Affirmed.

PER CURIAM

Petitioner seeks judicial review pursuant to ORS 144.335 of a final order of the Board of Parole and Post-Prison Supervision following a 2017 murder review hearing under ORS 163.105.¹ In that order, the board determined that petitioner failed to prove that he was likely to be rehabilitated in a reasonable period of time and scheduled his next murder review hearing four years out. Petitioner contends that the board's determination regarding the likelihood of his rehabilitation is not supported by substantial evidence or substantial reason. On review of the record, we disagree. Petitioner also contends that the board's decision to schedule his next murder review hearing four years out violates the state and federal constitutional prohibitions on *ex post facto* laws because, at the time of his crimes, the board was required to schedule murder review hearings biennially. That argument, as petitioner acknowledges, is foreclosed by our decision in *Morrison v. Board of Parole*, 277 Or App 861, 374 P3d 948, *rev den*, 360 Or 465 (2016).

Affirmed.

¹ We recently reversed the board's final order resulting from petitioner's 2015 murder review hearing on the ground that one of the factual findings was not supported by substantial evidence and remanded to the board to reconsider its decision without relying on that finding. *Aikens v. Board of Parole*, 298 Or App 14, ___ P3d ___ (2019). That decision does not moot this case because the board will not necessarily find in petitioner's favor on remand. That means a favorable ruling in this case would have a practical effect on petitioner's rights.