Federal Court  Cour fédérale

Date: 20191223

Docket: T-295-19

Citation: 2019 FC 1658

Ottawa, Ontario, December 23, 2019

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

WILTON A. SMITH

Applicant

and

THE ATTORNEY GENERAL OF CANADA AND CORRECTIONAL SERVICE CANADA

Respondents

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant [Mr. Smith] seeks judicial review of a decision of the Appeal Division [Appeal Division] of the Parole Board of Canada [Board] dated January 18, 2019, affirming the decision of the Board to deny his day or full parole review pursuant to the *Corrections and Conditional Release Act*, SC 1992, c 20 [Act].

[2] For the reasons that follow, Mr. Smith's judicial review application is dismissed.

II. Background

A. *The facts*

[3] Mr. Smith is a federal inmate serving a life sentence for first-degree murder. He is currently incarcerated at Springhill Institution, in Nova Scotia, a medium security institution.

[4] Mr. Smith became eligible for day parole in March 2014 and for full parole in March 2017. He applied for both on June 12, 2016, but was unsuccessful.

[5] This is the second time Mr. Smith comes before this Court regarding his efforts to be granted day or full parole. He was successful the first time, when this Court (per Justice Southcott) found that both the Board and the Appeal Division erred in their treatment of Mr. Smith's argument that an addendum prepared by his Case Management Team [CMT] at Correctional Service Canada [CSC] in anticipation of his parole hearing [2016 Addendum] should not have been considered by the Board and the Appeal Division since it had been removed from his institutional file by the institution's Warden prior to his parole hearing (*Smith v Canada (Attorney General)*, 2018 FC 200 [*Smith*]). The Appeal Division decision was therefore set aside and the matter was remitted to a differently constituted Board panel for redetermination.

[6] In *Smith*, the Court provided the following description of the general background of this case:

> [3] Mr. Smith is in his early fifties and is serving a life sentence for first degree murder. He has been incarcerated since April 29, 1994, and is currently at Springhill Institution in New Brunswick [*sic*], a medium security institution where he has been since 2003. Mr. Smith has appealed his conviction unsuccessfully to both the Court of Appeal for Ontario and the Supreme Court of Canada. He continues to maintain his innocence.
>
> [4] Although Mr. Smith has been in Canada since his early twenties, he was born in Jamaica and is currently subject to a deportation order.
>
> [5] According to the record before the Court, the events leading to the murder conviction were as follows. Mr. Smith was in a relationship with a woman named Patricia Innis from September to December 1991, when Mr. Smith assaulted her, threatened her with a knife, and stole a number of her possessions. He was charged with uttering threats, assault with a weapon, theft, and possession of property obtained by crime. Mr. Smith was released on bail, subject to a no contact order regarding Ms. Innis. He disobeyed the order and continued to contact and visit Ms. Innis. Mr. Smith was due to stand trial on March 12, 1992, but on March 10, 1992, he gained entry to Ms. Innis' home and attacked her, striking her in the neck with a machete, thereby causing her death.
>
> [6] Mr. Smith has a son with whom he is in contact and has had a number of romantic relationships of varying durations while incarcerated. He has participated in Personal Family Visits with these women and his son, with no reported issues in relation to family violence. Mr. Smith denies ever having been violent in any of his relationships. He has also completed all proposed rehabilitative programming and is reported to have conducted himself appropriately in, and gained from the content of, the programming. Mr. Smith's prison record discloses a conviction for carrying a concealed weapon, based on an incident in 2001 where he was discovered with a shiv. Other than this incident and a conflict in 2016 with a member of the prison's kitchen staff, Mr. Smith appears to have conducted himself in a pro-social manner during his incarceration. He has maintained employment and advocates for himself and others in the prison.

> [7] Mr. Smith became eligible for day and full parole in March 2014 and March 2017, respectively. In the application leading to the decisions being considered in this application for judicial review, Mr. Smith sought either day parole for release in Nova Scotia or full parole with a view to returning to Jamaica.

[7] Mr. Smith's first judicial review application was filed in April 2017, but before it was heard, he filed an application with the Board to have his day or full parole reviewed. The Board acknowledged receipt of said application on November 16, 2017.

[8] On January 23, 2018, Mr. Smith, pursuant to sections 157(3) and 158(3) of the *Corrections and Conditional Release Regulations*, SOR/92-620 [Regulations], asked the Board to postpone his review for day or full parole until the month of June (2018). Sections 157(3) and 158(3) of the Regulations provide that the Board may postpone parole reviews with the consent of the offender. According to his application for postponement, his goal was to gain the support of his new parole officer, Ms. Margaret Hoyt, for the purposes of the upcoming review hearing.

[9] On January 30, 2018, Mr. Smith's first judicial review was heard on the merits and on February 21, 2018, Justice Southcott issued his decision.

[10] In May 2018, an Assessment for Decision [2018 Assessment] was prepared in anticipation of the review hearing sought by Mr. Smith. On May 23, 2018, the Board advised Mr. Smith that his parole review hearing had been scheduled for June 12, 2018.

[11] The June 12, 2018 hearing was commenced, as scheduled, before a differently constituted panel, but was adjourned for two months, pursuant to sections 122(3) and 123(4) of the Act and

157(4)(a) and 158(4)(a) of the Regulations which provide that a review may be adjourned for a period of not more than two months should the Board require further information to conduct its review. The adjournment was aimed at allowing the Board to collect information related to the support that could be provided to Mr. Smith upon his deportation to his home country, once released on parole, as well as any pertinent information from foreign or Canadian authorities regarding his file.

[12] On July 24, 2018, Ms. Hoyt prepared an Addendum to the Assessment [2018 Addendum] in order to provide the Board with the information it had requested.

[13] The review hearing reconvened on August 10, 2018, with two new Board members, as the ones present on June 12, 2018 were not available. Since there were two new panel members, the hearing was to proceed *de novo* as required by section 11.5.10 of the *Decision-Making Policy Manual for Board Members* [Policy Manual]. Since he did not feel prepared for a full review hearing, Mr. Smith requested an adjournment. His request was granted.

[14] The review hearing was reconvened on August 24, 2018, with the two Board members present on June 12, 2018. At the conclusion of that hearing, the Board denied Mr. Smith's parole review application, being of the view that he was still presenting an undue risk to society.

B. *The Board's Decision*

[15] After first describing what the information on file revealed about Mr. Smith's personal background and criminal history, the Board reviewed the Pre-Release Psychological Risk

Assessment completed in 2016. It noted that Mr. Smith's risk for general violent reoffending was low and that his risk for violence in the context of an intimate relationship was moderate, which was congruent with a psychiatric evaluation performed in 2014. The 2018 Assessment confirmed that the identified risks remained valid.

[16] The Board observed, with respect to his institutional history, that Mr. Smith was initially placed in a maximum-security facility and then cascaded to medium security in 1997 before being transferred back to maximum security following his conviction, in 2001, for carrying a concealed weapon. The Board noted that Mr. Smith has demonstrated positive institutional behaviour and was able to return to medium security within the same year. In 2016, Mr. Smith was reclassified as a minimum-security offender but refused to be transferred, fearing being discriminated against and having to restart his correctional plan (Amended Respondents' Record at p. 59).

[17] The Board also recognized that Mr. Smith had successfully completed various programs addressing his areas of need during his sentence, the last one being completed in 2011. It also noted that he had obtained a variety of employment certificates and participated in a number of fundraising activities and volunteer work. Despite the completion of these programs and his involvement in these activities, the Board observed that the 2018 Assessment indicated that Mr. Smith's denial of his crime made it difficult to determine the quality of the progress he made.

[18] The Board addressed Mr. Smith's concern about his August 24, 2018 hearing being a *de novo* hearing rather than the continuation of June 12, 2018 hearing.

[19] Among the other factors that are described above, the Board noted that actuarial measures indicated that Mr. Smith was a low risk for general recidivism but a high risk for domestic violence recidivism.

[20] Moreover, the Board identified Mr. Smith's risk factors and found that he had limited insight into the factors that led to the commission of his crime. In fact, the Board noted that he needed further interventions, including spending time in a minimum-security facility, in order to strengthen his skills and tools in managing risk while in the community.

[21] The Board noted Mr. Smith's CMT's negative parole recommendation based on their concerns regarding his proposed release plan and its lack of protective measures and support.

[22] Prior to the review hearing resuming, Mr. Smith's mother and Pastor wrote letters to the Board indicating that he would have support upon his return to Jamaica. Mr. Smith also made several calls to family members to confirm support upon returning to that country.

[23] In refusing to grant day or full parole, the Board indicated that Mr. Smith's criminal history aggravated his risk to society. The Board was concerned with his ability to self-control while on release, as the crime for which he serves his sentence occurred while on bail.

[24] The Board considered that Mr. Smith's release plan did not sufficiently mitigate his risk to society because:

a. His mother does not live in Jamaica, which meant that she could only provide him limited support upon his return to that country;

b. His Pastor's letter lacked details;

c. He failed to follow through with the requirement to obtain a passport as the Canada Border Services Agency [CBSA] reported that he had been uncooperative regarding said passport application;

d. No supervision would be available through Jamaican authorities;

e. He refused to allow a community assessment with his mother and sister; and

f. He refused as well to provide the Board with details regarding his accommodation and occupation upon his return in Jamaica.

C. *The Appeal Division's Decision*

[25] The Appeal Division first concluded that the Board treated Mr. Smith fairly, conducted the review hearing in a fair and impartial manner and did not violate his *Charter* rights.

[26] In doing so, the Appeal Division considered that the Board's mistake in labelling the review hearing of August 24, 2018 as *de novo* rather than a continuation of the June 12, 2018 hearing did not cause Mr. Smith prejudice.

[27] The Appeal Division noted that the protection of society is the factor that predominates in any assessment of an application for parole and found that Mr. Smith failed to raise any grounds that would cause the Appeal Division to intervene in the Board's decision. It indicated that the role of the Appeal Division was not to reassess issues of risk to reoffend and to substitute its own findings and discretion for that of the Board, unless the Board's findings were unreasonable.

[28] The Appeal Division also noted that the Board assessed both positive and negative elements in Mr. Smith's file, but held that it was reasonable and within the Board's discretion to have placed more weight on information that he remains a high risk for domestic violence according to actuarial measures, that the murder he committed occurred while he was released on bail, that he does not demonstrate an adequate understanding of his offence cycle and that his release plan was not yet sufficiently structured.

[29] Regarding the alleged violation of *Smith*'s conclusions, the Appeal Division concluded that the Board did not consider, in reaching its decision, the document that Justice Southcott found should not have been considered by either the Board or the Appeal Division in reaching their own decision in that case.

[30] The Appeal Division also concluded that the Board had not exceeded its jurisdiction by asking questions about Mr. Smith's release plan in Jamaica. Although it acknowledged that the Board could not compel a foreign jurisdiction to provide information or insist that it participates in an offender's supervision, the Appeal Division held that the assessment of an offender's

release plan was integral to the assessment of risk, including for foreign offenders who may be deported upon release.

D. *Mr. Smith's claim against the Appeal Division Decision*

[31] Mr. Smith alleges that both the Board and the Appeal Board failed to follow *Smith*, by proceeding with the review of his file instead of redetermining the matter, and by considering the 2016 Addendum that the Court in *Smith* found that it should not have been considered.

[32] He also submits that the Board and the Appeal Division should not have taken into account the 2018 Addendum, which he refused to sign, and that it should have been excluded from the evidence on the basis that it contains false information, especially with respect to his alleged non-cooperation with CBSA in order to have his Jamaican passport renewed. He says that the Board and the Appeal Division ignored his evidence regarding this false information, including the complaint he filed against the author of the 2018 Addendum, Ms. Hoyt.

[33] Further, Mr. Smith submits that the Board failed to abide by section 11.5 of the Policy Manual, in labelling the hearing that took place on August 24, 2018 as a new hearing and not as a continuation of the June 12, 2018 hearing.

[34] At the hearing of the present judicial review application, Mr. Smith insisted that contrary to the evidence presented by Ms. Hoyt, he did everything that was asked of him by his CMT. He said, as a result, that he cannot reasonably be assessed as still presenting an undue risk to society since he is already at a lowest end of the risks scale, as evidenced by the institutional gate passes

he has been given in order to work outside of the walls of Springhill Institution and by the Escorted Temporary Absences that were issued to him.

[35] Mr. Smith also insisted that he did not refuse to move to a minimum-security facility, as appears from his correctional file. Rather, he said, he cannot go to such facility because he will be caught by CBSA as he would need first to be released from Springhill Institution in order to be transferred to such a facility. He claims that there are no CSC minimum-security facilities in the Atlantic region, but only community correctional centres, which only accept inmates who are on parole.

III. Issues and Standard of Review

[36] In my view, this case raises the following three issues:

a. Did the Board and the Appeal Division abide by the decision of Justice Southcott in *Smith*?

b. If so, then was the process that led to the decisions of the Board and of the Appeal Division procedurally fair to Mr. Smith?

c. If it was, then are these decisions reasonable?

[37] The case law on the judicial review of parole decisions establishes that although the proceedings are directed at the Appeal Division's decision, the Court, absent any separate error on the part of the Appeal Division, is actually examining the legality of the Board's decision when the Appeal Division confirms said decision. Such examination is made by applying a

standard of reasonableness (*Smith* at para 22, quoting from *Coon v Canada (Attorney General)*, 2016 FC 340 [*Coon*], at paras 18-19 and 21; *Chartrand v. Canada (Attorney General)*, 2018 FC 1183 at paras 38-40; *McLennan v Canada (Attorney General*), 2019 FC 1267 at para 17).

[38] Such standard means that the Court will only interfere with the Board or the Appeal Division's decision if said decision does not possess the attributes of justification, transparency and intelligibility or falls outside a range of possible, acceptable outcomes which are defensible in respect to the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 86 and 105 [*Vavilov*]).

[39] With respect to procedural fairness issues, it is well settled that the applicable standard of review is correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43 [*Khosa*]; *Smith* at para 23).

IV. Analysis

A. *Did the Board and the Appeal Division abide by Justice Southcott's decision in Smith?*

[40] As indicated at the outset of these reasons, Justice Southcott allowed Mr. Smith's judicial review application of the Appeal Division's decision on the ground that it erred in its treatment of Mr. Smith's argument that the 2016 Addendum should not have been considered by the Board since it had been removed from Mr. Smith's institutional file by the institution's Warden prior to the parole hearing.

[41] The 2016 Addendum had been prepared by Mr. Smith's Parole Officer at the time, Ms. Diana Pettigrew, in order to purportedly update the Assessment for Decision she had previously authored and which was recommending the denial of Mr. Smith's day or full parole application. However, this Assessment also captured dissenting opinions supportive of Mr. Smith's full parole for deportation to Jamaica. Those who signed these dissenting opinions, including the then Manager for Assessment and Intervention, were of the view that there was no particular benefit to transferring Mr. Smith to a lower security institution (*Smith* at paras 9 to 11).

[42] Mr. Smith claims that the 2016 Addendum was still before the Board when it reviewed his application for day or full parole in August 2018, contrary to Justice Southcott's Reasons for judgment. He further claims that the Board did not proceed with a redetermination of his case, as ordered by Justice Southcott, but rather with a full review comprising evidence that was not before the Board when it considered his application for day or full parole in the first place.

[43] Contrary to Mr. Smith's submissions, I do not believe that the Board or the Appeal Division ignored Justice Southcott's decision.

[44] First, pursuant to 123(5) of the Act, inmates whose parole applications are denied are generally entitled to a mandatory review of their file after two years. In the case of Mr. Smith that period, according to subsection 123(5.01) of the Act, was five years as he was convicted of an offence involving violence for which he is serving a sentence of at least two years. This does not mean, however, that an inmate cannot seek review of his application for parole earlier. The only restriction in that regard, based on the interplay between sections 122(4) and 123(6) of the

Act and the Policy Manual, is that the inmate must wait at least one year after having been denied parole before applying for review or until any earlier time that the Regulations prescribe or the Board determines.

[45] As mentioned previously, Mr. Smith was denied parole in December 2016 and on October 2017, he submitted an application to have his day and full parole reviewed by the Board. There is no explanation in the file as to why the review application was filed on October 17, 2017, which is less than a year after the denial of December 2016. However, before conducting an early review, the Board must, pursuant to the Policy Manual (Sections 4.1.17 and 4.2.10), look at CSC's referral which must indicate the following:

> a. The offender, if released, will not present an undue risk to society and that the release will contribute to the protection of society by facilitating the offender's reintegration into society as a law-abiding citizen; and
>
> b. The issues or concerns expressed in the reasons for the previous Board decision to deny, cancel, terminate or revoke release have been addressed.

[46] The application for an early review allowed the proceeding, but no hearing date was fixed. On January 23, 2018, a month prior to the issuance of *Smith* and a week prior to the hearing of his judicial review, Mr. Smith asked to postpone his parole review to June 2018, as permitted to do so by subsections 157(3) and 158(3) of the Regulations. He filed out the required form, indicating that he wanted to gain support from his parole officer. That form also gave him the opportunity to mention that he was requesting the postponement of his hearing since he was awaiting a decision from this Court. He did not do so, even though he must have been aware of the date of his scheduled judicial review hearing as the order fixing the date of that hearing was

released on December 21, 2017 as it appears from the Court file in *Smith*. Mr. Smith did not explain nor is there evidence on the file explaining the reasons why he did not check this particular box on the form.

[47] As mentioned earlier, the hearing of Mr. Smith's parole review application finally took place on June 12, 2018 before being postponed by the Board to August 10, 2018, and then, at the request of Mr. Smith, to August 24, 2018.

[48] On these three dates, the Board panel was constituted differently than the Board panel who rendered the impugned decision in *Smith*. The Board reassessed Mr. Smith's entire file and the decision it rendered contains no indication that it considered the 2016 Addendum in assessing whether or not, upon review, day or full parole should be granted to Mr. Smith. The Board noted the procedural history of Mr. Smith's parole application and even acknowledged the conclusion of this Court in *Smith*, as follows:

> You continued your appeal to the Federal Court of Canada, and on February 21, 2018, your application for judicial review was allowed by the Federal Court; although the Court found several of your arguments had no basis for support, one of the arguments raised in your application was accepted: that the Board and the Appeal Division had incorrectly considered information in an Addendum to the Assessment for Decision which indicated support had been withdrawn for your release to the local CCC/CBRFs. Your argument was that this document should have been removed from your file, as you had requested and as had been approved by the warden prior to your hearing. The Federal Court ordered your file be remitted to the Board for redetermination. In addition, costs were awarded to you in the amount of $300.00.

[49] The Appeal Division found that the information that *Smith* directed not to be considered was not an element in the Board's review decision.

[50] What reasonably stems from all this is that the Board, as ordered by *Smith*, was differently constituted when it considered Mr. Smith's parole review application and did not consider the 2016 Addendum. What can also be reasonably concluded from the facts of the case is that since Mr. Smith had opted to seek review of the denial of his parole application prior to *Smith* being released and sought a postponement of said review, not because he was awaiting a decision from the Court in *Smith* but because he wanted to gain support from his new parole officer, the Board was entitled to proceed with the review of Mr. Smith's entire file, including the 2018 Assessment and the 2018 Addendum which updated the information on file.

[51] At the hearing of the present judicial review application, Mr. Smith submitted that he was forced to file his application for review. However, I find no evidence supporting said assertion in the file.

[52] In sum, I am satisfied that the Board and the Appeal Division abided by Justice Southcott's decision in *Smith* in rendering the impugned decision in the present matter.

B. *Was the process that led to the decisions of the Board and of the Appeal Division procedurally fair to Mr. Smith?*

[53] Mr. Smith claims that the Board failed to abide by section 11.5 of the Policy Manual by labelling the hearing that took place on August 24, 2018 as a new hearing as opposed to a continuation of the June 12, 2018 hearing.

[54] Section 11.5.10 of the Policy Manual provides that, when a hearing is adjourned pursuant to section 157(4) and 158(4) of the Regulations in order for the Board to gather further information relevant to the review, when the review resumes, the same Board members have to continue to review at the point of adjournment. However, in circumstances where it is not possible to have the same members present, a new review will be necessary.

[55] As mentioned previously, the Board adjourned the review hearing on June 12, 2018 and it reconvened on August 10, 2018, with two new Board members, because the two members present on June 12, 2018 were not able to assist at the time. The Board informed Mr. Smith that the hearing would proceed *de novo*, according to the Policy Manual. Mr. Smith then requested that the hearing be adjourned in order to give him the chance to prepare. That request was granted.

[56] When the hearing reconvened on August 24, 2018, the Board was constituted of the two members that were present on June 12, 2018. According to the Policy Manual, the hearing was to be continued at the point of adjournment, on June 12, 2018.

[57] Mr. Smith submits that the Board informed him that although the hearing would technically be a continuation of June 12, 2018 and would focus on his release plan and the documents received following the adjournment, the hearing would be a new review, as every hearing must stand-alone.

[58] Even if I consider that the Board erred in telling Mr. Smith that every hearing must stand alone, I must agree with the Respondents. The Appeal Division acknowledged the mistake in labelling the hearing, but considered, after listening to the audio recording of the hearing that it mostly focussed on his release plan, which the Board did not address on June 12, 2018. Moreover, Mr. Smith agreed to the proceedings after being explained the nature and focus of the hearing.

[59] Furthermore, in *Sychuk v Canada (Attorney General)*, 2009 FC 105 at para 11, this Court explains that it is well settled that policy manuals are not law and, therefore, not binding on the decision-maker. They are, on the other hand, useful indicators in order to assess whether a decision was an unreasonable exercise of power (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 72; *Latimer v Canada (Attorney General*), 2014 FC 886 at para 34).

[60] I do not believe that the error in labelling the hearing by the Board constitutes an unreasonable exercise of its powers, because, despite the error, the resuming of the hearing followed the Policy Manual and did not infringe the procedural fairness of the hearing. As the Respondents correctly point out, there is no evidence that Mr. Smith suffered any prejudice from that labelling error.

C. *Was the decision denying Mr. Smith's review application reasonable?*

[61] Mr. Smith claims that the 2018 Addendum should have been excluded from the evidence on the basis that it contains false information, especially with respect to his alleged non-

cooperation with CBSA in order to have his Jamaican passport renewed. He further claims that the Board and the Appeal Division ignored his evidence regarding this false information, including the complaint he filed against the author of the 2018 Addendum, Ms. Hoyt, and the fact he had dealt 51 times with CBSA regarding his passport renewal.

[62] As I have just explained, it was appropriate for the Board to take into consideration the 2018 Addendum. Contrary to the 2016 Addendum, it had not been removed from Mr. Smith's institutional file and *Smith* did not constitute a bar to its consideration by the Board. There is no error here.

[63] Mr. Smith's contention based on his allegation that the 2018 Addendum contains false information cannot succeed either. As explained by Justice Southcott in *Smith*, "it is CSC, not the Board or its Appeal Division, which is responsible for resolving issues surrounding the correctness of information in an inmate's CSC files" (*Smith* at para 57). In *Smith*, Mr. Smith, as he does here with respect to the 2018 Addendum, was alleging that an application for an Escorted Temporary Absence had been fraudulently written and that a parole officer had engaged in misconduct. Again, this is not for the Board or the Appeal Division to resolve such issues, but for CSC on the basis of the mechanism set out in subsection 24(1) of the Act (*Smith* at para 58).

[64] Furthermore, as contented by the Respondents, the Board does not hear or assess evidence; instead, it acts on all information that is relevant to the case, is not bound by the

traditional rules of evidence and performs an inquisitorial function without contending parties (*Mooring v Canada (National Parole Board)*, [1996] 1 SCR 75 [*Mooring*], at paras 26 and 29).

[65] To the extent Mr. Smith claims that it was unreasonable for the Board to rely on the fact that he faces a deportation order, that argument was dismissed by Justice Southcott in *Smith* (Smith at para 41-42). Being bound by the principles of judicial comity, I see no reason to depart from that finding. In any event, as pointed out by the Respondents, the Board did not solely rely on his immigration status to come to a decision. Rather, it considered, as we will see, a number of other factors which , when considered together, did not, in its view, sufficiently mitigated the risk to society and enhanced its protection, as required by the guiding principle set out in section 100.1 of the Act for the purposes of assessing parole applications.

[66] Finally, Mr. Smith submits that contrary to the conclusions of the 2018 Assessment, he did everything that was required of him by his CMT and that as a result, he cannot reasonably be assessed as still presenting an undue risk to society. He asserts, in that regard, that he is already at a lowest end of the risks scale, as evidenced by the institutional gate passes he has been given in order to perform work outside of the walls of Springhill Institution and by the Escorted Temporary Absences that were issued to him. He also contends that contrary to what his institutional file indicates, he never refused to be transferred to a minimum-security institution. Rather, he asserts that he cannot go to such institution because in the event he does so, CBSA will catch him. He claims that there are no CSC minimum-security facilities in the Atlantic Region, but only community correctional centres, which only accept inmates who are on parole.

[67] Ultimately, Mr. Smith questions if there is any benefit in being cascaded to a lower security institution in order to be entitled to day or full parole.

[68] It is important to underscore, at this point, that the Act establishes a scheme "that enforces sentences rather than one that reduces them" and that assessing entitlement to day or full parole "is matter of observing the personality and behaviour of the offender during the offender's imprisonment in order to assess the danger he or she presents to society and his or her ability to re-enter the community" *(Ouellette v Canada (Attorney General)*, 2013 FCA 54 at paras 30-31).

[69] Pursuant to section 107 of the Act, the Board "has exclusive jurisdiction and absolute discretion" to grant parole to an offender. According to section 102 of the Act, the Board may grant parole "if, in its opinion, (a) the offender will not, by reoffending, present an undue risk to society before the expiration according to law of the sentence the offender is serving; and (b) the release of the offender will contribute to the protection of society by facilitating the reintegration of the offender into society as a law-abiding citizen". Section 107 of the Act must, however, be read in conjunction with section 100.1 of the Act, which makes of the protection of society the paramount consideration in any parole decision (see also: *Mooring* at para 27; *Cartier v Canada (Attorney General)*, 2002 FCA 384 at para 19; *Fernandez v Canada (Attorney General)*, 2011 FC 275 at para 15; *Korn v Canada (Attorney General)*, 2014 FC 590 at para 16).

[70] Here, I agree with the Respondents that the Board's decision was based on enough persuasive and reliable information to meet the requirements of a reasonable finding within the meaning of *Dunsmuir*, as reaffirmed by *Vavilov*.

[71] The Board did recognize that Mr. Smith had made a number of positive gains through his participation in institutional programs and volunteer work, but it was concerned that his release plan did not include specific interventions tailored for his needs in the community given his lengthy period of incarceration in a very structured context. It was also concerned with the fact that being deported to Jamaica upon his conditional release, Mr. Smith would not be under CSC's supervision. This meant Mr. Smith would not be monitored regarding how he manages interpersonal conflicts in the context of an intimate relationship with a variety of daily stressors.

[72] The Board's concerns in that particular regard stemmed from the fact that Mr. Smith perpetrated his offence, which resulted in the most serious harm, while he was under a condition not to have contact with his victim. They also stemmed from the fact that he did not properly address emotional, cognitive and behavioural issues related to this crime, since he was still denying its commission. The Board was therefore of the view that Mr. Smith would benefit from a more gradual return to the community, which would include a cascade to a minimum security institution that would allow him the opportunity to demonstrate, with the assistance of his CMT, his ability to manage those risks within a less structured environment. This would also allow his CMT, according to the Board, to monitor and assess his ability to adapt to a less restrictive environment given the specific dynamic of his case, especially regarding his intimate relationships.

[73] I note that contrary to the 2016 Assessment, the 2018 Assessment, which validly formed part of the information considered by the Board, contains no dissenting opinions and was also signed by the incumbent Manager of Assessment and Intervention of the time.

[74] It is not the Court's function on judicial review to reweigh the evidence that was before the Board and to substitute its own findings to those of the Board (*Khosa* at para 64; *Smith* at para 32). Here, I find that it was reasonably open to the Board, when the totality of the information on file is considered, to conclude that the conditional release of Mr. Smith, without first cascading to a minimum-security facility, still presents an undue risk to society.

[75] Having found that the Board's decision is reasonable, the Appeal Division's decision is also reasonable.

[76] The present judicial review application will therefore be dismissed. The Respondents are seeking their costs. Given the outcome of this case, they will be entitled to these. Pursuant to the authority bestowed to the Court under Rule 400(4) of the *Federal Courts Rules*, SOR/98-106, costs are fixed at 200$, disbursements included.

JUDGMENT in file T-295-19

THIS COURT'S JUDGMENT is that:

1. The judicial review application is dismissed;

2. Costs are awarded to the Respondents in the amount of $200, disbursements included.

"René LeBlanc"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-295-19
STYLE OF CAUSE:	WILTON A. SMITH v THE ATTORNEY GENERAL OF CANADA AND CORRECTIONAL SERVICE CANADA
PLACE OF HEARING:	MATTER HEARD BY VIDEOCONFERENCE BETWEEN OTTAWA, ONTARIO, HALIFAX, NOVA SCOTIA AND SPRINGHILL, NOVA SCOTIA
DATE OF HEARING:	OCTOBER 29, 2019
REASONS FOR JUDGMENT AND JUDGMENT:	LEBLANC J.
DATED:	DECEMBER 23, 2019

APPEARANCES:

Wilton A. Smith	FOR THE APPLICANT
Ami Assignon	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

None	FOR THE APPLICANT
Attorney General of Canada Halifax, Nova Scotia	FOR THE RESPONDENTS