

Federal Court



Cour fédérale

Date: 20210721

Docket: T-678-20

Citation: 2021 FC 775

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 21, 2021

PRESENT: The Honourable Associate Chief Justice Gagné

BETWEEN:

RICHARD TIMM

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] Richard Timm is serving a life sentence with no eligibility for parole for 25 years in a Correctional Service of Canada [CSC] institution. He has been eligible for full parole since September 9, 2019.

[2] He is challenging the decision of the Parole Board of Canada's Appeal Division [Appeal Division], which confirmed the refusal of the Parole Board of Canada [the Board] to grant him full parole or even day parole.

[3] Mr. Timm criticizes both courts for misunderstanding or failing to consider the tense situation between him and his parole officers and case management team [CMT], who are partly responsible for his behaviour. Accordingly, the Board based its decision on erroneous and incomplete facts and failed to meet its obligation to ensure that the information on which it acted was reliable and persuasive (*Mooring v Canada (National Parole Board)*, 1996 1 SCR 75 at p 96 [*Mooring*]).

II. Facts

[4] Despite serving a life sentence for two counts of first-degree murder, conspiracy to commit murder, obstructing justice and perjury, Mr. Timm continues to claim his innocence.

[5] Between September 2017 and September 2018, Mr. Timm received escorted temporary absences for family visits, which went well.

[6] His temporary absence program was cancelled, however, after he showed an intransigent, distrustful and defiant attitude towards his CMT. He unsuccessfully sought to have this decision overturned, but in its decision, the Appeal Division emphasized his lack of cooperation with his CMT and his officer, factors which were essential to the bond of trust required for temporary

absences. The Appeal Division therefore concluded that Mr. Timm still posed an undue risk to society. That decision is not being challenged before the Court.

[7] Mr. Timm instead submitted an application for day parole or full parole, which was also denied by the Board and, subsequently, the Appeal Division. It is this latter decision that is at issue in this application.

III. Impugned decision

[8] First, it is important to note that although the matter before the Court technically involves an application to review the decision of the Appeal Division, the Court must ultimately ensure the legality of the Board's decision (*Cartier v Canada (Attorney General)*, 2002 FCA 384 at para 10 [*Cartier*]). An overview of both decisions is therefore necessary.

A. *The Board*

[9] In considering an application for partial or full release before the expiration according to law of the sentence, the Board must determine whether the offender represents undue risks to society or whether the release of the offender will contribute to the protection of society by facilitating the reintegration of the offender as a law-abiding citizen (*Corrections and Conditional Release Act*, SC 1992, c 20, s 102 [the Act]).

[10] In this case, the Board considered Mr. Timm's prison record, his testimony, the written and oral submissions of his counsel, his previous legal dealings and his psychological assessments.

[11] The Board summarized the conflicts that Mr. Timm had with his officers. He refused to meet with his new officer in March 2019, he criticized his former officer's casework and blamed him for the lack of progress on his case, and he refused to begin clinical follow-up with his new officer. Given the short period of time between her appointment and the Board hearing, the new officer adopted her predecessor's position not to recommend day parole or full parole for Mr. Timm.

[12] The Board noted that the CMT was of the opinion that some of the key predisposing factors behind Mr. Timm's criminal behaviour were still present, namely poor emotions management, pent-up frustration and conflictual relationships with paternal or authority figures. The CMT is also of the view that his release was premature and that it would be preferable to begin with reclassification to a minimum-security institution before considering day parole and full parole.

[13] The Board agreed with the CMT. Mr. Timm has had a few escorted absences, and he requires a gradual reintegration. The Board also considered other factors such as the severity and violence of his criminality, his lack of work on his personal challenges and other risk factors such as distrust of authority, and his lack of personal tools to reduce the risk he presents. The

Board confirmed that cooperation with authority figures is absolutely essential to community release.

[14] Accordingly, the Board denied Mr. Timm's application on the basis that his release would pose undue risk to society and would not contribute to the protection of society by promoting his reintegration as a law-abiding citizen. Instead, the Board recommended that he build a relationship of trust with his CMT and his officer and engage in the pre-release stages of day parole.

B. *The Appeal Division*

[15] Before the Appeal Division, Mr. Timm argued that CSC opposed his release solely on the basis that he continues to partly deny his guilt.

[16] However, the Appeal Division recalled that this is an important factor that may be considered in the risk assessment but cannot be the sole ground for refusal (*Ouellette v Canada (Attorney General)*, 2013 FCA 54 at paras 75–76 [*Ouellette*]). The Appeal Division nonetheless noted that the Board expressly stated that Mr. Timm's continued denial of guilt is not a factor preventing his release. His lack of cooperation, his mistrust of his caseworkers and his emotions management were the primary factors that influenced the Board's decision.

[17] Mr. Timm also criticized the Board for preferring the CSC representatives' versions of the facts to his own. However, the Appeal Division found that the Board did consider Mr. Timm's version of the facts and his description of the ongoing conflict between him and his

officers: (a) Mr. Timm testified at length about the difficulties he encountered with his officers; (b) the Board even summarized Mr. Timm's testimony on the matter; and (c) the Board understood that Mr. Timm had experiences that contributed to his negative perception of the system.

[18] The Appeal Division consequently affirmed the Board's decision, finding that the Board had reasonably considered and weighed all of the relevant factors.

IV. Issues and standard of review

[19] This application for judicial review raises only one issue: *Did the Appeal Division err in affirming the Board's decision and in denying the applicant's application for day or full parole?*

[20] The standard of review applicable to this analysis is reasonableness since none of the exceptions identified by the Supreme Court in *Vavilov* is applicable (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17 [*Vavilov*]).

[21] The respondent submits that the Court should show considerable deference to the Board's decision given its unique expertise. The pre-*Vavilov* case law does indeed support this (see, for example, *Twins v Canada (Attorney General)*, 2016 FC 537 at para 25 [*Twins*]).

[22] Moreover, in *May v Canada (Attorney General)*, 2020 FC 292 at paragraph 23, Justice Brown confirmed that considerable deference is also aligned in principle with the

proposition in *Vavilov* that the Court must give attention to how administrative decision makers bring their expertise to bear (*Vavilov* at para 93).

[23] That said, the Supreme Court has also stated that the standard of reasonableness is a single standard that takes its colour from the context (*Vavilov* at paras 88–89).

V. Analysis

[24] Mr. Timm submits that the Board has an inquisitorial role and must question the offender and his officers when the information submitted to the Board appears to be incomplete. It must also validate the different versions of the facts (*Lepage c Canada (Procureur général)*, 2007 QCCA 567 at para 33). Finally, it must ensure that the information is reliable and persuasive (*Mooring* at p 96).

[25] Mr. Timm makes a similar argument to the one he made before the Appeal Division, namely that the Board erred in accepting CSC's version of the facts without investigating the extent to which its officers were responsible for his antagonistic relationship with them.

[26] Mr. Timm adds that the Board could have adjourned the hearing to request additional details on the ongoing conflicts between him and his CMT but did not do so. Without further submissions, the Board could not consider the evidence submitted to be reliable and persuasive.

[27] Finally, Mr. Timm reiterates that the Board could not let his continued denial of his crimes colour his entire case.

[28] Mr. Timm's arguments have failed to satisfy me that the decision of the Appeal Division, and by extension that of the Board, was unreasonable.

[29] The *Decision-Making Policy Manual for Board Members* [the Manual] states that release decisions require consideration of all relevant information available. In cases where relevant information is not available, the Manual states that the Board can postpone the review at the request of the offender, adjourn the review to obtain the information or proceed with the review in order to meet established timeframes.

[30] The record reveals that Mr. Timm did have an antagonistic relationship with his previous officer, who was replaced by the officer present at the Board hearing only a few months before the hearing. In her testimony before the Board, the officer indicated that this transfer was imposed on her and that she did not have time to review the file sufficiently to allow her to form her own opinion as to what recommendations to make to the Board. She therefore adopted the position advanced by her predecessor not to recommend day parole or full parole for Mr. Timm. She also made it clear that, as far as she was concerned, Mr. Timm's denial of guilt was not a determining factor and that, in light of all the positive factors in Mr. Timm's file, she was hopeful that she could work with him towards a reclassification and, eventually, parole. However, this required that Mr. Timm learn to accept authority and to trust his officers and CMT and participate in scheduled sessions. Finally, the officer noted that during her short time on the job, Mr. Timm declined several meetings and had a negative attitude towards her.

[31] The Board does not have an open-ended duty to actively seek potentially relevant information from the CSC; rather, the Board must simply take into consideration all information received from the CSC that is relevant to a case (*Miller v Canada (Attorney General)*, 2010 FC 317 at para 54; *DLE v Canada (Attorney General)*, 2019 FC 909 at paras 35–36).

[32] Thus, the Board was not required to investigate beyond the documented evidence submitted to it, namely Mr. Timm’s file and any additional documentary evidence that may have been submitted, nor did it have to inquire beyond the testimony given.

[33] A reading of the transcript of the hearing before the Board satisfies me that the Board considered Mr. Timm’s antagonistic relationship with his previous officers and his version of the facts and considered the psychological report confirming that he has considerable difficulty with authority. Mr. Timm himself admitted that he had considerable difficulty containing himself and that he was trying to develop mechanisms to cope with irritants. In my view, the Board fulfilled its duty to consider all of the evidence, to question the witnesses about their version of the events and to weigh it all.

[34] Addressing Mr. Timm, the Board stated the following:

[TRANSLATION]

. . . [Y]ou are described as being rigid in your thinking, defensive and distrustful with caseworkers and offering minimal cooperation with your case management team. During the hearing, the Board witnessed this rigidity, which is likely to hinder your learning and your clinical work. The Board understands that certain situations may have contributed to your negative view of the system and limited your involvement in your reintegration process.

. . .

During the hearing, the Board observed your outright refusal to work with your new [officer]. Despite her openness to work with you, which she clearly demonstrated at the hearing, despite your assistant's opinion that your new [officer] is open and available to support you and despite the Board's repeated requests that you open up to your [officer's] assistance, you have continued to speak negatively, reflecting your past failures, and you are reluctant to cooperate with her. You continue to believe that by denying your offences, the [Correctional Service] will refuse any form of release.

[35] The Board therefore recognizes that Mr. Timm had negative experiences with some of his previous officers; it did not ignore the fact that this may have contributed to his discouragement.

[36] However, it was not unreasonable for the Board to conclude that his current attitude towards his new officer, which the Board itself witnessed at the hearing, led to the finding that he still presented a risk to society and that he was not ready for day or full parole. It was reasonable to conclude that a relationship of trust between Mr. Timm and his caseworkers is essential and that he must learn to cooperate with authority figures before he can be released.

[37] Finally, I am of the view that the Board adequately addressed the issue of denial of guilt and considered the evidence before it in concluding that, for CSC, this was no longer a factor that would impede the progress of Mr. Timm's case.

VI. Conclusion

[38] For the reasons provided herein, the application for judicial review is dismissed. There will, however, be no award as to costs.

JUDGMENT in T-678-20

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. There is no order as to costs.

“Jocelyne Gagné”

Associate Chief Justice

Certified true translation
Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

Pierre Tabah
Andrée-Anne Dion-Côté

FOR THE APPLICANT

Sean Doyle

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Labelle, Côté, Tabah & Associés
Saint-Jérôme, Quebec

FOR THE APPLICANT

Attorney General of Canada
Montréal, Quebec

FOR THE RESPONDENT