Federal Court  Cour fédérale

Date: 20240312

Docket: T-1701-23

Citation: 2024 FC 412

Ottawa, Ontario, March 12, 2024

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

KENNETH ALLEN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Kenneth Allen, seeks judicial review of a decision of the Parole Board of Canada – Appeal Division [AD]. In a decision dated January 23, 2023, the Parole Board of Canada [Board] revoked the Applicant's statutory release [Board Decision]. The Applicant appealed to the AD, which affirmed the Board Decision on June 6, 2023 [AD Decision].

[2] For the reasons explained in more detail below, this application is dismissed, because the Applicant's arguments do not undermine the reasonableness of the Board Decision.

II. Background

[3] As a preliminary point, I note that the Applicant's counsel has advised the Court that, while the Applicant identifies as white (having formerly identified as Métis), the Applicant also identifies as two-spirited and uses they-them pronouns. I will therefore employ those pronouns in these Reasons.

A. *Criminal History*

[4] The Applicant is a federal inmate residing at Kent Institution, a maximum security penitentiary administered by the Correctional Service of Canada [CSC] under the *Corrections and Conditional Release Act*, SC 1992, c 20 [the *CCRA*] and the *Corrections and Conditional Release Regulations*, SOR/92-620.

[5] The Applicant's criminal history dates back to 2007, when they were 18 years old. The Applicant and several others disguised themselves and threatened a store clerk with a firearm and demanded cigarettes and money. The firearm was later located by police at the Applicant's residence. The Applicant, upon arrest, stated that they committed the robbery because they were bored and that they would not have hesitated to pull the trigger if the store clerk had not complied. The Applicant pleaded guilty and was sentenced to a sentence of five yeas for these offences.

[6] At the time of the hearing before the Board, the Applicant was serving an aggregate sentence of 19 years, 8 months, and 3 days, as a result of other offences committed during their incarceration or during statutory release on a previous occasion. After the imposition of the first sentence resulting from the 2007 offences, the Applicant was convicted of assault with a weapon in September 2009 and received an eight-month consecutive sentence, related to assault of another inmate while incarcerated.

[7] In September 2011, the Applicant was statutorily released. In December 2011, while on release, the Applicant committed several assaults, resulting in a number of convictions and an additional eight-year consecutive sentence. In August 2012, while in custody, the Applicant assaulted another inmate, acting out of a misapprehension that doing so would result in transfer to another institution. The Applicant was sentenced for this assault to two years and six months consecutive to their existing sentence.

[8] In August 2016, while in custody, the Applicant was engaging in self-harming behaviour by banging their head against their cell door. The Applicant then punched a correctional officer in the back of the head when he came to assist the Applicant. Later that same month, the Applicant threatened correctional officers and, along with another inmate, used broken broom handles to damage sprinkler heads and cause the range to flood. In doing so, the Applicant damaged drywall, lights, security cameras, telephones, and mattresses. The Applicant received a sentence of 12 months consecutive as a result.

[9] In June 2018, while in custody, the Applicant was involved in an assault on another inmate. They were convicted of aggravated assault and sentenced to 30 months consecutive to their sentence. This was the last offence that contributed to the Applicant's aggregate sentence.

B. *Statutory Release*

[10] The Applicant was granted statutory release for their current sentence on May 19, 2022. In addition to the mandatory release conditions under the CCRA, the Board imposed on the Applicant certain special release conditions tailored to their specific risk, including:

- abstain from alcohol;
- abstain from drugs;
- avoid negative associates;
- follow a treatment plan;
- take medications as prescribed; and
- residency at a specified place.

Leave privileges were not restricted.

[11] After a couple of weeks in the community, the Applicant's statutory release was suspended for various behavioural reasons including not taking medication as prescribed, making comments about going unlawfully at large and being shot by police, and barricading themselves in their room at the Community Residential Facility [CRF] where they were residing.

[12] The Board cancelled the Applicant's suspension on September 23, 2022, with one additional special condition that the Applicant participate in mental health counselling. The Applicant was re-released to the CRF upon the cancellation of the suspension.

C. *The Applicant's Current Suspension*

[13] From September 23 to October 12, 2022, the Applicant had various issues at the CRF. These issues included inconsistent use of their synthetic THC medication, threats of self-harm, refusing to eat, and being rude to staff on a number of occasions.

[14] On September 26, 2022, the Applicant met with their parole officer and was referred to the community mental health team, a social worker, and a community employment counsellor.

[15] On September 29, 2022, CRF staff were made aware that the Applicant had not taken some of their prescription medication the night before. However, it was determined that one of the medications was no longer prescribed to the Applicant, and the Applicant was therefore instructed to not take the rest of their medication until the following day. On October 4 and 5, 2022, the Applicant missed taking their medication due to the prescription expiring, but the Applicant resumed taking it the next evening after the CRF staff obtained it for the Applicant.

[16] On October 5, 2022, the Applicant had a series of behavioural issues at the CRF. The Applicant told members of their supervision team that they were conspiring against the Applicant by discussing their case with other staff. The Applicant told CRF staff that the Applicant should just "slash up". The Applicant was placed on close monitoring. The Applicant

went to the office asking for band-aids, showing some minor cuts on their fingertips. The Applicant indicated they had cuts on other parts of their body too but did not elaborate. The Applicant was offered a meal but refused it. A couple times, the Applicant became verbally aggressive towards CRF staff about the availability of their medication.

[17] On October 6, 2023, the Applicant asked staff at the CRF for a band-aid to cover a large area and expressed a desire to self-harm. The Applicant did not want to see mental health staff. The Applicant was advised that if their negative behaviour continued, they would no longer be supported to stay at the CRF. House confinement was lifted so that the Applicant could attend a meeting with their social worker for mental health support. The Applicant apologized to staff for their behaviour. The Applicant also requested that nightly checks be carried out by both male and female staff, stating that being checked on by a male staff member alone would be a trigger. When it was explained that this request could not be accommodated, the Applicant responded by being rude to a female staff member.

[18] On October 12, 2022, the Applicant placed a note on their door saying “leave me alone”. Later, the Applicant presented in the lobby of the CRF with a seizure-type medical issue, in the course of which the Applicant made physical contact with staff members. After staff were able to calm the Applicant down and instructed them not to leave the CRF, the Applicant disregarded this instruction and went to an employment orientation that had been scheduled for that morning. A warrant of suspension was issued, and the Applicant was arrested at the employment office.

[19] The Applicant was returned to custody after being arrested. On November 28, 2022, the Applicant was transferred to a structured intervention unit [SIU] as they had self-harmed and refused to interact with staff. The Applicant refused to show themselves and barricaded their door. The Applicant resumed speaking with staff, and attempts were made to escort them to an outside hospital. After three times refusing the staff's offer to obtain medical attention, the Applicant eventually agreed to get medical attention at an outside hospital.

[20] On November 29, 2022, the Applicant covered their cell window, barricaded their door, and refused to communicate with staff. The Applicant made threats to stab other inmates and told mental health staff to go away. The Applicant threw an unknown liquid on staff. The Applicant blocked the food slot and again told mental health staff to go away. The Applicant continued making threats of assault towards other inmates and staff throughout the day. The Applicant was again transferred to the SIU.

III. Decisions

A. *Board Decision*

[21] The Board conducted a hearing and, on January 23, 2023, revoked the Applicant's release, finding that they posed an undue risk to society pursuant to s 135(5) of the *CCRA*.

[22] The Board Decision engaged in a review of the Applicant's criminal history, as well as their social history, including not finishing high school and having a limited employment history.

The Board also considered the Applicant's suspension after their May 2022 release, describing their performance on release to date as problematic.

[23] In considering the circumstances related to the current suspension, the Board discussed the details of the events that took place between September 23, 2022 and October 12, 2022, when the Applicant was arrested for leaving the CRF site. The Board also considered the events of November 28 and November 29, 2022, when the Applicant was transferred to the SIU.

[24] The Board then turned to the Applicant's release plan, remarking that the Applicant did not have a detailed release plan and that the CSC had not found any CRF willing to accept the Applicant in the region. The Board Decision notes that, at the hearing, the Applicant's assistant provided information that she had canvassed a CRF in the region and that it accepted the Applicant for placement, but the Board found that support was not confirmed through the standard CSC community assessment process.

[25] The Board considered CSC's recommendation, which suggested the Applicant have their day parole revoked. This recommendation was based on the Applicant's lengthy history of violently offending both in the community and in the institution. The Board considered CSC's opinion that the Applicant's risk to the public was rated high and that the Applicant had not demonstrated stability or coping skills to manage their risk.

[26] The Board also considered two letters of support, one from what it described as a community group that offers transportation and referrals to resources, and one from a mental

health therapist. In addition, the Board referred to a 26-page letter from the Applicant's lawyer, which asserted unfairness and misunderstandings surrounding the Applicant's current suspension, including inconsistencies with an accusation that the Applicant assaulted staff, discordant information surrounding medication compliance, difficult communication with the CRF and the CSC, and an inability to access security camera footage. The letter advocated that the Applicant was manageable in the community and recommended cancellation of the suspension.

[27] In analysing the facts and material before it, the Board noted that the Applicant's behaviour was resistant and challenging from the first day of their release. The Board then provided details of that observation, referencing the events that occurred after the Applicant returned to the institution. The Board again noted that the Applicant did not have a detailed release plan and that the CSC had not found a CRF willing to accept the Applicant in the region.

[28] Ultimately, the Board found the Applicant's performance on statutory release leading up to their suspension, and since returning to the institution after October 12, 2022, to be extremely problematic. The Board found the Applicant did not make any progress toward correctional plan objectives and that, on release, the Applicant's risk escalated and became undue. The Board found that the circumstances surrounding the Applicant's suspension was within the Applicant's control and that cancellation of the suspension would not contribute to the protection of society by facilitating the Applicant's reintegration into society as a law-abiding citizen.

B. *AD Decision*

[29] The AD affirmed the Board Decision on June 7, 2023. In its reasons, the AD rejected the Applicant's grounds for appeal, namely that the Board Decision failed to observe principles of fundamental justice, that the Board Decision made an error of law, and that the Board based its decision on erroneous or incomplete information. The AD found that the Board Decision was reasonable and based on sufficient relevant, reliable, and persuasive information consistent with the criteria set out in law and Board policy.

[30] The AD explained its consideration of the Applicant's submissions in finding that the Board Decision was reasonable. First, in considering the Applicant's submission that the Board Decision did not document how it considered the information from the psychiatric nurse, institutional parole officer, legal advocate, or the Applicant's case management and mental health teams in the community, the AD relied on *Barr v Canada (Attorney General)*, 2018 FC 217, where the Court noted the principle that an administrative decision-maker is presumed to have weighed all the evidence presented to it unless the contrary is shown. The AD found the Board was not required to refer to each piece of evidence. The AD also found that the Board went over the key issues raised in the Applicant's written submissions and letters of support during the hearing itself. The AD also noted the Board's reference in the Board Decision to two letters of support and to the letter from the Applicant's lawyer.

[31] The AD then rejected the Applicant's argument that the Board did not consider the Applicant's release plan, finding that the unofficial release plan raised by the Applicant was

unconfirmed and that the Applicant had the opportunity to postpone their hearing to create a viable release plan for the Board's consideration, particularly if the Applicant believed it was in their best interest to confirm a different release plan for the Board. The AD found it was reasonable for the Board not to adjourn the hearing for this information based on the information available on the Applicant's file, which suggested that no CRFs were willing to accept the Applicant. Ultimately, the AD found there was sufficient information before the Board to suggest that the Applicant did not have a confirmed and viable release plan.

[32] In considering the Applicant's submission that the Board Decision did not explain how it considered how the Applicant's social factors contributed to their offending, the AD found that the Board did consider the Applicant's social history. The AD found that, while the Applicant argued that the Board erred by stating that the Applicant did not finish high school and had limited employment, this information was described in the Board Decision within the context of the Applicant's history.

[33] Next, the AD found it was reasonable that the Board did not view the Applicant's mental health as a mitigating factor, as the Board was concerned with the Applicant's aggressive behaviour linked to their instability, despite significant mental health supports offered by the community mental health team. The AD noted the importance of the Applicant's mental health being a contributing factor to the Applicant's violent offending.

[34] The AD disagreed with the Applicant's submission that the Applicant's statutory release was revoked due to a medical emergency and that the Board should have considered that the

Applicant's return to maximum security was solely based on the Applicant's behaviour during their medical emergency. The AD found that the Board considered a number of factors in finding the Applicant's behaviour on release to be resistant and challenging. The AD noted that the Applicant's offence cycle was linked to deficits in the areas of personal/emotional orientation, and that the Applicant's mental health exacerbated these deficits. The AD considered that the Applicant's risk was elevated if they stopped taking prescribed medications and that the Applicant had demonstrated non-compliance with prescription medication. The AD found the Board relied on all available information from a risk-relevant perspective, and that the Board was working within its discretion when it weighed the behaviours related to the Applicant's medical emergency, as well as their highly aggressive behaviour upon their return to the institution.

[35] The AD then considered that, although police took statements from those involved in the medical incident on October 12, 2022, there was no information on the Applicant's file to suggest that there were victim statements submitted for the Board's review. The AD also found that it was reasonable that the Board did not take a break to deliberate prior to rendering a decision, because the panel was a quorum of one, and that the Applicant's argument of bias was unfounded, especially when considering the test for reasonable apprehension of bias set out in *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 SCR 369.

[36] Finally, the AD considered the Applicant's submission that the Board had erred in referring to the 26-page submission as being from their lawyer, when the author was in fact a social worker. The AD noted that the submissions were received from Prisoners' Legal Services

and concluded that the Board reasonably considered the submission to have been provided by a legal representative.

[37] The AD found that the Board assessed and weighed all relevant information in the Applicant's file and at the hearing, and it ultimately gave more weight to the aggravating aspects of the file information. The AD was satisfied that the Board was specific in what information it relied upon to revoke the Applicant's release, and it found that the Board's reasons were transparent and provided a logical path to its conclusion.

IV. Issues and Standard of Review

[38] There is no disagreement between the parties on the approach the Court should take to reviewing the administrative decision-making at issue in this matter. As explained in *Coon v Canada (Attorney General)*, 2016 FC 340 at paragraph 18:

> 18. Judicial review of parole decisions is distinctive in that although the Court is theoretically dealing with an application for judicial review of the Appeal Division's decision, the Court actually has to examine the legality of the Board's decision when, as in this case, the Appeal Division confirms the Board's decision. According to the Federal Court of Appeal, this is the case in *Cartier v. Canada (Attorney General)*, 2002 FCA 384, [2003] 2 FC 317, because the intention that emerges from the Act is to deny parole once the Board's decision is reasonably supported in law and fact, since the Appeal Division's role is limited to intervening only in cases where the Board has committed an error of law or fact and that error is unreasonable (*Cartier*, at paragraphs 6 to 10).

[39] As such, the issue for the Court's adjudication in this application for judicial review is whether the Board Decision was reasonable. The parties agree, and I concur, that the standard of reasonableness is the appropriate standard of review (*Canada (Minister of Citizenship and*

Immigration) v Vavilov, 2019 SCC 65 [*Vavilov*]). The parties also agree that, in the event I were to allow this application for judicial review, the appropriate remedy is to quash the Board Decision and refer the matter back to the Board for redetermination, with an opportunity to present new evidence to the Board.

V. Analysis

[40] In challenging the reasonableness of the Board Decision, the Applicant's principal arguments are that the Board failed to consider relevant factors and that the Board Decision is not justified, intelligent or transparent in accordance with the requirements of *Vavilov.* The Applicant also submits that the Board misapprehended key evidence, an argument to which I will turn at the end of these Reasons.

[41] The Applicant's principal arguments relate to evidence and submissions focused mainly on the medical emergency that they experienced on October 12, 2022, which the Applicant submits was the precipitating event that led to the suspension and ultimately the revocation of their statutory release. The Applicant notes that the evidence before the Board related to this event included the Assessment for Decision [A4D] prepared by CSC and dated November 3, 2022, which included the following paragraphs related to this event:

> On 2022-10-12 at approximately 0900 hrs, Mr. ALLEN experienced what appeared to be a seizure in the lobby of the Belkin House building. Numerous committee members, including Salvation Army Staff went to assist him. Mr. ALLEN bit, punched, and kicked several people who were trying to help him. Thought [*sic*] the victims were physically assaulted by Mr. ALLEN, serious harm did not occur. Mr. ALLEN was restrained by these community members for a short period in an attempt to prevent him form [*sic*] hurting himself.

> Belkin CRF Staff arrived at the scene and were able to calm him down. He was directed not to leave the site. Police and paramedics were called to attend. This writer attended the area and observed Mr. ALLEN in a chair, calm and somewhat disoriented. Consultation was completed with A/POS K. Hook and a decision was made to issue a warrant for the Protection of Society - Increase Risk/Deteriorating behaviour, given that Mr. ALLEN had assaulted members of the community.
>
> Against the instruction from Belkin CRF staff and Management, Mr. ALLEN left the premises to attend an employment orientation at 111 West Hastings Street. The Case Management Team (CMT) and CRF Staff did not make attempts to stop him from leaving, as he had just assaulted community members without provocation, and it was deemed unsafe to approach him. This writer called the Embers Employment Counsellor to inform him that Mr. ALLEN could be on his way to their site and that a warrant had been issued. Mr. ALLEN was apprehended at the training site, 111 West Hastings Street by VPD that same morning. Police noted that he appeared sober at the time of his arrest.
>
> The Vancouver Police attended the Belkin Building and took statements from the victims and witnesses. Police consultation determined that on 2022-10-12, Mr. ALLEN was in the lobby of 555 Homer Street and had a seizure and fell to the ground. Four individuals attempted to help him. Mr. ALLEN blacked out for a few seconds and came back to and started kicking and punching everyone around him. Mr. ALLEN punched one female in the face and a male's left arm drawing blood. Both the victims were not interested in charges, as the [*sic*] believed that Mr. ALLEN did not intend to harm them, as the impression was that he was not aware of what he was doing. The two injured victims were taken to the hospital.

[42] The Applicant relies on these paragraphs, because they indicate that: (a) the warrant against them was issued as a result of the October 12, 2022 incident, describing that incident as an assault on members of the community; and (b) the members of the community reported to police that they were not interested in charges against the Applicant, as they believed that the Applicant did not intend to harm them and was not aware of what was happening.

[43] The Applicant also relies on their own written submissions before the Board and on their assistant's 26-page set of submissions, which speak to the October 12, 2022 incident. As summarized in the assistant's submissions, the Applicant relied on the A4D to argue before the Board that there were many inconsistencies surrounding the allegation that they had assaulted CRF staff members. The submissions emphasized the explanation in the A4D that the victims were not interested in pressing charges, as they believed that the Applicant did not intend to harm them and was unaware of what was happening. These submissions further emphasized that the Applicant stated they did not recall assaulting anyone. The Applicant's assistant therefore argued that the Applicant could not be said to have violently re-offended and that the medical incident should not be used to elevate their risk or to justify revocation of the statutory release.

[44] While the Applicant's arguments before the Court focus principally upon the evidence and submissions surrounding the October 12, 2022 incident, emphasizing that those submissions were central to the position advanced by the Applicant before the Board, the Applicant also identifies other elements of the evidence that they submit were not addressed. In particular, the Applicant references the evidence of their Registered Psychiatric Nurse at Kent Institution, the evidence of their Community Parole Officer, and the evidence of a registered nurse from the Applicant's Community Mental Health Team.

[45] Against the background of that evidence and those submissions, the Applicant refers the Court to statutory authority and policy, intended to support their position that the Board failed to consider relevant factors in arriving at the Board Decision.

[46] The Applicant references section 101 of the *CCRA*, which sets out the principles that guide the Board in achieving the purpose of conditional release, including paragraph (a) that refers to taking into consideration all relevant available information (including information obtained from victims) and paragraph (d) that refers to policies adopted by the Board.

[47] The Applicant also references subsection 132(1) of the *CCRA*, which sets out a non-exhaustive list of factors required to be considered by the Board in reviewing and determining the case of an offender pursuant to sections 129, 130 or 131 of the *CCRA*. However, at the hearing of this application, the Respondent argued that the Applicant's reliance on section 132 is misplaced, as sections 129, 130 and 131 relate to a proceeding of a different nature than the review that led to revocation of the Applicant's statutory release. The Respondent explains that the Board Decision was made under subsection 135(5) of the *CCRA*, which states that the test for termination or revocation of statutory release is whether the Board is satisfied that the offender will, by reoffending before the expiration of their sentence according to law, present an undue risk to society. In reply submissions, the Applicant did not express disagreement with the Respondent's argument and, based on my review of the legislation, I agree with the Respondent that section 135 is the applicable provision.

[48] The Applicant also relies on the Decision Making Policy Manual for Board Members, Third Edition, No. 1, dated October 24, 2022, Policy 7.1 of which addresses post-release decision-making by the Board [Policy]. Section 6 of the Policy states that, in determining whether an offender's risk has changed since release and, if applicable, re-incarceration, Board members will consider all relevant factors. This section then provides a non-exhaustive list of

such factors including, as emphasized by the Applicant, the offender's behaviour since release and professional opinions and/or information from others regarding such behaviour. The Applicant also references section 30 of the Policy, which states that the reasons for a decision on termination or revocation of statutory release will include, among other things, an overview of victim statements if applicable.

[49] Relying on paragraphs 101(a) and (d) of the *CCRA* and the mandatory nature of the language in the above referenced sections of the Policy, *i.e.*, that the Board "will" include these factors in its decision-making and "will" provide reasons that engage with victim statements, the Applicant submits that the Board Decision is unreasonable, because it failed to consider, and provide reasons that engaged with, the information provided by the community members who were involved in the October 12, 2022 incident, as captured in the A4D. More broadly, the Applicant submits that the Board failed to consider, and provide reasons that engaged with, their assistant's submissions that the October 12 incident involved a medical emergency and did not justify revocation of their statutory release.

[50] The Respondent notes that the Policy does not have the force of law and is therefore not binding on the Board, although it can nevertheless inform an assessment of reasonableness (see *Gagnon v Canada (Attorney General)*, 2017 FC 258 at para 19). The Applicant does not disagree with this characterization of the role of the Policy but submits that the provisions of the Policy are consistent with the principles of *Vavilov*, which explains that the submissions of the parties represent constraints on administrative decision-making (at para 106) and that reasonableness review is concerned with the decision-maker's justification for a decision (at para 15). In other

words, a decision will be unreasonable if it fails to demonstrate consideration of a party's principal position or fails to intelligibly explain why that position was rejected.

[51] I accept this analytical framework that the Applicant encourages the Court to apply in assessing the reasonableness of the Decision. I also accept the Applicant's argument that their submissions surrounding the October 12, 2022 incident were central to the Applicant's position before the Board. As such, if a review of the Decision, with the benefit of the respectful attention owed an administrative decision-maker in an effort to understand its reasoning process, failed to demonstrate consideration or analytical engagement with this position, that could well undermine the reasonableness of the Decision.

[52] However, the Applicant has not satisfied me that the Board Decision suffers from those deficiencies. The Board identified various factors relevant to its decision, including the Applicant's criminal and conditional release history and social history, the circumstances related to the current suspension, the outcome of the Applicant's post suspension interview, their behaviour since returning to custody, the absence of a detailed release plan, and the CSC recommendation. Then, immediately before its summary and analysis, the Board explained that it had also considered the 26-page submission, which spoke about unfairness and misunderstandings surrounding the suspension, including inconsistencies with the accusation that the Applicant had assaulted staff, discordant information surrounding medical compliance, difficult communication with the CRF and CSC, and inability to access security camera footage.

[53] These references all relate to the Applicant's assistant's submissions in connection with the October 12 incident. These are the submissions that include reliance on the information in the A4D that the victims of the incident were not interested in pressing charges, as they believed that the Applicant did not intend to harm them and was unaware of what they were doing, and the Applicant's own evidence that they did not recall assaulting anyone and would not do this if in a clear mind.

[54] As such, I cannot conclude that the Board overlooked the evidence (including the evidence of the community members who were involved in the October 12 incident) or the submissions advanced by the Applicant in support of their principal position, that the nature and circumstances of the October 12 incident did not warrant revocation of the statutory release.

[55] Nor do I have difficulty identifying from the Board Decision the Board's reasoning process in finding that, notwithstanding those submissions, the test for revocation of the Applicant's conditional release was met. I agree with the AD's interpretation of the Board Decision, in responding to appeal submissions similar to those advanced in this application for judicial review, that the Applicant's release was not revoked due to a medical emergency. As the Respondent submits, the October 12 incident was only one factor among many that contributed to the Board Decision.

[56] The Board stated, and then provided ample support for, its conclusion that the Applicant's behaviour was resistant and challenging from the first day that they returned to the CRF following the first suspension of their conditional release. The Board then referenced the

October 12 incident, including not only the events of the Applicant's seizure but their subsequent disregard of instructions not to leave the CRF. The Board then canvassed the Applicant's negative behaviour back at the institution and the lack of a detailed release plan.

[57] The Board concluded with its finding that the Applicant's performance on statutory release leading up to suspension, and since returning to the institution, were extremely problematic. The Applicant did not demonstrate any progress on correctional plan objectives. Rather, the risk escalated and became undue, such that cancellation of the current suspension would not contribute to the protection of society by facilitating their reintegration into society as a law-abiding citizen.

[58] The Applicant notes the Board's statement that, in the course of their seizure-type medical issue in the lobby of the CRF, the Applicant "… became combative, throwing punches and kicking." The Applicant argues that this language suggests a conclusion that they were intentionally attempting to assault staff, notwithstanding evidence to the contrary and without an explanation as to why the Board did not accept that evidence. In my view, this argument does not undermine the reasonableness of the Decision. If the Decision were to be understood as the Applicant submits, *i.e.,* as based on the Applicant having assaulted staff on October 12, 2022, this could create a requirement for further analysis and/or more precise language in the Decision surrounding that event. However, understood as based on the much broader sequence of events and factors canvassed by the Board, the Applicant's arguments do not undermine the reasonableness of the Board Decision.

[59] I will address briefly the Applicant's submission that other elements of the evidence, which are not expressly referenced in the Board Decision, were overlooked by the Board. In relation to the evidence of their Registered Psychiatric Nurse at Kent Institution, the evidence of their Community Parole Officer, and the evidence of a registered nurse from the Applicant's Community Mental Health Team, I agree with the Respondent's submission that the Board benefits from the presumption that it has weighed and considered all the information before it, absent evidence to the contrary (*Barr v Canada (Attorney General)*, 2018 FC 217 at para 45). Employing the articulation of this principle in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, (1998) 157 FTR 35 at paragraph 17, the evidence upon which the Applicant relies does not sufficiently contradict the Board Decision to give rise to an inference that the evidence was overlooked.

[60] I have also considered the Applicant's argument advanced in their written submissions, that the Board erred in its treatment of a particular piece of evidence, a letter from an organization called Unlocking the Gates [UTG], by incorrectly describing the organization as a community group that offers transportation and referrals to resources. The Applicant submits that this letter was actually evidence of a CRF that the Applicant had been accepted into. This is potentially a material point, as the absence of any CRF in the region willing to accept the Applicant was a factor, and I would think necessarily a significant one, that contributed to the Board Decision. However, I find no merit to the Applicant's submission that the Board mischaracterized the letter. I do not read this letter as suggesting that UTG was a CRF that had agreed to accept the Applicant. Moreover, I find nothing unreasonable in the Board's assessment

that such support had not been confirmed through the standard CSC community assessment process.

[61] Finally, I note the Applicant's written submissions identifying components of the Board Decision that the Applicant submits demonstrate errors of fact based on the evidence. At the hearing of this application, Applicant's counsel conceded that these alleged errors, even if demonstrated, could not on their own undermine the reasonableness of the Decision. I agree with that concession and therefore will not analyse those submissions, other than to comment that I find them to be of little merit.

VI. Conclusion and Costs

[62] That said, I would also comment that overall I found the Applicant's counsel's submissions to have been very capably advanced. However, notwithstanding that strong advocacy, the Applicant's arguments do not undermine the reasonableness of the Board Decision, and this application for judicial review must therefore be dismissed.

[63] Neither party seeks costs, and I agree that none should be awarded.

JUDGMENT IN T-1701-23

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed, without any award of costs.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Carly Peddle	FOR THE APPLICANT
Sarah Pearson Mary E. Murray	FOR THE RESPONDENT

SOLICITORS OF RECORD:

MacKay Boyar Law Corporation Vancouver, British Columbia	FOR THE APPLICANT
Department of Justice Vancouver, British Columbia	FOR THE RESPONDENT