SUPREME COURT OF QUEENSLAND

CITATION:	*Zane Tray Lincoln v Parole Board of Queensland* [2019] QSC 156
PARTIES:	**ZANE TRAY LINCOLN** (Applicant) **v** **PAROLE BOARD OF QUEENSLAND** (Respondent)
FILE NO/S:	No 497 of 2019
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	21 June 2019
DELIVERED AT:	Brisbane
HEARING DATE:	7 June 2019
JUDGE:	Brown J
ORDER:	**The order of the Court is that:** **1. The application for a statutory order for review be dismissed.** **2. The applicant pay the costs of the respondent of the application.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS OF REVIEW – RELEVANT CONSIDERATIONS – FAILURE TO CONSIDER – where the applicant was sentenced to imprisonment for manslaughter and possession of a dangerous drug in excess of two grams – where the body of the victim of the manslaughter has not been located – where the Parole Board refused the applicant parole pursuant to s 193A of the *Corrective Services Act 2006* (Qld) having determined he had not cooperated satisfactorily in the investigation of the offence to identify the victim's location – whether the Parole Board failed to take account relevant considerations in making the decision to refuse the applicant parole ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS OF REVIEW – IRRELEVANT CONSIDERATIONS – whether the Parole

Board took into account irrelevant considerations in making the decision to refuse the applicant parole

R v Lincoln; *R v Kister*; *R v Renwick* [2017] QCA 37, cited

Corrective Services Act 2006 (Qld) s 193A, s 490U
Judicial Review Act 1991 (Qld), s 20(2)(e), s 23(a), s 23(b)

COUNSEL:	DL Crews for the applicant JM Horton QC with S Richardson for the respondent
SOLICITORS:	Michael Mason Lawyers for the applicant Crown Law for the respondent

[1] Mr Lincoln was sentenced to nine years' imprisonment for manslaughter and two years' imprisonment, cumulative on the former sentence, for possessing a dangerous drug in excess of two grams, namely methylamphetamine, with a parole eligibility date of not before five years.[1] The body of the victim of the manslaughter, Mr Pullen, has not been found. Mr Lincoln was not present at the time of Mr Pullen's death nor involved in the disposal of the body. Mr Lincoln says he does not know where Mr Pullen's body is located. Mr Lincoln seeks to review a decision of the Parole Board refusing parole on the basis it was not satisfied he provided satisfactory cooperation in relation to the location of Mr Pullen's body.

Background

[2] Mr Lincoln was found guilty of manslaughter pursuant to s 8 of the *Criminal Code Act 1899* (Qld), on the basis that an unlawful killing was a probable consequence of the force used to enable the abduction of Mr Pullen. A number of people were convicted of manslaughter. Mr Renwick and Mr Kister were convicted of being accessories after the fact to manslaughter on the basis they transported the body of Mr Pullen in a car in order to dispose of it.[2]

[3] The statement of facts tendered at the arraignment of Mr Lincoln on the manslaughter indictment, which was agreed between the applicant and the prosecution, relevantly stated as follows:[3]

> "The [applicant] organised the forced abduction of [Mr Pullen]. He knew that it was highly likely that some violence would have to be used to achieve the abduction, but did not know that the intended violence would amount to grievous bodily harm or death. He is culpable as a section 8 party on the basis that an

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1 Sentencing remarks, McMeekin J, 31 May 2016; Affidavit of Mobbs, CFI 10, p 110. Application for leave to appeal sentence refused: [2017] QCA 37.

2 *R v Lincoln*; *R v Kister*; *R v Renwick* [2017] QCA 37, [30]-[41].

3 Affidavit of Mason, MAM-1, p 42.

> unlawful killing was a probable consequence of the force used to enable the abduction. The motivation was money to be paid by the Odin's Outlaw Motorcycle Gang." (emphasis added)

The sentencing Judge referred to the statement of facts and stated:[4]

> "…the deceased was a resident in the unit that McKay occupied. McKay was in a relationship with Voorwinden. McKay informed [the applicant] about two days prior to the eventual abduction that the deceased was staying at her unit and [the applicant] told her that he wanted to meet with them. He [the applicant] wanted to get some boys up from Brisbane before the meeting." (emphasis added)

[4] The agreed statement of facts also stated that on the morning of the abduction of Mr Pullen:[5]

> "At about 4am Oakley was awakened by Lincoln and another man. They travelled to the unit where the deceased was located. Others also arrived in separate vehicles. Kister and Renwick were in another vehicle…" (emphasis added)

[5] Mr Lincoln applied for parole on 12 January 2018. That was refused by the Board on 5 December 2018 pursuant to s 193A of the *Corrective Services Act 2006* (Qld) ("the CSA").

Section 193A

[6] After applying for parole, Mr Lincoln was notified that he would have to satisfy the Board of satisfactory cooperation under s 193A of the CSA.

[7] It is uncontroversial that Section 193A of the CSA applies to Mr Lincoln, even though it only came into force four months before he filed his application for parole.[6] Section 193A of the CSA relevantly provides as follows:

> "**193A Deciding particular applications where victim's body or remains have not been located**
>
> (1) This section applies to a prisoner's application for a parole order if the prisoner is serving a period of imprisonment for a homicide offence and—
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> (a) the body or remains of the victim of the offence have not been located; or
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> (b) because of an act or omission of the prisoner or another person, part of the body or remains of the victim has not been located.

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[4] Affidavit of Mason, MAM-1, p 717.

[5] Affidavit of Mason, MAM-1, p 717.

[6] Section 490U of the *Corrective Services (No Body, No Parole) Amendment Act 2017* (Qld) provides that s 193A "applies to a prisoner's application for a parole order whether the prisoner was convicted of, or sentenced for, the offence before or after the commencement" of the Amendment Act.

(2) The parole board must refuse to grant the application under *section 193* unless the board is satisfied the prisoner has cooperated satisfactorily in the investigation of the offence to identify the victim's location.

(3) For *subsection (2)*, the cooperation may have happened before or after the prisoner was sentenced to imprisonment for the offence.

(4) After receiving the application, the board must, by written notice, ask the commissioner for a report about the prisoner's cooperation as mentioned in *subsection (2)*.

(5) In its request, the parole board must state the day it proposes to hear the application (the "**proposed hearing day**").

(6) The commissioner must comply with the request by giving the parole board, at least 28 days before the proposed hearing day, a written report that states whether the prisoner has given any cooperation as mentioned in *subsection (2)* and, if so, an evaluation of—

(a) the nature, extent and timeliness of the prisoner's cooperation; and

(b) the truthfulness, completeness and reliability of any information or evidence provided by the prisoner in relation to the victim's location; and

(c) the significance and usefulness of the prisoner's cooperation.

(7) In deciding whether the parole board is satisfied about the prisoner's cooperation as mentioned in *subsection (2)*, the board—

(a) must have regard to—

(i) the report given by the commissioner under *subsection (6)*; and

(ii) any information the board has about the prisoner's capacity to give the cooperation; and

(iii) the transcript of any proceeding against the prisoner for the offence, including any relevant remarks made by the sentencing court; and

(b) may have regard to any other information the board considers relevant. …"

The Board's decision

[8] The Board made its preliminary decision on 16 November 2018 and refused parole pursuant to s 193A on 5 December 2018.

[9] At the first hearing that occurred between the applicant and the Board, four questions were asked by the Board of the applicant, namely:

(a) Whether the persons who promised the money had knowledge of the location of the body;

(b) Whether the applicant had further contact with others regarding the location of the body;

(c) The source of the money; and

(d) How the applicant knew that a possible disposal site for the body was Collinsville, some 240 kilometres west of Mackay.

[10] In the course of that hearing, prior to Mr Lincoln providing a statement, the President of the Board in response to the submission that Mr Lincoln did not know the location of the body, stated that:[7]

> "PRESIDENT BYRNE: Let me put it this way, then: it has never been determined who the occupants of one car of the three that proceeded to this unit were.
>
> MR CREWS: Okay.
>
> PRESIDENT BYRNE: Mr Lincoln is saying he's the one that organised them, they had personal loyalty to him and a promise of money. The Board doesn't know whether or not those persons have knowledge of the location of the body. Mr Lincoln, seemingly, from his own words, is in a position to assist and cooperate. …."

[11] On 22 June 2018, the applicant signed a statement answering the four questions relating to the threshold question of whether he had cooperated satisfactorily.[8] As was correctly conceded by Mr Lincoln's counsel, the statement provided by Mr Lincoln was less than fulsome. It was also inconsistent in some respects with the agreed statement of facts tendered at the sentencing hearing. The statement did not identify any other co-offenders in the cars other than Renwick, Oakley and Kister.

[12] Prior to the Board making its decision, it held a further hearing with the applicant. The second hearing was held as a result of the applicant not being provided with certain documents, particularly the first report of the Police Commissioner, which was requested pursuant to s 193A(4) of the CSA. An addendum report was also obtained. The Board provided an updated index to the Board file including the annexure, the addendum report which annexed the first report and attachments thereto prior to the second hearing. Further submissions were allowed to be made on behalf of Mr Lincoln.

[13] In the Board's decision, the Board found that:[9]

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7 Affidavit of Mason, MAM-1, p 218.

8 Affidavit of Mason, MAM-1, p 704 and 706.

9 Affidavit of Mobbs, p 58-60 [30]-[36].

"a. the Board, after considering all of the available information, concluded that it was not satisfied the Applicant had cooperated satisfactorily in the investigation of the offence to identify the victim's location;

b. the Applicant had not cooperated to the best of his ability;

c. there was no basis for finding that the facts contained in an agreed schedule from sentencing should not be relied upon;

d. the Board was fortified by statements made by the Applicant in his application for parole;

e. despite being 'the organiser of the group', he stated he was not aware of who else went to the unit on the night of the offence;

f. having regard to section 193A(7)(a)(ii) of the CSA, the Applicant had capacity to provide further information, regarding the persons who accompanied him on the night of the offence and this may assist the investigation."

Grounds of Judicial Review

[14] The application for a statutory order for review and written submissions of Mr Lincoln identified three grounds for judicial review:

(a) The making of the decision by the Board to refuse to issue a parole order on 18 December 2018 ("the Decision") was an improper exercise of the power conferred by the enactment under which it was purported to be made contrary to s 20(2)(e) of the *Judicial Review Act 1991* (Qld) ("the JRA") and a breach of natural justice contrary to s 20(2)(a) of the JRA; (**Natural Justice**)

(b) The making of the Decision was an improper exercise of the power conferred by the enactment under which it was purported to be made within the meaning of s 20(2)(e) of the JRA, by failing to take into account relevant considerations contrary to s 23(b) of the JRA; (**Relevant Considerations**) and

(c) The making of the Decision was an improper exercise of the power conferred by the enactment under which it was purported to be made contrary to s 20(2)(e) of the JRA, in that the Board exercised a discretionary power in accordance with a rule or policy without regard to the merits of the particular case by taking into account irrelevant considerations contrary to s 23(a) of the JRA. (**Irrelevant Considerations**)

[15] At the hearing, the applicant's counsel abandoned the ground of natural justice.[10] That ground will therefore not be considered further.

Irrelevant Considerations

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[10] The natural justice ground included a further ground of an improper exercise of power, which also was not pursued at the hearing.

[16] As to the ground that the decision maker had taken into account irrelevant considerations, counsel for the applicant conceded that, given the fact that other people were present at the time Mr Pullen was abducted and the fact that the applicant was the organiser (both of which were the subject of the statement of agreed facts for the purposes of sentencing), the Board had a reasonable basis for asking the four questions. Counsel for Mr Lincoln accepted that the task of establishing that the Board's questions referred to in paragraph 9 above constituted irrelevant considerations, within the meaning of the test outlined by Mason J in *Minister for Aboriginal Affairs v Peko-Wallsend Ltd,*[11] was insurmountable.[12] While counsel did not formally abandon the argument, he all but conceded that the argument must fail. That concession was clearly correct.

[17] Section 193A(7)(b) of the CSA empowers the Board to have regard to such information beyond the mandatory relevant considerations listed in s 193A(7)(a) as it considers relevant. As was accepted by the applicant's counsel, the Board had the power to ask the questions outlined determining whether Mr Lincoln had cooperated satisfactorily under s 193A(2) of the CSA. The relevance of the questions is quite apparent from the terms of s 193A(2) of the CSA, namely that the Board had to satisfy itself that the applicant had "cooperated satisfactorily in the investigation of the offence to identify the victim's location". The section is not limited to inquiries as to the location of the body per se, but extends to "the investigation of the offence" to identify the victim's location. Matters pertaining to the involvement of other parties to the homicide offence and the knowledge underlying the applicant's belief as to the location of the body are relevant to the investigation of the offence to identify the victim's location. They fall within the terms of the cooperation which the Board must investigate under s 193A(2) and are not excluded as matters that may be taken into account given the subject matter, scope and purpose of s 193A of the CSA.[13] The fact that the questions may not have been asked of Mr Lincoln's co-accused has no bearing on whether the questions asked of Mr Lincoln are irrelevant. Nor does the fact that the response to the questions may only possibly result in identifying other people who may then provide information, which may then lead to identification of the location of the deceased, lead to a conclusion that the questions themselves are irrelevant. There is no basis for concluding that the questions asked and the extent of any response were irrelevant considerations. This ground is not made out.

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[11] (1986) 162 CLR 24 at 40.

[12] T1-6/10-44.

[13] The Explanatory Notes to the *Corrective Services (No Body, No Parole) Amendment Bill 2017* (Qld), pursuant to which s 193A was inserted and which acted upon the Queensland Parole System Review Report, state at p 1: "The review report expressly acknowledged that in the case of homicide offences, withholding the location of a victim's body or remains prolongs the suffering of the families and all efforts should be made to attempt to minimise this sorrow. The review report states that, 'a punishment is lacking in retribution, and the community would be right to feel indignation, if a convicted killer could expect to be released without telling what he did with the body of the victim. The killer's satisfaction at being released on parole is grotesquely inconsistent with the killer's knowing perpetuation of the grief and desolation of the victim's loved ones'."

[18] To the extent that it is submitted that the four questions are inconsistent with the basis on which Mr Lincoln was sentenced, that is not borne out by the sentencing remarks which I have highlighted above.

Relevant considerations

[19] The applicant did pursue the ground based on a failure to take into account relevant considerations. According to the applicant's counsel, his strongest argument is that Renwick disposed of the body and his client had no capacity to cooperate. Mr Lincoln contends that the relevant consideration which the Board failed to take into account in making the decision was Mr Lincoln's capacity to provide the details of the location of the deceased. In particular, this was on the basis that:[14]

> "a. Section 193A of the CSA imports a threshold issue for the respondent to determine before considering whether a person should be released to parole.
>
> b. Pursuant to s 193A(7) of the CSA the respondent was required to consider "any information the board has about the prison's capacity to give the co-operation."
>
> c. It is uncontentious that Lincoln did not kill the victim or dispose of the body of the victim.
>
> d. The respondent formed a view that "Lincoln, as the organiser of the group, has capacity to provide further information regarding the persons who accompanied him on the night of the offence. This information may assist in the investigation of the offence to identify the victim's location.
>
> e. On the facts as found by the respondent, Lincoln denies being an associate of the Odins Outlaw Motorcycle Club or having knowledge or contact with any other person other than those who were charged by the police.
>
> f. The respondent erred in law by misconstruing the meaning of "principal organiser" other than he arranged for others to attend the offence location with him.
>
> g. The respondent erred in concluding that Lincoln had or was able to obtain capacity to assist in locating the victim's body. There is no material available to make such a conclusion.
>
> h. In the circumstances, the respondent having failed to take into account the relevant consideration, that Lincoln has no knowledge of the location of the victim and no capacity to find the location of the victim was an improper exercise of the respondent's power."

[20] Paragraphs (e) and (f) are inconsistent with the agreed statement of facts. The fact that Mr Lincoln now denies those matters does not make them a fact.

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[14] Applicant's Submissions, [59].

[21] At paragraph 34 of its decision,[15] the Board stated:

> "The Board is of the view that the applicant, as the organiser of the group, has capacity to provide further information regarding the persons who accompanied him on the night of the offence. This information may assist in the investigation of the offence to identify the victim's location."

[22] According to the applicant, the decision of the Board failed to consider the statement of Lincoln, where he stated he "did not have any contact with Renwick or Kister after the meeting with Renwick on 16 April 2012". This was expanded upon in oral submissions, in which it was contended that Mr Lincoln does not know where the body is located and that Renwick is the person who does. In respect of the assertion that Mr Renwick knows of the location of the body, the applicant relies upon public documents where Mr Renwick has purported to identify the location of where Mr Pullen's body was taken and, subsequently, to identify where his body was taken and cremated.

[23] Even if Mr Renwick might be best placed to provide information as to the location of Mr Pullen's body, that does not mean that Mr Lincoln does not have capacity to give the cooperation under s 193A(7)(a)(ii).

[24] In any event, the Board has not accepted Mr Renwick's evidence nor found that he was the only person who knows of the location of Mr Pullen's body. The respondent directed the Court to the Board's decision in relation to Mr Renwick, where the Board was not satisfied of Mr Renwick's truthfulness, completeness and reliability.[16]

[25] The Board did take into account Mr Lincoln's submissions as to his capacity to cooperate and specifically referred to the submission made on behalf of the applicant by his counsel that Mr Lincoln lacked capacity to cooperate, namely:[17]

> "He quite simply has deposed today that he doesn't know and, on that basis, the Parole Board will be satisfied that he has cooperated to the best of his ability and that would be cooperated satisfactorily in answering the threshold question."

[26] The Board, however, did not accept that submission, particularly as Mr Lincoln organised the abduction of Mr Pullen for reward and organised other people to assist in the abduction,[18] thus resulting in the Board reaching a different conclusion from that submitted by Mr Lincoln. The Board did state the basis upon which they concluded he had the capacity to cooperate,[19] which arose from matters which had been the subject of the agreed statement of facts at his sentence. There was no failure by the Board to take into account a relevant consideration.

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[15] Affidavit of Mobbs, p 60.

[16] See e.g. Affidavit of Mason sworn 21 February 2019, MAM-A, p 19.

[17] Affidavit of Mobbs, CFI 10, p 53.

[18] Board's reasons, [34].

[19] Cf Applicant's Submissions, [61].

[27] In reality, the real complaint of Mr Lincoln is not that the Board failed to take into account a relevant consideration, but rather the fact that the Board did not accept his submission and find, as he contended, that Mr Lincoln did not have capacity to locate the victim's body.[20] That does not give rise to any ground for judicial review.

[28] The complaint by Mr Lincoln is misconceived. Accordingly, the ground is not made out.

Conclusion

[29] The applicant has failed to establish that the Board failed to take into account a relevant consideration or that it took into account irrelevant considerations. The applicant abandoned the ground of natural justice.[21] The application should be dismissed. Costs should be paid by the applicant, given the application has been unsuccessful.

Order

[30] I order that:

(1) The application for a statutory order for review be dismissed.

(2) The applicant pay the costs of the respondent of the application.

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[20] Affidavit of Mobbs, p 60, [31].

[21] Which included a duty to inquire.