

SUPREME COURT OF QUEENSLAND

CITATION: *Grigg v Queensland Parole Board* [2010] QSC 115

PARTIES: **Stuart John GRIGG**
(Applicant)
-v-
The Queensland Parole Board
(Respondent)

FILE NO/S: B792 of 2009

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court

DELIVERED ON: 19 April 2010

DELIVERED AT: Townsville

HEARING DATE: 30 March 2010

JUDGES: Cullinane J

ORDER: **The Application is to be dismissed**

CATCHWORDS: **ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS OF REVIEW – where the Applicant seeks review of the Respondent’s decision to reject the Applicant’s application for Parole – where the Applicant was deemed to be an unacceptable risk – whether the Respondent failed to take relevant considerations into account**

Judicial Review Act 1991 (Qld)

COUNSEL: The Applicant appeared on his own behalf
D.Keane for the Respondent

SOLICITORS: The Applicant appeared on his own behalf
Crown Law for the Respondent

- [1] This is an application pursuant to the *Judicial Review Act 1991* as amended for a review of the decision of the respondent made on 10 July 2009 rejecting the applicant's application for parole. The applicant was unrepresented on the hearing of the application .
- [2] The applicant is currently serving a term of imprisonment of some nine years for armed robbery. The applicant was sentenced on 24 September 2009 in the District Court and became eligible for parole on 23 March 2009. His full time release date is September 2013.
- [3] The applicant's application for parole bears the date 24 November 2008 and was received by the respondent on 28 November 2008.
- [4] Subsequently by letter of 24 March 2009, the respondent wrote to the applicant and in the letter informed the applicant that whilst there were a number of positive factors supportive of his application, there were factors which suggested to the respondent that the applicant would pose an unacceptable risk to the community. The purpose of the letter was to provide him with an opportunity to comment on those matters. The letter was in the following terms:

"Dear Mr Grigg

Your application for a parole order was considered by the Queensland Parole Board ("the Board") at a meeting held on 27 February 2009. The Board acknowledged that the material considered by it contain a number of positive factors supportive of your application. However there are also some factors that work against your application being successful. The Board has not made a final decision on your application. The purpose of this letter is to draw to your attention factors that suggest to the Board you would pose an unacceptable risk to the community and provide you with an opportunity to comment on them or present to the Board further relevant information.

Enclosed with this letter are copies of the documents that the Board had and considered. They consist of documents numbered 1 to 138 on the file maintained by the Secretariat. Additionally documents were tabled at the meeting these included a letter from Ozcare (copy enclosed) and material relating to an incident of 11 February 2009. These documents are not included as the matter is currently under investigation and includes sensitive information submitted by the Agency's Intelligence Section. A claim of public interest immunity against its discovery is maintained. Certain other limited information has been deleted from the:

- *Home assessment report dated 19 November 2008 (Page 122-123), as information related to the personal affairs of the sponsor; and*
- *The index tool for quick location of documents on file however, it is not utilised for its content in the Board's decision making process.*

The Board was concerned that the following information and factors indicate that if released you would pose an unacceptable risk to the community:-

When considering your application, The Board took into account the Ministerial Guidelines, and in particular that community safety must be the highest priority. However, the Board ensured that your application was considered on its own merits.

You have a significant criminal history extending from 1990 through to your current offences. Your criminal history is detailed on pages 1-6 of the documents considered by the Board and includes a range of property related offences including, but not limited to, breaches of suspended sentence, escape from lawful custody and an offence of unlawfully at large. The Board noted that there were no violent offences recorded in your criminal history prior to your current offences.

Your criminal history also identifies that you have previously breached your community based orders, including breaches of a Suspended Sentence; Probation Orders, and Fine Option Orders. This is of grave concern to the Board as having been given a second you continued to commit further offences. This does not give the Board confidence when considering further community based orders that you would be able to effectively self manage or put into practice appropriate strategies to avoid re-offending.

The Parole Board Assessment Report confirms that you have recorded a number of breaches whilst in custody 2008. These include breaches for Using abusive insulting obscene or threatening language, Contravene lawful direction and Act contrary to security and good order of facility. More recently you were reported as being negatively involved in an incident on 11 February 2009 which is currently under investigation. The Board noted that your security classification was increased to high on 23 December 2008 following your breach of prison discipline of 16 September 2008 which resulted in your transfer from the Lotus Glenn Correctional Centre to the Woodford Correctional Centre. Your security classification remains high to date.

You reported during your preliminary parole assessment interview a history of substance abuse spanning some 15 years progressing from pot, to amphetamines, MDA and heroin by the age of 17 years. When sentencing you Judge Samios remarked 'Now, I see that you have struggled over time with an addiction to heroin and that has been behind your offending'

An Offender Risk Needs Inventory - Revised identified your risk of re-offending as medium. The Board notes your completion of recommended programs and your willingness to complete programs including that you are waitlisted to complete the Transitions program. The Board is of the view that your efforts to rehabilitate and return successfully to the community would be enhanced by completing the Transitions program. By remaining breach and incident free in a less secure environment you may demonstrate to the Board that you are capable of complying with the conditions of an order while in the community as required while on parole supervision.

You have the opportunity to make a written submission to the Board as to why your application for a parole order should be granted. Any submission must

be forwarded in sufficient time to reach the Board within 14 days of your receipt of this letter. If you need an extension of this time limit you will need to write to the Board within the time limit and explain the reasons why you need further time and indicating how long you need. You are not under any obligation to respond however if no response is received from you the Board will proceed to determine your application on the information presently available to it ."

- [5] The applicant responded by letter dated 29 April 2009. The Board met on 10 July 2009 and decided to refuse the applicant's application for parole. This letter which is the subject of this application is in the following terms:

"Dear Mr Grigg,

The Queensland Parole Board ("the Board") considered your most recent application for a parole order at its meeting on 27 February 2009.

The Board wrote to you on 24 March 2009 outlining the relevant features of your case to that time and inviting you to forward any new information or make such submissions you may wish concerning the matters outlined in that letter. You were given 14 days from reception of the letter to make your submissions.

You provided a number of submissions and support letters in regards to the issues raised in this letter. At its meeting of 05 June 2009 the Board deferred further consideration of your matter to obtain a home assessment for the Ozcare Residential Rehabilitation facility in Cairns.

At its meeting on 10 July 2009, the Board again considered your submission and the Home Assessment Report. The Board noted the contents of your submission dated 29 May 2009 and further noted that you have approval for Ozcare in Brisbane, but have been declined residential rehabilitation with Ozcare in Cairns.

The Board were of the opinion that they would still like you to work through the system and move from secure custody, the Board would also like to see you complete all recommended programs and show an extended period of breach free behaviour.

For the reasons set out in this letter and its previous letter to you the Board decided that you would be an unacceptable risk to the community on a parole order at this time and your application has been declined.

The Board consents to you lodging a new application with the Board at any time from 10 January 2010. However the Board is aware that the collation of material for a new application can take approximately two months so it recommends that you indicate to your Centre that you intend to lodge an application any time from 10 November 2009."

- [6] The applicant had forwarded a letter of 6 July 2004 which was apparently not received by the respondent prior to its determination.

- [7] In the letter he amongst other things, complained about the predicament that he was in so far as undergoing a transitions programme is concerned. The respondent by letter dated 27 July 2009 informed the applicant that it had considered the matters raised in his letter of 6 July 2009 and had decided not to vary its decision not to grant parole.
- [8] Subsequently the applicant sought a statement of reasons and these were contained in a document dated 19 November 2009.
- [9] After setting out the material considered by the Board and the facts upon which the Board proceeded, the respondent stated the reasons for its decision:

- "1. The Board considered your prior criminal history as well as your prior response to community supervision and noted that you had received the benefit of a community-based order but continued to offend. The Board were concerned that previous court sanctions had not acted as a deterrent to your continued offending and that it did not give the Board confidence, when considering further community based orders, that you would be able to effectively self manage or put into practice appropriate strategies to avoid re-offending.*
- 2. The Board took into account the nature of your current offences, and the comments of the sentencing Judge. The Board noted that your offences of armed robbery were an escalation in the nature of your offending. The Board further noted that there were no violent offences recorded in your criminal history prior to your current offences.*
- 3. Your incident and breach history was of particular concern to the Board. The Board was concerned that you appear to struggle to maintain acceptable conduct in a highly structured environment. Once back in the community, a less supervised environment, the Board is of the view that you might struggle to abide by the conditions of a parole order. The Board was of the view that it still has not had sufficient opportunity to assess your progress in institutional behaviour over a reasonable period of time, as you had not yet had the opportunity to demonstrate your self management skills in a less structured environment, such as progressing to low security classification and a low security facility, remaining breach and incident free over an extended period and maintaining positive conduct. The Board is of the view that such progression is considered an important step in the process of re-integration to the community and ensuring community safety. The Board believes that this may demonstrate that you are capable of complying with the conditions of an order while in the community as required while on parole supervision.*
- 4. The Board noted your successful completion of recommended programs and your willingness to complete programs including that you were waitlisted to complete the Transitions program. The*

Board is of the view that your efforts to rehabilitate and return successfully to the community would be enhanced by completing the Transitions program.

5. *The Board noted your release plans including that while you had been declined residential rehabilitation with Ozcare in Cairns, you had been approved to reside at the Ozcare Supported parole Accommodation in Brisbane. Your plan identified a range of strategies that you intend to implement upon release that will cater for your personal needs such as suitable accommodation and securing employment. The Board considered your plan to be realistic and appropriate.*
6. *The Board took into account the relapse prevention plan that you submitted. The Board considered that the plan adequately identified strategies that you plan to implement to avoid or manage situations or circumstances that have in the past led to criminal behaviours.*
7. *The Board gave detailed consideration to your profile including the circumstances of your offending behaviour both past and present and concluded that were you to re-offend the risk that a member of the community would suffer physical or psychological harm was high.*

Taking into account all of the relevant factors of your case, both positive and negative, the Board formed the view that you posed an unacceptable risk to the community at that time and decided to decline your application for a parole order."

- [10] The applicant has a substantial criminal history commencing in the Brisbane Children's Court in November 1990. The criminal history includes many offences of dishonesty and on 24 September 2004 he was sentenced in respect of two counts of armed robbery, one of burglary, a number involving breaking and entering and possession of implements of housebreaking and wilful damage.
- [11] He has breached community based orders and committed offences during the currency of suspended sentences.
- [12] The learned sentencing Judge at the time he imposed sentence on 24 September 2004, referred to the fact that his addiction to heroin was behind his offending.
- [13] The applicant has been breached a number of times since being in custody.
- [14] In the outline of argument the applicant raised a number of matters. In some instances he did little more than refer to the provisions of the *Judicial Review Act* and asserted that there were breaches of such provisions. This includes for example, a reference to an error of law and an improper exercise of the power conferred by the enactment.
- [15] Primarily the applicant in his outline of argument alleges that the respondent failed to give proper consideration to the particular circumstances of the applicant's case

and applied a policy. It is also said that no regard or no sufficient regard was had to the Parole Board Assessment Report which recommended that the application for parole be approved.

- [16] It was contended also that the decision was so unreasonable that no reasonable person could so exercise the power. Again I understand that to be an argument based upon the failure to adopt the Parole Board Assessment Report and the failure to consider the merits of the applicant's case.
- [17] Before me, he complained in particular about the Respondent's finding that he was an unacceptable risk to the community. He linked this with the Respondent's finding of concern that the applicant had not had the opportunity to demonstrate his self management skills in a less structured environment such as progression to a low security classification in a low security facility, something which the Board regarded as an important step in the process of reintegration into the community.
- [18] The applicant complained that he has not been able to progress in this way because of the security classification which he has been given and because of his personal security concerns which have led him not to seek to be placed in the ordinary prison community. He says that he has sought to have his classification altered but has not been successful and as such is faced with an insurmountable obstacle in the light of the respondent's attitude to qualify for parole.
- [19] Putting these matters in the context of the Act, I take what the respondent is saying to involve an allegation that the respondent has failed to take into account the reasons for his inability to progress in the way the Respondent sees as being important to a consideration of the application and that in coming to the conclusion that it has the Board has offended the Wednesbury principle.
- [20] Dealing with these matters seriatim, there is no material before the court which would support the conclusion that the respondent has failed to take into account the applicant's particular circumstances and has applied a policy. The respondent has taken into account the policy, as it is obliged to do, but there is nothing to suggest that it has simply applied it without any regard to the applicant's particular circumstances. The material set out in these reasons makes it clear there is no substance to this complaint.
- [21] So far as the Assessment Report is concerned, the respondent expressly refers to this in the reasons for its decision. Again there is nothing to suggest that it has not taken it into account. The applicant's real complaint in this regard is that the recommendation it contains has not been determinative of his application for parole. It is, of course, axiomatic that the decision to be made is that of the Respondent..
- [22] Whilst the frustration of the applicant is understandable so far as concerns the question of his incapacity to progress whilst in custody so as to demonstrate his self management skills whilst on parole under supervision, the fact that this has not occurred is undeniably a matter of relevance to the respondent in its considerations. However it be that the position has been reached that the applicant has not been able to satisfy this area of concern it remains a matter which the respondent is entitled to and indeed obliged to take into account in my view.

- [23] The Applicant's incident and breach history were given relevant consideration and are, plainly enough, relevant to the lack of a history of progress in institutional behaviour over a reasonable period.
- [24] I should add that the applicant has in the last week or so entered the ordinary prison community and is now living in a residential environment. No doubt on any future application how he performs in this environment will be of considerable importance.
- [25] When one considers the applicant's criminal history and his record whilst in custody taken with all of the other factors, those which militate in favour of and those which militate against the granting of parole, it is not in my view possible to conclude that the respondent has failed to take into account any consideration it ought to have or had taken into account any improper or irrelevant consideration or that its conclusion was unreasonable in the Wednesbury sense. The conclusion that the application should be refused because the Applicant is an unacceptable risk to the community was open to the Respondent.
- [26] The result will be that the application is dismissed.
- [27] I give the parties liberty to apply within 14 days in writing on the matter of costs.