**[2013] QSC 129**

**SUPREME COURT OF QUEENSLAND**

**CHIEF JUSTICE**

**SC No 1115 of 2013**

**WALL, Benjamin John** **Applicant**

**v**

**CENTRAL AND NORTHERN QUEENSLAND REGIONAL PAROLE BOARD** **Respondent**

**BRISBANE**

**DATE 17/05/2013**

**JUDGMENT**

[1] **CHIEF JUSTICE:** The applicant is a prisoner serving a five year term of imprisonment. He pleaded guilty to two counts of assault occasioning bodily harm and one of indecent assault. The term of imprisonment imposed bespeaks the seriousness of the charges. On 4 March 2011, the sentencing Judge set a parole eligibility date of 29 September 2012.

[2] On or about 24 April 2012 the applicant applied for parole. On about 8 November 2012 the respondent Board informed the applicant that it refused his application.

[3] By application filed 7 February 2013, the applicant sought judicial review of that decision on the grounds that the Board had failed to consider his application on its merits, had used "inaccurate and outdated information", and had denied him natural justice and procedural fairness.

[4] In further particulars, the applicant focused on a contention that the Board based its decision on "rule or policy", stemming from a view that because the applicant

maintained his innocence, he could not complete the "New Directions: Medium Intensity Sexual Offending Program".

[5] The applicant did complete the precedent "Getting Starting Preparatory Program". That led to a recommendation that the applicant participate in the subsequent Medium Intensity Program.

[6] On 8 October 2012 the Board advised the applicant that it would have greater confidence in his ability to manage his behaviour if he completed the Medium Intensity Program.

[7] On 17 October in a submission to the Board, the applicant rejected a contention that he was not willing to complete the Medium Intensity Program, but said that his preference was to undergo counselling in the community while on parole.

[8] The Board refused parole on about 8 November 2012. The Board subsequently provided reasons, in which it said that the applicant had declined placement in the Medium Intensity Program, and that he would not be an appropriate candidate for the community counselling option.

[9] In his outline of submissions before me, the applicant alleged that he had in fact commenced the Medium Intensity Program, but had been excluded because he continued to maintain his innocence.

[10] This question was live before the Board. As mentioned, in the unsworn statement dated 17 October 2012, the applicant told the Board that it was not true to say that he was not willing to complete the Medium Intensity Program, and that his own view was that external counselling would be more beneficial.

[11] The Board has rejected (or doubted) the applicant's claim to have been willing to participate in the Medium Intensity Program, and implicitly, that the applicant had at least commenced that course. A parole board is not obliged to proceed in the evidentiary way a court proceeds.

[12] While there was notation in the preparatory program report recording a shift in the applicant's approach towards accepting his guilt – which may support a view that he may have been prepared to start, and may have started, the Medium Intensity

Program, the thrust in the other direction rested in the applicant's view that external counselling would be preferable.

[13] The Board may well have taken the view that it should not accept the applicant's claim to have been willing to participate in the Medium Intensity Program, because of his claimed belief, apparently firm, in the greater desirability of external counselling.

[14] This court does not "re-try" such factual questions in cases like this. It is enough that there was some basis upon which the Board could, even without having tested the issue by assessing competing bodies of evidence, choose without patent unreasonableness to reject an applicant's claim.

[15] Also, this court may not review the question whether the Board's decision was the right one. It is enough that the Board's decision was reasonably open on the material before it, acknowledging its non-curial approach.

[16] The jurisdiction I presently exercise is a strictly constrained jurisdiction. It is no part of the court's role to second-guess decisions of the Board made regularly under its charter.

[17] Proceeding however, for the moment, on the basis the Board erred in finding the applicant did not even commence the medium intensity course, the issue for now is whether that infected, in a jurisdictional sense, the Board's ultimate decision to refuse parole.

[18] It did not, because the Board's overall view, reasonably open, was that having regard, not to inflexible policy, but to the applicant's particular circumstances, community protection, in particular, would be advanced by his first completing that course, rather than by releasing him subject to counselling outside the correctional environment.

[19] The erroneous factual decision would in those circumstances have been made along the pathway to, but not of itself determinative of, the ultimate decision.

[20] The applicant referred to *Gough v Southern Queensland Regional Parole Board* (2008) QSC 222 and *Queensland Parole Board v Moore* (2012) 2 Qd R 294. They were factually different cases, where the different factual scenarios disclosed

jurisdictional error. In *Gough*, the Board had followed inflexible policy without considering the prisoner's circumstances. Likewise in *Moore*, the Board failed to deal with factual contentions central to the prisoner's position.

[21] In the present case, the Board received relevant information, flagged its concerns in a preliminary way to the applicant, received further responses, then decided the matter on a basis reasonably open.

[22] I revert to the specific challenges.

[23] As to the alleged denial of natural justice, the applicant was given a full opportunity to respond to the Board's tentative concerns, including, directly, the question of fact whether he began the Medium Intensity Program.

[24] As to the alleged factual error, the Board at least doubted the applicant's claim to have commenced the Medium Intensity Program in circumstances where he was disavowing its potential benefit – a course open to it.

[25] As to the alleged reliance on an inflexible rule or policy, it is clear that the Board did not proceed in that hampered way. In paras 6 and 7 of its reasons, the Board makes it clear that it had regard to the applicant's particular circumstances.

[26] The application for judicial review of the decision of the Board should be refused.

[27] The respondent seeks an order for costs, notwithstanding he is in custody. They must however follow the event. There will also therefore be an order that the applicant pay the respondent's costs of and incidental to the application, to be assessed on the standard basis.