[2009] QSC 301

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

P LYONS J

No 7108 of 2009

FAHRI BASACAR	Applicant
and	
THE PAROLE BOARD	Respondent

BRISBANE

..DATE 16/09/2009

ORDER

HIS HONOUR: Mr Basacar has been sentenced to a term of imprisonment of eight years, the sentence having been imposed on the 1st of March 2006. He has previously applied for and been refused exceptional circumstances parole.

On 4 March 2009 he made a further application for exceptional circumstances parole. On 1 July 2009, by virtue of section 193 subsection (5) of the Corrective Services Act 2006 the applicant's application was deemed to be refused.

Mr Basacar then filed an application for review of that refusal on the 3rd of July 2009 in respect of which he was successful as a result of an order made by P D McMurdo J on 13 August 2009.

On 28 August 2009 the board considered the application and declined it. On the 1st of September 2009 it provided reasons.

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HIS HONOUR: The application filed on the 3rd of July 2009 has been treated by both parties as extending to the decision made on 28 August 2009.

In the reasons, the following appears:

"In your current application, you have not presented to the board with any plan that you developed that is conducive to preventing the possibility of your relapse into offending behaviour. In your parole panel assessment interview it is recorded that you do not believe you needed such a plan as you are maintaining your innocence."

Mr Basacar points out that his application did in fact include a relapse prevention plan which commences at page 10 of the application and continues for a number of pages.

Reading the paragraph of the reasons which has been set out above, it seems to me that that does not represent a consideration of the document provided by Mr Basacar and a determination that it is not sufficient to provide material assistance to Mr Basacar in his attempts to avoid the commission of offences in the future. Rather it seems to me to represent a failure to recognise that any plan had been provided.

The provision of such a plan was obviously regarded by the board as a material matter. I am therefore of the view that it has failed to take into account a material consideration, namely the plan presented by Mr Basacar. It has therefore failed to consider the plan and determine what significance, if any, might be attached to it in coming to the decision to which it came.

The reasons conclude with the following statement:

> "After 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 of harm to the community and declined your release on exceptional circumstances parole."

That followed a consideration of the circumstances relied upon by the applicant, including what was described as "a stressful and regrettable situation" and "the present unfortunate and serious situation relating to your family".

It seems to me that the board has weighed up a consideration of the circumstances of the applicant's family against the risk of re-offending. On considering the risk of re-offending, considerable attention has been paid in the reasons to the fact that the applicant maintains his innocence and that he has not completed a sexual offending treatment program.

The applicant has referred to a number of authorities which address circumstances of this kind. They are Whisker v Queensland Corrective Services Commission [1998] QSC 279, Batts v Department of Corrective Services [2002] QSC 206, Fogarty v Department of Corrective Services [2002] QSC 207, Salter v West Moreton Community Corrections Board [2007] QSC 29 and Weribone v Chief Executive, Department of Corrective Services [2007] QSC 129.

Those cases indicate that where a person maintains his innocence, and has not undertaken a treatment program, it is nevertheless necessary for the board to consider the circumstances of the applicant at the time of the decision and whether in the time between commission of the offences and the time of the decision there have been changes in his conduct which bear on the risk of future offending.

In the reasons that have been provided it seems to me that this matter has not been considered by the board. I therefore consider that it has failed to take into account a material consideration in that respect also.

I should add that my attention was drawn to a recent decision of Graf v Central & North Queensland Regional Parole Board [2009] QSC 280. In that case the Chief Justice expressed the view that there is authority for the proposition that a decision based solely on a parole applicant maintaining his innocence is unjustified. His Honour considered that the decision in that case was more broadly based. There is in the very short reasons little more than that. It does not seem to me that the decision in Graf warrants a different conclusion to that to which I have come.

Accordingly I allow the application and set aside the decision of the parole board of the 28th of August 2009.

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HIS HONOUR: I remit the application to the parole board to be considered in accordance with law.

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I direct that a transcript be provided of the argument and reasons in this matter.

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