Federal Court  Cour fédérale

Date: 20220118

Docket: T-894-21

Citation: 2022 FC 60

Ottawa, Ontario, January 18, 2022

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

JAY SEDORE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Jay Sedore seeks judicial review of a decision of the Appeal Division [Appeal Division] of the Parole Board of Canada [Board]. The Appeal Division dismissed Mr. Sedore's appeal of the Board's decision to deny his request for full parole.

[2] Pursuant to s 102(a) of the *Corrections and Conditional Release Act*, SC 1992, c 20 [CCRA], the Board may grant parole where it is satisfied that the offender will not, by reoffending, present an undue risk to society. Both the Appeal Division and the Board made explicit findings, based on the institutional information and psychological assessment provided, that Mr. Sedore failed to satisfy this precondition. He has not demonstrated that these conclusions were unreasonable.

[3] The application for judicial review is therefore dismissed.

II. Background

[4] Mr. Sedore is 67 years old. He is serving a life sentence for first degree murder (sentenced in 1991), attempted escape of lawful custody (sentenced in 1995), and attempted prison breach with intent (sentenced in 2001).

[5] Mr. Sedore's life sentence was subject to a 25-year period of parole ineligibility. He became eligible for full parole on November 10, 2015. His first application for full and day parole was denied in 2017. His subsequent applications for escorted and unescorted temporary absences were withdrawn in 2019.

[6] A parole review was scheduled for August 2020, but was administratively adjourned until November 2020 to allow documentation to be compiled. At Mr. Sedore's request, the hearing was further postponed to permit him to obtain a health care summary.

[7] Mr. Sedore's hearing before the Board took place on January 29, 2021. He was assisted by counsel. At the time of his parole review, Mr. Sedore was incarcerated at Warkworth Institution near Kingston, Ontario. His security classification was medium.

[8] The Board denied Mr. Sedore's request for full parole based on a number of considerations. These included Mr. Sedore's criminal history, social history, community release history, institutional behaviour, psychological risk assessments, victim statements and his release plan.

[9] The Appeal Division affirmed the Board's refusal to grant Mr. Sedore full parole on March 15, 2021.

III. Issue

[10] The sole issue raised by this application for judicial review is whether the decision of Appeal Division was reasonable.

IV. Analysis

[11] The decision of the Appeal Division is subject to review by this Court against the standard of reasonableness. As the Supreme Court of Canada explained in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paragraph 100:

> The burden is on the party challenging the decision to show that it is unreasonable. Before a decision can be set aside on this basis, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. It would be improper for a reviewing court to overturn an administrative decision simply because its reasoning exhibits a minor misstep. Instead, the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable.

[12] In *May v Canada (Attorney General)*, 2020 FC 292 [*May*], Justice Henry Brown observed that jurisprudence prior to *Vavilov* instructed the Court to afford considerable deference to administrative decisions respecting parole. He found this approach to be "aligned in principle" with the proposition in *Vavilov* that reasonableness review requires the Court to give respectful attention to a decision-maker's demonstrated expertise (*May* at paras 22-23, citing *Vavilov* at para 93).

[13] Judicial review of a decision by the Appeal Division affirming a decision of the Board requires the Court to ensure that both decisions are lawful (*Timm v Canada (Attorney General)*, 2021 FC 775 at para 8, citing *Cartier v Canada (Attorney General)*, 2002 FCA 384 at para 10).

[14] Mr. Sedore presented numerous arguments before the Appeal Division and the Board. At the hearing of this application for judicial review, his counsel limited his submissions to the Board's findings respecting an incident that occurred in 2014, when Mr. Sedore was incarcerated in a minimum security facility.

[15] Mr. Sedore was detained in a communal, cottage-like setting with other inmates. One of these inmates, identified only as “Brian”, physically threatened him and tried to get behind him with an electrical cord. According to Mr. Sedore, “every time I went to the door, he stopped me and said you have to go through me to go out the door. So, I finally had enough and threatened to kill him”. There is no dispute that Mr. Sedore held a knife to Brian’s throat.

[16] The police were called. The incident was investigated, but Mr. Sedore was not charged. Mr. Sedore explained to the Board that he acted in self-defence, and he had no choice but to react in the way that he did:

> Yeah, that’s what’s going on for over, about 45 minutes. This went on. And finally, I had enough. I said, there was only one way to deal with you. I mean, that was the only way to deal with him. Now, if I would have had a fork, like I was doing dishes. And I had the knife in my hand when he threatened me the last time. But if I would’ve had a fork, I would have used the fork, I mean, it wasn’t that I was violent, or I wanted to kill him. I didn't want to do that. All I wanted to do was scare him so bad he would leave me alone, which he did.

[17] One of the Board members expressed dismay that, when pushed emotionally, Mr. Sedore’s “split-second reaction” was to get a knife and hold it to Brian’s neck to scare him, instead of pushing him out of the way and going to get help.

[18] The Board found as follows:

> At your hearing, you failed to take accountability for your actions that have surrounded your institutional behaviour. You also failed to recognize problematic thought pattern[s] with respect to violent reactions if provoked by a third person. You also repeatedly indicated

> that since you were not charged for the incident in 2014, that there was nothing wrong with your reaction. You did admit that there may have been an alternate manner to deal with a difficult person, or to obtain assistance from staff. This, unfortunately, indicates that you have not made gains in managing your emotions or improved your problem-solving skills to the degree expected from someone who has completed programming.

[19] Mr. Sedore takes issue with the Board member's characterization of his decision to hold a knife to another man's throat as a "split-second reaction". He testified before the Board that the incident unfolded over a period of approximately 45 minutes. His counsel described Mr. Sedore as a long-serving, experienced inmate who would understand when his life was in danger. Despite his conviction for a violent first degree murder, Mr. Sedore's institutional history has generally been free of violence.

[20] I am not persuaded that Mr. Sedore has identified "sufficiently serious shortcomings" in the decisions of the Appeal Division or the Board that would justify this Court's intervention. Even though the altercation with Brian unfolded over a period of 45 minutes, the Board reasonably found that at one brief moment during that timeframe, Mr. Sedore determined that his best course of action was to hold a knife to another man's throat.

[21] Mr. Sedore admitted there were alternative ways of dealing with the difficult person. These included leaving the premises through a back door. Mr. Sedore said he was not authorized to use the back door, and that opening it would have triggered an alarm. The Board member remarked that this would have been a great way of avoiding the situation Mr. Sedore found himself in. Mr. Sedore's failure to consider or pursue alternatives supports the conclusions of the

Appeal Division and the Board respecting his ongoing challenges in managing his emotions or improving his problem-solving skills.

[22] Furthermore, the 2014 incident was only one of the reasons the Appeal Division and the Board denied Mr. Sedore's request for full parole. Mr. Sedore's previous reviews for conditional release showed a mixed history. There were factors favouring Mr. Sedore's release, including letters of support from family and friends, and positive commentary and scores resulting from numerous programs he had completed during his incarceration. However, these considerations were balanced against more problematic institutional behaviour, such as Mr. Sedore's reactions when provoked and exposing himself inappropriately to prison guards. In 2019, an improvised weapon was found in his cell. Mr. Sedore denied it was his, but the incident resulted in a period of segregation, an involuntary transfer, and an increase in his security classification.

[23] A psychological assessment of Mr. Sedore indicated that his risk to reoffend was moderate for both general and violent recidivism, and his reintegration potential was low. His case management team recommended a gradual and structured release plan, but Mr. Sedore said he was interested only in full parole. A letter from the murder victim's sister indicated she was fearful of Mr. Sedore if he were to be released.

[24] Mr. Sedore expressed concern about his vulnerability to COVID-19. According to Mr. Sedore, he engaged in self-study and diagnosed himself with a polyethylene glycol [PEG] allergy. He therefore chose not to be vaccinated against the coronavirus. The Board reasonably found there was no medical information to support a finding of a PEG allergy. Mr. Sedore also

expressed fear of experiencing an aneurysm, but again the Board reasonably found there was no medical information to substantiate this.

[25] Pursuant to s 102(a) of the CCRA, the Board may grant parole where it is satisfied that the offender will not, by reoffending, present an undue risk to society. Both the Appeal Division and the Board made explicit findings, based on the institutional information and psychological assessment provided, that Mr. Sedore failed to satisfy this precondition. He has not demonstrated that these conclusions were unreasonable.

[26] Mr. Sedore's counsel confirmed during the hearing of the application for judicial review that he was no longer advancing an argument based on ss 7 and 12 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

V. Conclusion

[27] The application for judicial review is dismissed. The Respondent does not seek costs, and accordingly none are awarded.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed without costs.

"Simon Fothergill"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-894-21
STYLE OF CAUSE:	JAY SEDORE v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	BY VIDEOCONFERENCE BETWEEN KINGSTON AND OTTAWA, ONTARIO
DATE OF HEARING:	JANUARY 10, 2022
JUDGMENT AND REASONS:	FOTHERGILL J.
DATED:	JANUARY 18, 2022

APPEARANCES:

John Dillon	FOR THE APPLICANT
Sean Stynes	FOR THE RESPONDENT

SOLICITORS OF RECORD:

John Dillon Barrister and Solicitor Kingston, Ontario	FOR THE APPLICANT
Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT