Federal Court Cour fédérale

Date: 20241008

Docket: T-2436-23

Citation: 2024 FC 1589

Ottawa, Ontario, October 8, 2024

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

SHANE SAUVE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Shane Sauve, seeks judicial review of a decision made by a member of the Parole Board of Canada (the "Board") dated October 6, 2023, revoking the Applicant's pardon pursuant to section 7(b) of the *Criminal Records Act*, RSC, 1985, c C-47 (the "Act").

[2] The Applicant submits that the decision is unreasonable owing to factual and logical errors, as well as for being insufficiently responsive to the Applicant's submissions concerning the impact of the decision on his personal and professional life.

[3] For the following reasons, I find that the decision is reasonable. This application for judicial review is dismissed.

II. **Facts**

[4] The Applicant is a 51-year-old resident of Ontario.

[5] Between 2003 and 2006, the Applicant was convicted of various crimes, including uttering threats, failing to comply with a recognizance, two counts of failing to comply with probation orders, and four counts of assault. For the brevity of the decision, I do not address each of these convictions or other incidents where the Applicant was investigated without being charged. However, I do note that at least one incident involved an intimate partner, with police documents indicating that the Applicant "was considered controlling in nature." In 2017, the Applicant received a record suspension for these convictions.

[6] In July 2021, the Applicant's ex-wife attended at a police station to report an assault which occurred in 2020 (the "2020 Incident"). She reported that she was in the bedroom when the Applicant entered, yelled at her, and then "took her by the throat…and pushed her against the wall." She stated that the Applicant grabbed her by the throat with one hand and held out the other as if he was going to hit her, before placing both hands on her neck, "pressing to strangle

her," and dragging her to a different room. She reported that the Applicant told her not to tell anyone, and that the Applicant was "very manipulative." She stated that this was not the first time he had behaved in a violent manner.

[7] On March 18, 2022, the Applicant pled guilty to assault for this incident. He was given a conditional discharge, receiving 18 months' probation and a 10-year discretionary weapons prohibition.

A. *Decision under Review*

[8] In a decision dated October 6, 2023, the Board revoked the Applicant's pardon pursuant to section 7(b) of the Act. The Board was not satisfied that the Applicant had shown an ability to lead a law-abiding lifestyle since his record suspension had been ordered.

[9] The Board made this decision based on the March 18, 2022 pleading. The Board found that a court of competent jurisdiction had determined that there was sufficient evidence to establish guilt of assault by choking, suffocating, or strangling.

[10] The Board acknowledged the Applicant's submissions regarding his attendance at trainings on intimate partner violence, his compliance with the court order, and progress in his personal life, as well as his character reference letters. However, the Board also found that the Applicant's materials contradicted the police report and appeared to "downplay the seriousness of the circumstances." The Board found that the 2020 Incident occurred shortly after the pardon

and, in tandem with his previous convictions, demonstrated a pattern of violence from the Applicant.

[11] For these reasons, the Board revoked the Applicant's pardon under section 7(b) of the Act.

III. **Issue and Standard of Review**

[12] The sole issue in this application is whether the Board's decision is reasonable.

[13] The standard of review is not disputed. The parties submit that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*") at paras 16–17, 23–25). I agree.

[14] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13, 75, 85). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A decision that is reasonable as a whole is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[15] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100).

IV. **Analysis**

[16] The Applicant submits that the Board's decision is unreasonable. He maintains that the Board fundamentally misapprehended the evidence by stating that the 2020 Incident occurred in July 2021. By not recognizing this, the Board failed to meaningfully grapple with the Applicant's submissions.

[17] The Applicant further submits that the Board did not explain why it gave more weight to the "complainant's recanted testimony" as stated in the police reports than to the Applicant's written statement. The Applicant states that the Board failed to respond to his submissions concerning the absence of a pattern of behaviour that would justify revoking his pardon and the "employment and financial considerations" for which he entered a guilty plea. Finally, the Applicant submits that the Board's decision was not sufficiently responsive to the consequences the decision would have upon him.

[18] The Respondent submits that the decision is reasonable. The Respondent submits that the Board's mistake with respect to the date of the 2020 Incident is a minor error which does not

warrant judicial intervention. The Respondent further submits that the Board reasonably relied on the Applicant's conditional discharge as an admission of guilt to assaulting his partner, that the Board gave "clear, coherent reasons" for giving more weight to the police reports than to the Applicant's version of events, and that the Applicant's submissions amount to an impermissible request for the Court to reweigh the evidence. Lastly, the Respondent submits that the Board reasonably found the Applicant to have shown a pattern of violence based on his documented history of violent crime.

[19] I agree with the Respondent.

[20] Section 7(b) of the Act provides that a record suspension may be revoked "on evidence establishing to the satisfaction of the Board that the person to whom it relates is no longer of good conduct."

[21] This Court has held that "in assessing good conduct, the Board may consider a range of information, including information about non-law-abiding conduct that did not result in any charges and information about conduct that resulted in a charge that was withdrawn, stayed, dismissed or which resulted in an acquittal" (*Buffone v Canada (Attorney General)*, 2017 FC 346 ("*Buffone*") at para 76, citing *Jaser v Canada (Attorney General)*, 2015 FC 4 ("*Jaser*")). Similarity between new charges and prior convictions for which a pardon was granted may be a relevant consideration for the Board (*Buffone* at para 79).

[22] What constitutes good conduct is a question of fact (*Jean Edouard Conille v Procureur General du Canada*, 2003 FCT 613 ("*Conille*") at para 22). On reasonableness review, the Court generally does not interfere with the factual findings of an administrative decision-maker (*Vavilov* at paras 125-126). The Court has also held that information in police reports does not necessarily need to be proven, it being within the ambit of the Board to determine an applicant to no longer be of good conduct "in the face of the charges as alleged" (*Jaser* at para 48).

[23] I begin by finding that there is no merit to the Applicant's lengthy written submissions about the Board misstating the date of the 2020 Incident. It is a trivial error in a decision that clearly demonstrates an understanding of the disturbing facts of the matter, namely, the circumstances of the Applicant's assault on his partner and his subsequent criminal charge (*Vavilov* at paras 100, 125-126).

[24] Moreover, I agree with the Respondent that the decision explains why the Board discounted the Applicant's evidence and favoured the evidence found in the police reports.

[25] To be clear: the Court is prohibited from reweighing and reassessing evidence (*Vavilov* at para 125). In this case, the sufficiency of the Board's reasons in light of the evidence is plain and suffices to dispose of the Applicant's submissions. The Board found that the Applicant's "version of events" contradicted the evidence in the police report and appeared to downplay the seriousness of the circumstances. The Applicant submits that his ex-wife recanted the testimony found in the police reports, and that the Board therefore erred by preferring this testimony over the Applicant's version of the events.

[26] The Applicant's submission is not supported by the evidentiary record. There is no independent evidence to corroborate the Applicant's claim that his ex-wife recanted her testimony. Instead, the evidence demonstrates that the Applicant, in a court of competent jurisdiction and while represented by counsel, pled guilty to a criminal charge of "[a]ssault by choking, suffocating or strangling." The Applicant was specifically cautioned by the sentencing judge that the plea would not be accepted if the assault was not "substantially what happened." In the Applicant's own words, "I did say that substantially it had happened." Crown counsel, who would have been familiar with the new testimony of the Applicant's ex-wife, was under an obligation to inform the judge if the facts no longer supported the charge. Given this context, it was reasonable for the Board to conclude from the fact that a conditional discharge was issued that "sufficient evidence existed to arrive at a finding of guilt for the charge in question." As mentioned above: the Court will not reweigh the evidence and intervene in this sufficiency finding.

[27] Similarly, I find it was reasonable for the Board to give more weight to the police reports than to the Applicant's written submissions with respect to the 2020 Incident. Not only were the RCMP and court documents the only corroborative evidence in the record about the 2020 Incident, they also addressed the elements of the crime in a more detailed manner than the statement of the Applicant himself. The Applicant states that the 2020 Incident did not occur, but that he pled guilty to the crime of assault due to an earlier incident when he and his ex-wife "grabbed each other." This sentence is the only reference to this incident in the Applicant's written statement, and is so inadequate as to be unrecognizable as a description of assault by choking, suffocating, or strangling. Based on the evidence before it, the Board reasonably

concluded that the Applicant "downplay[ed] the seriousness" of the offence. This is not a circumstance where a decision maker has fundamentally misapprehended the evidence or failed to justify their decision in relation to the facts (*Vavilov* at para 101, 125-126).

[28] I further find that the Applicant is seeking to collaterally attack his guilty plea for the 2020 Incident. Neither this Court nor the pardon revocation process before the Board are proper fora for such an attack. As such, in my view, the Board did not have to address the Applicant's reasons for submitting a guilty plea. The Board was only required to consider that the Applicant was charged with and pled guilty to assault. The Board unmistakeably did so. I therefore do not agree with the Applicant that the Board's decision did not account for his circumstances. I find, instead, that the Board's decision is justified in relation to its legal and factual constraints (*Vavilov* at para 99).

[29] The Applicant's submission that the Board was insufficiently responsive to his concerns about the consequences of the pardon revocation and his assertion that "one single event does not signify a similar pattern of behaviour" are meritless.

[30] The Board did not have to specifically address each argument put forward by the Applicant, especially one so demonstrably contradicted by evidence of the Applicant's previous criminality (*Vavilov* at para 128).

[31] I find that the Board nonetheless did address this submission. The Board did not, contrary to the Applicant's submissions, fail to consider the Applicant's lifestyle or the

circumstances of the Applicant's offence (*MY v Canada (General Attorney)*, 2016 FCA 170 at para 26). The Board acknowledged the Applicant's circumstances leading up to the assault charge as well as evidence of the Applicant's progress, "qualities," and the steps the Applicant had taken to address his most recent criminal charge. The Board also acknowledged that the Applicant had previous similar convictions (*i.e.*, assault), as well as both the Applicant's submissions and the RCMP documents about the 2020 Incident. I find that the Board was entitled to refer to this material in determining that the Applicant had demonstrated a pattern of violence. The Court will not interfere with the Board's factual assessment of whether the Applicant is of good conduct per section 7(b) of the Act (*Buffone* at paras 76, 79; *Conille* at para 22; *Vavilov* at paras 125-126).

[32] Finally, there is no merit to the submission that, due to the consequences it would have on the Applicant, the Board's decision did not reflect the legislative intention of section 7(b) of the Act. As the Respondent rightfully put it, pardon revocations inherently affect individuals in precisely the manner alleged by the Applicant in this case. In other words, revoking a pardon has consequences—and rightfully so. It is clear that Parliament intended, through the words of the Act, that a record suspension may be revoked if an individual is no longer of good conduct, including both law-abiding and non-law-abiding conduct. The Board's reasons state that the Applicant's recent criminal charge for assaulting his partner "does not align to [*sic*] good conduct," and that the Board was "satisfied that [the Applicant] ha[s] not shown an ability to maintain a law-abiding lifestyle since [his] record suspension was ordered." Thus, the decision reflects Parliament's intention and abides by the precepts of responsive justification (*Vavilov* at para 133).

[33] Although it was open to the Board to incorporate additional details about the impact of the decision into the reasons for their decision, their choice not to do so does not make the decision unreasonable. The standard here is reasonableness, not perfection (*Vavilov* at paras 91, 127-128). Given the Board's thorough consideration of the Applicant's submissions as a whole, it cannot be said that the Board's decision is unresponsive to the Applicant's concerns.

[34] For these reasons, I find the decision is justified in relation to its legal and factual constraints and therefore reasonable (*Vavilov* at para 99).

[35] In closing, I note that there were a number of troubling submissions made by the Applicant in this matter.

[36] The first is the constant reference to the Applicant's ex-wife as the "complainant" in the 2020 Incident. The Board rightly noted that "a court of competent jurisdiction was satisfied that sufficient evidence existed to arrive at a finding of guilt for" assault by choking, suffocating, or strangling. The Applicant pled guilty to this crime. Contrary to the Applicant's submissions, the 2020 Incident is not a "spurious" allegation. It is a criminal charge. The Applicant's ex-wife is not a "complainant." She is a survivor.

[37] The second is framing the 2020 Incident as "one single event" that does not show a pattern of behaviour. Aside from being obviously false in light of the Applicant's previous assault convictions, the Applicant downplays the seriousness of the criminal charge arising from the 2020 Incident. The Applicant pled guilty to a violent crime with significant consequences for

the survivor. Furthermore, the nature of this charge is similar to the previous convictions for which the Applicant had received a pardon. The Board reasonably concluded that the evidence on the record demonstrates a pattern of violent and unlawful behaviour. The Court is both unpersuaded and unsettled by the Applicant framing the 2020 Incident as “one single event.”

V. **Costs**

[38] The Respondent does not seek costs and none will be awarded.

VI. **Conclusion**

[39] This application for judicial review is dismissed. The Board’s decision is reasonable. No costs are awarded.

JUDGMENT in T-2436-23

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

"Shirzad A."

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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