

In the matter of

**Klaus Julius ANDRES**

**(Applicant)**

**SECTION 176 CORRECTIVE SERVICES ACT 2006**

PROCEEDING:	An application for an exceptional circumstances parole order
DELIVERED ON:	11 February 2022
PUBLISHED ON:	16 February 2022
DELIVERED AT:	Brisbane
HEARING DATES:	25 June 2021
MEETING DATES:	The Board met to consider the matter on 1 June 2021, 27 May 2021, 25 June 2021, 18 August 2021 and 11 February 2022
SENIOR BOARD MEMBER:	Peter Shields, Deputy President, Parole Board Queensland
DECISION:	The application for a parole order is refused
COUNSEL	The applicant appeared on their own behalf
SOLICITORS	The applicant appeared on his own behalf

## The application for an exceptional circumstances parole order

- [1] A prisoner may apply for an exceptional circumstances parole order ('parole order') under s.176(1) of the *Corrective Services Act 2006* (Qld) ('CSA') at any time.<sup>1</sup> An exceptional circumstances parole order may start at any time.<sup>2</sup> After receiving a prisoner's application for a parole order, Parole Board Queensland ('the Board') must decide to grant the application or to refuse the application.<sup>3</sup>
- [2] On 2 May 2020, Klaus Andres ('the applicant') filed his application for an exceptional circumstances parole order ('the application').
- [3] The application was received by the Board on 22 May 2020.

## No Body, No Parole decision<sup>4</sup>

- [4] The application was first considered by the Board on 1 June 2020. The Board decided to defer its decision to follow the procedure under s.193A ('No Body, No Parole') of CSA regarding his cooperation in finding the remains of the deceased.
- [5] In correspondence dated 20 September 2020, which was received by the Board on 13 October 2020, the applicant requested an extension of time for up to four (4) months to engage legal representation. This extension of time was granted by the Board.
- [6] In further correspondence dated 13 January 2021, which was received by the Board on 1 February 2021, the applicant requested an extension of time of a further two (2) months. This extension of time was also granted by the Board.
- [7] The applicant's application was subject to s.193A of the CSA as the applicant is serving a sentence of life imprisonment for the offence of murder and the body or remains of the victim of the offence have not been located<sup>5</sup>.
- [8] Pursuant to s.193A(1)-(2) of the CSA, the Board must refuse to grant an application for parole where the prisoner is serving a period of imprisonment for a homicide offence<sup>6</sup> and –
- (a) the body or the remains of the victim of the offence have not been located; or
  - (b) because of an act or omission of the prisoner or another person, part of the body or remains of the victim has not been located
- unless the Board is satisfied the prisoner has cooperated satisfactorily in the investigation of the offence to identify the victim's location.<sup>7</sup>
- [9] In the decision dated 25 June 2021, the Board decided that it was satisfied the applicant had cooperated satisfactorily in the investigation of the offence to identify the victim's location.<sup>8</sup> As a result of this decision, the Board is not obliged to refuse the applicant's application for a parole order pursuant to the mandatory obligations imposed by s.193A(1)-(2).

[10] The Board must therefore decide to grant or refuse the applicant's application for a parole order.

### **The priority of the Board is protection of the community**

[11] In *Ripi v Parole Board Queensland*,<sup>9</sup> Davis J stated that s.193 of the CSA concerns the process for the making of a decision by the Board but it does not prescribe the considerations relevant to an application. However, s.242E of the CSA provides as follows:

#### **"242E Guidelines**

The Minister may make guidelines about policies to help the parole board in performing its functions."

[12] Guidelines have been made by the Minister. Section 1 of the Guidelines contains the guiding principles for considering parole. Section 1 provides as follows:

#### **"SECTION 1 – GUIDING PRINCIPLES FOR PAROLE BOARD QUEENSLAND**

1.1 Under section 242E of the *Corrective Services Act 2006* (the Act) the Minister may make guidelines about policies to assist Parole Board Queensland in performing its functions. In following these guidelines, care should be taken to ensure that decisions are made with regard to the merits of the particular prisoner's case.

1.2 When considering whether a prisoner should be granted a parole order, the highest priority for Parole Board Queensland should always be the safety of the community.

1.3 As noted by Mr Walter Sofronoff QC<sup>10</sup> in the Queensland Parole System Review *'the only purpose of parole is to reintegrate a prisoner into the community before the end of a prison sentence to decrease the chance that the prisoner will ever reoffend. The only rationale for parole is to keep the community safe from crime'*. With due regard to this, Parole Board Queensland should consider whether there is an unacceptable risk to the community if the prisoner is released to parole; and whether the risk to the community would be greater if the prisoner does not spend a period of time on parole under supervision prior to the fulltime completion of their prison sentence."

[13] As further stated by Davis J in *Ripi*,<sup>11</sup> the guiding principles articulated in s.1 of the CSA are consistent with the purpose of the CSA as stated in s.3(1):

### **“3 Purpose**

(1) The purpose of corrective services is community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders.”

[14] The Guidelines provided to the Board are no longer expressed in mandatory terms. The Guidelines are not “to be followed” but are “to help the Parole Board”.<sup>12</sup>

[15] As prescribed by both the CSA<sup>13</sup> and the Guidelines,<sup>14</sup> the priority of the corrective services regime, including parole, is protection of the community.<sup>15</sup>

#### **Threshold for exceptional circumstances parole**

[16] Section 194(1)(a) of the CSA provides that the Board may, by a parole order, release any prisoner on parole if the Board is satisfied that exceptional circumstances exist in relation to the prisoner.

[17] As previously stated, s.242E of the CSA states the Minister may make guidelines about policies to help the Board in performing its functions. Section 5.7 of the Guidelines relates to ‘Exceptional circumstances parole’ and states:

“Parole Board Queensland may release a prisoner on parole, if satisfied that exceptional circumstances exist in relation to the prisoner. If parole is granted, in the case of a prisoner claiming exceptional circumstances for serious medical reasons, Parole Board Queensland should first obtain advice from Queensland Health or other approved medical specialists on the seriousness, and management of, the prisoner's medical conditions.”

[18] The term ‘exceptional’ has been judicially defined as follows:

“We must construe ‘exceptional’ as an ordinary, familiar English adjective, and not as a term of art. It describes a circumstance which is such as to form an exception, which is out of the ordinary course, or unusual, or special, or uncommon. To be exceptional a circumstance need not be unique, or unprecedented, or very rare; but it cannot be one that is regularly, or routinely, or normally encountered.”<sup>16</sup>

[19] The Explanatory Memorandum to the CSA provides the following guidance as to what may amount to exceptional circumstances:

“...a prisoner who develops a terminal illness with a short life expectancy or who is the sole carer of a spouse who contracts a chronic disease requiring constant attention...”

[20] The Board has a very wide discretion in determining whether exceptional circumstances exist, and the CSA does not “limit the reasons for which a prisoner may apply for exceptional circumstances parole”.<sup>17</sup> However the threshold is high and there must be evidence to support that the circumstances are in fact exceptional.

## **Applicant's exceptional circumstances parole application**

- [21] In his submissions the applicant claims that he suffers from various medical conditions, which he submits amount to exceptional circumstances that justify his release from custody prior to his parole eligibility date of 12 December 2028.
- [22] The applicant provided consent, by way of a consent form signed 2 May 2020, for the Board to access relevant information from his health care provider in order to inform itself as to whether the applicant's medical conditions can be appropriately managed in custody.
- [23] At its meeting on 25 June 2021, the Board further considered the applicant's application. The applicant attended the Board's meeting via video-link from Lotus Glen Correctional Centre. At the commencement of the meeting the applicant was verbally informed of the Board's No Body, No Parole decision, namely the Board is satisfied the applicant has cooperated satisfactorily in the investigation of the offence to identify the victim's location.
- [24] The Chair of the Board then requested the applicant to articulate his various health needs which he claims are not being adequately addressed because he is incarcerated, which is the basis of the applicant's application for a parole order. The applicant particularised his health needs as follows:
- (a) He has a genetic spinal disease, which is getting worse with his age. Prior to his imprisonment, the applicant advised he would receive two (2) injections to his back four (4) times a year. The applicant stated this continued whilst he was on remand, however upon being convicted and sentenced, he stated it only happens now once or twice a year. The applicant contended that he is in constant pain and cannot bend over to lift;
  - (b) He suffers from an enlarged prostate. The applicant advised he had an appointment in the Cairns Base Hospital last year, however this appointment was cancelled. The applicant advised the Board he requested to decline the appointment due to his concerns about COVID-19. The applicant stated he has received no further information about a future appointment or treatment;
  - (c) He has suffered hearing problems since being seriously assaulted in custody on 13 October 2013. The applicant blames the hearing problems on the assault. The applicant stated he has hearing problems in both ears. Further, the applicant stated he now has sinus problems as well. The applicant did say he has received nasal spray to assist with his sinus problems;
  - (d) His eyesight has deteriorated. The applicant stated he has cataracts, which was diagnosed approximately two (2) years ago. The applicant did say he was advised at that time that his eyesight (cataracts) was not bad enough to require treatment;
  - (e) He suffers from short-term memory loss. The applicant stated he gets dizzy when he stands-up quickly and can lose balance. The applicant stated that he is prescribed medication for his balance issues; and

(f) His pulse is always running, and he gets cold sweats.

[25] On 25 June 2021, the Board directed a request be sent to the General Manager of Lotus Glen Correctional Centre to enquire whether the applicant's health concerns, as outlined in the preceding paragraph, are being adequately addressed in a custodial setting and noting that the applicant is 78 years of age, whether a dementia assessment has been undertaken.<sup>18</sup>

[26] On 6 August 2021, the Board received a letter dated 1 July 2021 under the hand of Chief Superintendent Gabrielle Payne, General Manager of Lotus Glen Correctional Centre. This letter stated:<sup>19</sup>

“Liaison with the QHealth Nurse Unit Manager for Lotus Glen Correctional Centre Josephine Drinkwater and Specialist Medical Officer Dr Margaret Purcell have advised the following information:

a) Consideration that a dementia assessment be undertaken?

*Mr Andres has not been assessed for dementia. Queensland Health receive regular, detailed, coherent health service requests [sic] forms, in his second language. Doctor Purcell deems this a defacto measure of his higher functioning abilities.*

b) Can the current medical conditions be adequately addressed in custody?

*Doctor Purcell advises that Mr Andres [sic] health care needs are not beyond the capability of Queensland Health.*

QHealth have also advised that Klaus ANDRES has previously refused to attend medical appointments or has not disclosed the existence of some of the medical conditions listed in the Boards [sic] letter.” (emphasis in original)

[27] On 18 August 2021, the Board met again to further consider the applicant's application for a parole order.

[28] On 18 August 2021, the Board formed the preliminary view that the applicant's submissions do not meet the threshold for exceptional circumstances parole.

[29] In forming this view, the Board noted that the prisoner was 78 years of age at the time of his application. The Board also considered the content of an independent submission received by the Board on 10 June 2021 under the hand of the applicant's son, daughter-in-law and grandson. The independent submission states that if released on a parole order the applicant can reside with his family who would assist him to reintegrate into the community.<sup>20</sup>

### **The preliminary decision**

[30] On 20 August 2021 the Board wrote to the applicant outlining the reasons why the Board had made a preliminary decision to refuse the application for an exceptional parole

order ('the preliminary decision'). The applicant was invited to provide any further submissions or new information by 13 September 2021.<sup>21</sup>

- [31] On 25 August 2021, the Board received a submission from the applicant requesting an extension of time to respond to the Board's preliminary decision of 18 August 2021.<sup>22</sup> The Board approved the application for an extension of time by the applicant and advised the applicant in writing that he had a further ninety (90) days, that is, three (3) months to provide any further submissions or new information.<sup>23</sup>

#### **Further submissions and material from the applicant**

- [32] Subsequent to the preliminary decision, the Board received a number of handwritten and typed submissions from the applicant, including further medical documents on the following dates: 20 August 2021; 26 October 2021; 11 November 2021; 24 November 2021; 2 December 2021; 13 December 2021; and 22 December 2021.<sup>24</sup>
- [33] On 11 February 2022, the Board met again to further consider the applicant's application for a parole order. The Board considered the entirety of the applicant's file, including the preliminary decision and the further submissions and medical documents provided by the applicant as referred to in [32], above.
- [34] The Board took notice of the content of the submissions made by the applicant and in particular the following:
- (a) the various medical documents outlining the applicant's medical conditions, including blood being found in a bowel motion;
  - (b) the general information the applicant provided regarding his health;
  - (c) the applicant's complaint at the delay he experiences in receiving medical treatment, including a colonoscopy, nasal spray support, regular injections for back pain and related issues and dizziness suffered during his incarceration;
  - (d) the applicant claims he requires a walker to help move around;
  - (e) the applicant claims he suffers from short-term memory loss, or dementia, which contributed to the applicant's request for an extension of time to reply to the Board's preliminary decision;
  - (f) the complaint of the applicant that his medical conditions were being ignored by custodial officers and other prison staff;
  - (g) the applicant's belief that his perceived lack of medical care is linked with complaints the applicant has made against the authorities;
  - (h) the applicant's complaint that there was a failure to provide a duty of care at the Lotus Glen Correctional Centre, and further, a failure to adhere to relevant procedures;
  - (i) the applicant has been subject to an alleged assault whilst he has been in prison;
  - (j) the applicant's complaint of a lack of mental health access which is contributing to the stress the applicant is suffering whilst in custody; and
  - (k) the applicant's belief that medical care is not a privilege, but rather a fairness issue.

- [35] For the applicant to be released on an exceptional circumstances parole order, the Board requires evidence the applicant's health issues cannot be adequately treated in custody, rendering the circumstances 'exceptional'. As quoted above at [26], the General Manager of the correctional centre in which the applicant is accommodated, in consultation with the QHealth Nurse Unit Manager and the Specialist Medical Officer, has informed the Board that his conditions can be adequately managed in a custodial setting.
- [36] Further, the Board noted the content of correspondence from the Office of the Health Ombudsman dated 13 September 2021, which was provided by the applicant as part of his submissions to the Board.<sup>25</sup> This correspondence was a response to complaints made by the applicant to the Office of the Health Ombudsman. The correspondence confirmed the complaints made by the applicant had been dismissed, and that the Cairns and Hinterland Hospital and Health Services ('CHHS') are adequately managing the applicant's health concerns.
- [37] The applicant's condition is not out of the ordinary course of someone of the applicant's age. Further, there is no evidence before the Board that his conditions are sufficiently serious that they cannot be managed in custody. The Board noted that the applicant has "previously refused to attend medical appointments" and has not disclosed several medical conditions he relies upon in his submissions that his circumstances are indeed exceptional. This indicates to the Board that some of the applicant's conditions are not serious or pressing enough for him to have sought medical treatment for them in custody.
- [38] Further, the Board has considered the example provided in the Explanatory Memorandum to the CSA, namely that "a prisoner who develops a terminal illness with a short life expectancy" would meet the threshold for exceptional circumstances. While this is not an exhaustive example and the Board has a wide discretion in determining whether the threshold has been met, the applicant's submissions and the evidence before the Board do not allow for a conclusion that the applicant's circumstances are of a similarly exceptional severity or nature.

## Conclusion

- [39] The application for an exceptional circumstances parole order is refused.

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<sup>1</sup> *Corrective Services Act 2006* (Qld), s.176(1).

<sup>2</sup> *Corrective Services Act 2006* (Qld), s.177.

<sup>3</sup> *Corrective Services Act 2006* (Qld), s.193(1). An application for a parole order for this section includes exceptional circumstances parole orders, pursuant to the definition furnished by s.186 of the CSA.

<sup>4</sup> The decision was made in accordance with the relevant sections of the *Corrective Services Act 2006* (Qld), as it then was, at the time of the decision making.

<sup>5</sup> *Corrective Services Act 2006* (Qld) s.175C.

<sup>6</sup> A 'homicide offence' is defined in s.175B of the CSA and includes the offences of murder (s.302 of the *Criminal Code* (Qld)) and misconduct with regard to corpses (s.236(2) of the *Criminal Code* (Qld)).

<sup>7</sup> A 'victim's location' is also defined in s.175B of the CSA as:

- a) the location, or the last known location, of every part of the body or remains of the victim of the offence;  
and
- b) the place where every part of the body or remains of the victim of the offence may be found.

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<sup>8</sup> In the matter of Klaus Julius ANDRES ('the applicant'), an application for an exceptional circumstances parole order is one which the No Body No Parole (s.175K of the CSA) applies. On 25 June 2021 the Board decided that it was satisfied the applicant has cooperated satisfactorily in the investigation of the offence to identify the victim's location.

<sup>9</sup> [2018] QSC 205, at [36] – [38].

<sup>10</sup> As his Honour then was.

<sup>11</sup> [2018] QSC 205, at [38].

<sup>12</sup> Before the 2017 amendments to the Act, the Ministerial Guidelines were in quite different terms to s.242E. Section 227 (now repealed) authorised the making of Guidelines about policy "to be followed by the Queensland board". The Guidelines mandated the express consideration of the factor identified in Guideline 1.3. As per Davis J in *Ripi v Parole Board Queensland*, *supra*, at [42] – [44], referencing *Johnston v The Central and Northern Queensland Regional Parole Board* [2018] QSC 54 at [70] and *Maycock v Queensland Parole Board* [2015] 1 Qd R 408. His Honour also referred to the judgments of *Smoker v Pharmacy Restructuring Authority* (1994) 52 FCR 287 and *Minister for Human Services and Health v Haddad* (1995) 58 FCR 378.

<sup>13</sup> Section 3 of the Act.

<sup>14</sup> Guideline 1.2.

<sup>15</sup> *Ripi*, *supra*, at [44].

<sup>16</sup> *R v Kelly* [2000] QB 198.

<sup>17</sup> Explanatory Notes to the *Corrective Services Bill 2006* (Qld).

<sup>18</sup> Parole Board Record Book at 49-50.

<sup>19</sup> Parole Board Record Book at 68.

<sup>20</sup> Parole Board Record Book at 69-70.

<sup>21</sup> Parole Board Record Book at 71-80.

<sup>22</sup> Parole Board Record Book at 87.

<sup>23</sup> Parole Board Record Book at 89.

<sup>24</sup> Parole Board Record Book at 81-86, 90-134.

<sup>25</sup> Parole Board Record Book at 94-95, received by the Board on 14 October 2021.