In the matter of

Klaus Julius ANDRES

(Applicant)

SECTION 193A *CORRECTIVE SERVICES ACT 2006*

PROCEEDING:	An application for an exceptional circumstances parole order
DELIVERED ON:	25 June 2021
PUBLISHED ON:	16 February 2022
DELIVERED AT:	Brisbane
HEARING DATE:	27 May 2021
MEETING DATE:	The Board met to consider the matter on 27 May 2021 and 25 June 2021
SENIOR BOARD MEMBER:	Peter Shields, Deputy President, Parole Board Queensland
DECISION:	The Board is satisfied the Applicant has cooperated satisfactorily in the investigation of the offence to identify the victim's location
COUNSEL:	Mr Neville Weston appeared as Counsel Assisting the Board
SOLICITORS:	Parole Board Queensland Legal Services
	The Applicant appeared on his own behalf with the assistance of peer support prisoner Mr Arron Blenkinsop

Application for an exceptional circumstances parole order

[1] A prisoner may apply for an exceptional circumstances parole order ('parole order') under s.176 of the *Corrective Services Act 2006* (Qld) ('CSA') at any time. 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.[1]

Application for parole order where victim's body or remains have not been located

[2] 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[2] 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.[3]

[3] It is accepted by the Board that it is not a prerequisite to a finding of satisfactory cooperation that the body or remains of the victim be found.[4]

Amendment to the CSA

[4] Section 193A was inserted into the CSA by s.4 of the *Corrective Services (No Body, No Parole) Amendment Act 2017* (Qld) ('the Amendment Act'), which was assented to and commenced on 25 August 2017.

[5] This legislative amendment implemented Recommendation 87 of the Queensland Parole System Review Report ('the QPSR'), which recommended the establishment of a No Body, No Parole law in Queensland.

[6] The QPSR acknowledged that:

> "*Withholding the location of a body extends the suffering of victim's families and all efforts should be made to attempt to minimise this sorrow.*"[5]

[7] The Amendment Act is designed to help victims' families. It aims to encourage and incentivise prisoners to whom s.193A applies to assist in finding and recovering the remains of a victim by making parole release contingent on his/her satisfactory cooperation in the investigation of the homicide offence to identify the victim's location.[6]

[8] As stated in the QPSR:

> "*… such a measure is consistent with the retributive element of punishment. A punishment is lacking in retribution, and the community would be right to feel indignation, if a convicted killer could expect to be released without telling what he did with the body of the victim.*"[7]

Application of s.193 of the CSA

[9] Section 193A(7) of the CSA provides that, in deciding whether the Board is satisfied about the prisoner's cooperation as mentioned in s.193A(2), the Board –

(a) must have regard to –

(i) the report given by the commissioner under subsection (6); and
(ii) any information the Board has about the prisoner's capacity to give the cooperation; and
(iii) any relevant remarks made by the sentencing court that sentenced the prisoner to the term of imprisonment the prisoner is serving for the offence; and
(iv) if the prisoner requests the Board to consider a transcript of a proceeding against the prisoner for the offence – the transcript; and

(b) may have regard to any other information the Board considers relevant.

[10] When determining whether the prisoner has 'cooperated satisfactorily' in the investigation, the Board is to give the phrase 'cooperated satisfactorily', as part of a statutory provision, the meaning that the legislature is taken to have intended it to have:

> *"Ordinarily, that meaning (the legal meaning) will correspond with the grammatical meaning of the provision. But not always. The context of the words, the consequences of a literal or grammatical construction, the purpose of the statute or the canons of construction may require the words of a legislative provision to be read in a way that does not correspond with the literal or grammatical meaning."*[8]

[11] The Board formed the view that, in these circumstances, the legal meaning (in accordance with the legislative intention referred to in [7]) of 'cooperated satisfactorily corresponds with the grammatical meaning of that phrase.

[12] The Board determined the grammatical meaning of 'cooperated satisfactorily' may be derived with reference to the *Shorter Oxford English Dictionary*, which provides the following definitions:

> *"satisfactory" – "sufficient, adequate; (of an argument) convincing."*[9]
> *"cooperate" – "act jointly with or* with *another (*in *a task, to an end)."*[10]

Standard of Proof[11]

[13] The process of the Board's decision making under s.193A of the CSA is not adversarial. No onus is cast on the applicant prisoner nor the Board in making the determination.[12]

[14] Accordingly, the Board is not bound to apply the rule in *Briginshaw v Briginshaw*,[13] or the principles derived from that decision, in the same way as a court would be, in coming to its decision.

[15] Section 230 of the CSA provides that the Board may conduct its business, including its meetings, in the way it considers appropriate (subject to Chapter 5, Part 2, Division 4 of the CSA).[14]

[16] The Board is to consider for itself whether it is satisfied the prisoner has cooperated satisfactorily, and the findings of fact will be those that the Board considers necessary for it to make its decision in this regard. In doing so, the Board is to act fairly (including as to processes) and with common sense, and to inform itself by reference to relevant and probative information so as to draw conclusions on matters in issue to its comfortable satisfaction. The Board is to be cognisant of the seriousness of the findings to be made, including with regard to the gravity of the consequences of its decision under s.193A of the CSA, and may, depending upon the issue, express greater caution in evaluating the factual foundation for the conclusion to be reached on that point.[15]

Background

[17] The relevant background to Klaus Andres' (the Applicant) conviction for the homicide offences was stated by Boddice J, with whom Morrison JA and Carmody J agreed, in the Applicant's unsuccessful appeal against conviction in *R v Andres* [2015] QCA 167:[16]

> "*[2]* ***BODDICE J:*** *On 2 December 2013, the appellant pleaded not guilty to the charge that he had, between 28 October 2011 and 9 November 2011, at Brinsmead in the State of Queensland, murdered Li Ping Cao. A jury was empanelled. Both the prosecution and the defence called evidence. On 12 December 2013, the jury convicted the defendant of murder. The trial judge sentenced the defendant to life imprisonment.*
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> *[3] By Notice of Appeal, filed 20 December 2013, the appellant appealed against his conviction. In his Notice of Appeal, the appellant relied on multiple grounds of appeal. At the hearing of the appeal, the appellant abandoned each of those grounds and was given leave to substitute in their place a single ground of appeal, that the verdict of the jury convicting the appellant of murder should be set aside on the ground that it was unreasonable and insupportable.*
>
> ***Background***
>
> *[4] The appellant was born in Germany on 13 May 1943. He married his first wife, Monika Andres, in 1967. They had a son, Ralf Andres, in 1968. The family emigrated to Australia in 1982. Mrs Andres died in 2005.*
>
> *[5] The deceased, Li Ping Cao, who was born in China on 8 February 1969. She met the appellant whilst he was travelling in China in 2006. The deceased travelled to Australia on 12 October 2006. The appellant and the deceased were married on 26 November 2006.*
>
> *[6] The appellant and the deceased lived together at the appellant's property at Brinsmead near Cairns from 2009. Their relationship deteriorated from mid-2010. The couple fought frequently. The deceased left the appellant on at least two occasions but returned to live at the property.*

> *[7] The deceased departed Australia for China on 25 July 2011 and returned to Australia on 14 September 2011. While in China, the deceased had porcelain teeth fitted by a dentist. Upon the deceased's return, she lived with the appellant at his property, but they argued regularly. The deceased was last seen at the property on 29 October 2011. The deceased's body was never recovered, although her porcelain teeth were subsequently located on the property.*
>
> *[8] At trial, the appellant made multiple admissions, including that he caused the death of the deceased on 30 October 2011, and disposed of her body by dissolving it in acid."*

The present application

[18] On 2 May 2020 the Applicant filed his application for an exceptional circumstances parole order ('the application').

[19] The application was received by the Board on 22 May 2020.

[20] 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.

[21] 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.

The report of the Commissioner of Police

[22] The Board has received from the Commissioner of Queensland Police Service, as it must under s.193A(6) of the CSA, a 'Prisoner Cooperation Report' ('the report') dated 22 July 2020.

[23] The Board has had regard to the contents of the report. The delegate of the Commissioner of Police concludes the report with the following opinion:

> *"I am of the view Andres has not co-operated with police throughout the course of the investigation or subsequent court proceedings. The admissions made by Andres were made post evidence being elicited at trial and appear to be untimely, therefore identifying his unwillingness to assist investigators in the first instance."*

[24] Notwithstanding the conclusion of the report highlighted in [23] above, the report does speak favourably of the truthfulness and reliability of the admissions[17] that the Applicant made at the commencement of his trial:

> "*The truthfulness of the version provided during the trial in December 2013 is consistent with known investigative material which indicates that the deceased was disposed of in acid within a wheelie bin and poured into a storm water drain at the front of her residence*."[18]
>
> "*The version eventually provided during trial by ANDRES is likely to be an accurate account of the disposal of the deceased's body and fits with the evidence collected by police*."[19]

The initial hearing on 27 May 2021

[25] The application was listed for an initial hearing on 27 May 2021.

[26] Prior to the initial hearing, the Board had confirmed with the Applicant that he was not legally represented. Arrangements were made for a copy of all of the material to be considered by the Board to be provided to the Applicant.

[27] Due to COVID-19, all hearings proceeded via video-link.

[28] At the commencement of the initial hearing, the Applicant requested that he be assisted during the hearing by a peer support prisoner. Leave was granted for peer support prisoner Mr Arron Blenkinsop to appear with the Applicant.

[29] One witness was called to give evidence, namely Detective Sergeant Bradley McLeish, who gave evidence via telephone link from Cairns. Detective McLeish commenced his evidence by giving a brief overview of the investigation into the homicide of the deceased Li Ping Cao, including the false statements made by the Applicant about the whereabouts of the deceased, the Applicant forging various documents and the numerous lies told by the Applicant.

[30] Detective McLeish gave evidence of the Applicant's lack of cooperation up until the commencement of the Applicant's trial:[20]

> "[Mr Weston] *All right. And can I confirm this with you: between the first interview that you conducted with the applicant on – I think it was the 10th of November 2011- - -?*
>
> [DS McLeish] *Yep.*
>
> [Mr Weston] *- - - and until his trial in December 2013, there was no cooperation shown by the applicant at all with the police investigation in locating the remains of Ms Cao?*
>
> [DS McLeish] *No cooperation at all. Obstruction would be a better word. There was no cooperation, only obstruction.*"

[31] Importantly, in relation to the investigation of the offence to identify the victim's location, Detective McLeish gave evidence that the Applicant disposed of the remains of the deceased by dissolving her in sixty (60) litres of hydrochloric acid, which the Applicant had purchased from Bunnings Warehouse on two (2) occasions. Detective McLeish gave evidence that the only remains of the deceased were her porcelain teeth, which had been located:[21]

> "[Mr Weston] *All right. Now, it seems, as a consequence of the admissions made by the applicant, the prosecution didn't seek to lead in detail any expert evidence about the decomposition of a body once it's immersed in hydrochloric acid. As part of your investigation were there any - did you obtain any expert evidence about these matters?*
>
> [DS McLeish] *We did. So as a result of our investigations, obviously we believe that - we established that the defendant had purchased 60 litres of*

hydrochloric acid. We'd also spoken with witnesses, who lived in the same street, Chapel - Chapel Street, Chapel Avenue, and they had, on the 7th of November, seen Mr Andres attempting to wheel a wheelie bin outside his house. He subsequently lost control of that wheelie bin, given the weight of it, and it spilled down the front of his driveway, the contents, and the witnesses had described the contents as, for want of a better word, a pink slushy mess going down his driveway into the stormwater drain. As a result of that information we believed that he had disposed of Ms Cao's body by dissolving her in acid, so we conducted an experiment with two 50 kilo pig carcasses. So we obtained two pigs, both 50 kilos, because we believed that was the approximate weight of Ms Cao. One pig was placed into a wheelie bin of 50 litres of hydrochloric acid, and it was left for seven days. Another pig was placed into a wheelie bin of 50 litres of hydrochloric acid, and it was stirred or agitated once a day for seven days. At the end of the seven-day experiment, the pig that was in the first wheelie bin that was not stirred was approximately 50 per cent to 75 per cent dissolved. So only a small amount left. The bin that we stirred once a day with the pig inside, it was completely dissolved, apart from approximately 300 grams of matter, which was, you know, we say would have been dissolved shortly within hours afterwards. So all hair, all teeth, all bones, all bodily remains of that pig are completely dissolved in acid over a seven-day period if agitated once a day.

[Mr Weston] *All right. I understand that. Just for the record, no doubt that experiment was conducted by one of the QPS forensic officers, I take it?*

[DS McLeish] *That's right. We conducted with forensic police investigators, and also with the pathologist, Dr Botterill.*

[Mr Weston] *Okay. And the hydrochloric acid that was used would have been the same type of acid as the acid purchased by the applicant?*

[DS McLeish] *Correct, yes.*

[Mr Weston] *All right. Thank you. Now, Detective McLeish, may I ask you this: in your professional opinion, have all of the remains that may exist of Ms Cao been found?*

[DS McLeish] *From our investigation, we believe her body has dissolved in acid and the only remains available to us are the porcelain teeth."*

[32] In relation to the 'capacity' of the Applicant to provide any further cooperation, Detective McLeish gave evidence that there are no other remains of the deceased in existence:[22]

"[Mr Weston] *All right. Just for the sake of completeness, are you satisfied that there is nothing further that can be done by way of police investigation to confirm that there are no other remains of Ms Cao in existence?*

[DS McLeish] *That's correct. The investigation was one of the most extensive investigations I've ever been involved in. And, you know, a great amount of resources went into it. And, yes, the only remains we've ever been able to locate are the porcelain teeth, and there's no other avenues of investigation open to us."*

[33] The Applicant declined to ask any questions of Detective McLeish in cross-examination.

Submissions made by Counsel Assisting the Board at the initial hearing

[34] During the initial hearing, Counsel Assisting the Board neatly summarised the tension manifest in this application when he submitted:[23]

> *"So the question really comes down to this, in my submission: should the cooperation be deemed to be satisfactory, given that it was not timely, and given that all the applicant said was what was already known by the investigating authorities. And it's clear from the report of the Commissioner of Police that the position is taken that the cooperation did not add anything to what was already known by the investigating police.*
>
> *Nonetheless, section 193A does permit the cooperation to be given at any stage, which includes both before trial, at trial, or after trial and sentence. So, in my submission, it's a matter for the Board as to how it grapples with that issue.*
>
> *I must say, I find this a particularly difficult case. On the one hand, the applicant has, when he did have the opportunity to cooperate, not only failed to cooperate, but did wilfully obstruct the investigation, as the Board has heard. After all material facts about the disposal of the body that can be found, that can be ascertained, were ascertained by the investigating police, some two years later the applicant then, essentially, confirms what is already known and what can be proved at trial. So his conduct did not assist the police investigation, but by the same token it must be said that what he did say was all that the man could say, albeit he said it very late, and in a very grudging and, if I may say so, very unsatisfactory way*."

[35] Counsel Assisting, when asked by the Chair of the Board whether there was anything that he wished to say in relation to the fact that the admissions made at trial were made many years before the commencement of the Amendment Act, submitted:[24]

> *"…All that can be said is that in December 2013, everything that the applicant could say was said by him. He, as it were, did exhibit some cooperation at that point. That is, really, as high as the matter can be put, in my submission. His later statements to the investigating police in 2017, really don't take anything any further but, logically, they cannot take matters any further, because everything that the man could say he's already formally admitted at his trial.*
>
> *So, to that extent, yes, the applicant has said everything that he could possibly say. He's exhausted, apparently, his capacity to give cooperation. The Board cannot require anything further of him…"*

[36] During the initial hearing it became apparent the material which was before the Board had not all been given to the Applicant until the day before. Further, the Applicant had not been provided with a copy of the written outline of submissions prepared by Counsel Assisting the Board. Accordingly, the hearing was deferred to a date to be fixed to allow sufficient time

for the Applicant and his peer support prisoner to provide, if they wished to, written submissions for the further consideration of the Board.

[37] Prior to the deferment of the application, the Applicant through his peer support prisoner Mr Blenkinsop, made the following submission to the Board:[25]

> "*Just in relation to the provisions. The statute does provide that cooperation can be given during an investigation, after the investigation, including after conviction. This statute also provides relief to an offender such as Mr Andres who has done everything they possibly can to identify both the location, as in last known location of the body, and the place, being the place where the body can be expected to be found. So, in that respect, the Board can reasonably find that - that he has cooperated satisfactorily.*
>
> *Also, there is nothing in the section that is a prerequisite that remains actually be found. As long as the attempt to locate those remains is a genuine one.*
>
> *And in relation to the authority of Shaun Danny Dennis, like in Klaus' case, there was actually no body ever found. But the Board, you know, did consider that he cooperated satisfactorily, because the admissions that he did make were frank, they were damning, and ended up in his conviction, which is very, very similar to Klaus when he gave his full cooperation at trial*."

[38] The application was then deferred to a date to be fixed and arrangements were made for the transcript of the hearing, and the written submissions prepared by Counsel Assisting the Board, to be provided to both the Applicant and his peer support prisoner.

Discussion

[39] On 2 December 2013, which was the first day of the Applicant's trial before the Supreme Court at Cairns before his Honour Justice Henry, the Applicant through his legal representatives made ten (10) admissions. A document particularising each admission in writing was tendered and marked as exhibit 1. The admissions made by the Applicant were:[26]

> "1. *That on the 30th of October 2011 Klaus Andres caused the death of Li Ping Cao.*
>
> 2. *That Klaus Andres disposed of the body [of] Li Ping Cao by dissolving it in acid in a wheelie bin and pouring the solution into the drainage system.*
>
> 3. *That the last known communication was with her sister Li Huan Cao on 30th of October 2011.*
>
> 4. *That on 31st of October 2011 Klaus Andres purchased 20 litres of hydrochloric acid from Bunnings Warehouse.*
>
> 5. *That on 2nd of November 2011 Klaus Andres purchased 40 litres of hydrochloric acid from Bunnings Warehouse using Li Ping Cao's bankcard.*
>
> 6. *That no blood was detected on Klaus Andre's [sic] lawnmower.*
>
> 7. *That ten (10) porcelain teeth belonging to Li Ping Cao were recovered from the stormwater drain located outside of 19 Chapel Close on 20th November 2011.*
>
> 8. *That a letter to Centrelink dated 29th October 2011 was created on 1st November 2011 at 06:42am.*

9. *That Klaus Andres used Li Ping Cao's mobile phone on 8th November 2011 to make a number of phone calls including phone calls to Linya (Zhi Li) and Claire (Chun yu Chang).*

10. *That on 1st of November 2011 Klaus Andres made two attempts to access the Commonwealth Bank account of Li Ping Cao at Lake Street using Cao's bankcard."*

[40] The admissions made by the Applicant were made pursuant to s.644(1) of *the Criminal Code* (Qld), which states:

> *"An accused person may by himself, herself or the person's counsel admit on the trial any fact alleged against the person, and such admission is sufficient proof of the fact without other evidence."*

[41] By making the admissions that he did, the Applicant admitted that he had caused the death of the deceased on 30 October 2011 and disposed of her body by dissolving it in acid.

[42] Upon his conviction by the jury of the murder of the deceased, the Applicant was sentenced by Justice Henry in the Supreme Court at Cairns on 12 December 2013. In relation to the mechanism of the murder and the disposal of the deceased's body, His Honour said:[27]

> *"Exactly how you killed her remains unknown. You destroyed the evidence of what you did. You did so, I accept, by putting her in a wheelie bin and then depositing significant quantities of acid upon her dead body, over a period of days gradually dissolving her existence."*

[43] As previously stated in paragraph [9], s.193A(7) of the CSA mandates what the Board must have regard to before it can be satisfied about the Applicant's cooperation. Relevantly to this application, the report confirms the truthfulness and reliability of the admissions made by the Applicant at the commencement of his trial. Counsel Assisting conceded during the initial hearing that the Applicant, by making the admissions that he did, has exhausted his capacity to give cooperation. Finally, the relevant sentencing remarks confirm the content of the relevant admissions made by the Applicant at his trial.

[44] Whilst the police in the report may be critical of the Applicant in that he did not cooperate with their homicide investigation and the admissions made by the Applicant at his trial were not timely. But timeliness must also be evaluated by the Board with the truthfulness, completeness and reliability of the information or evidence provided by the Applicant, in relation to the victim's location, as well as the significance and usefulness of the Applicant's cooperation.

[45] In relation to this application, Counsel Assisting the Board summarised it neatly when he submitted that "the applicant has said everything that he could possibly say. He's exhausted, apparently, his capacity to give cooperation. The Board cannot require anything further of him." The Board accepts Counsel Assisting's submission.

Conclusion

[46] The Board is satisfied the Applicant has cooperated satisfactorily in the investigation of the offence to identify the victim's location.

[1] *Corrective Services Act 2006* (Qld), s.193(1).
[2] A 'homicide offence' is defined in s.193A(8) of the CSA and includes the offences of murder (s.302 of the *Criminal Code* (Qld)) and misconduct with regard to corpses (s.236 of the *Criminal Code* (Qld)).
[3] A 'victim's location' is defined in s.193A(8) 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.

[4] *Renwick v Parole Board Queensland* [2019] QCA 269 at [10].
[5] Queensland Parole System Review Final Report of November 2016, at [1199].
[6] Explanatory Notes, *Corrective Services (No Body, No Parole) Amendment Bill 2017*, page 1.
[7] Queensland Parole System Review Final Report of November 2016, at [1200].
[8] *Project Blue Sky Inc v Australian Broadcasting Authority* (1998)194 CLR 355, 384 [78].
[9] *Shorter Oxford English Dictionary* (5th ed, Vol. 2), 2674.
[10] *Ibid*, 513.
[11] *Sullivan v Civil Aviation Safety Authority* (2014) 322 ALR 581 at [60]-[62], [98]-[122]; *Kyriackou v Law Institute of Victoria Ltd* (2014) 45 VR 540 at [22]-[30]; *Karakatsanis and Another v Racing Victoria Ltd* (2013) 42 VR 176 at [29]-[40]; *Bronze Wing International Pty Ltd v SafeWork NSW* [2017] NSWCA 41 at [15], [122]-[127]; *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd & Ors* (1992) 110 CLR 445; *MZZZW v Minister for Immigration and Border Protection*(2015) 234 FCR 154, at [58].
[12] As applied by the Board in the decision of *Stephen Dale Renwick* made on 8 November 2018.
[13] (1938) 60 CLR 336.
[14] As applied by the Board in the decision of *Stephen Dale Renwick* made on 8 November 2018.
[15] As applied by the Board in the decision of *Stephen Dale Renwick* made on 8 November 2018.
[16] Parole Board Record Book at 1723 *et* seq.
[17] Parole Board Record Book at 1078.
[18] Parole Board Record Book at 1231.
[19] Parole Board Record Book at 1232.
[20] Parole Board Record Book at 1760.
[21] Parole Board Record Book at 1758-1759.
[22] Parole Board Record Book at 1760.
[23] Parole Board Record Book at 1766.
[24] *Ibid*.
[25] Parole Board Record Book at 1768-1769.
[26] Parole Board Record Book at 1078.
[27] Parole Board Record Book at 516, lines 13 – 16.