IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV118 of 2023

BETWEEN:

[1] MICHAEL SILVA

Claimant/Applicant

and

[1] PAROLE BOARD

Defendant/Respondent

Appearances:

Ms. Sheena S Pitts for the Claimant/Applicant

Ms. Alea Gomez and Mr. Javis Lou for the Defendant/Respondent

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2023: November 24th;

2024: May 8th.

JUDGMENT

[1] **ALEXANDER, J.**: The claimant applies for judicial review of the decision of the defendant ("the Parole Board") made on 24th November 2022 to deny his application for release on license without giving him any reasons for the refusal.

[2] The impugned decision follows a prior decision made by the Parole Board on 21st November 2021 denying his application for release on license, without providing any reasons for the denial. The claimant complains that his 2022 application for release on license (as was his previous 2021 application) was made in accordance with the Parole Act Chapter 139:01 R.E. 2020. He made representations on his own behalf, submitted new and/or additional recommendations, and supplied the Parole Board with copies of the successfully completed programs. After the hearing on 24th November 2022, the claimant was informed that his

application had been denied. He was yet again not given any reasons for the denial of his release on license. The present judicial review application is the consequence of his denial of parole without being given reasons. He rests his case on the duty of the Parole Board to provide reasons for its decision in circumstances where good administration and fairness dictate that reasons ought to be given.

[3] The claimant filed a Fixed Date Claim Form on 1st August 2023 for the following reliefs:

1. An order of certiorari to remove into the High Court for the purposes of being quashed the decision made by the Defendant on 24th November 2022 whereby the Defendant denied the Claimant's application for release on license in accordance with the Parole Act.
2. An order that the decision made on the 24th November 2022 by the Parole Board is unreasonable, erroneous and irrational in law and therefore void and a nullity.
3. A declaration that the Defendant failed to duly exercise its remit under the Parole Act when it purported to deny the Claimant's application for release on license.
4. Alternatively, an order of mandamus directing the Respondent (Defendant) to now properly exercise its functions and/or duties under sections 4(1) (sic) and 4(3) of the Parole Act to consider the Applicant's (Claimant's) parole case for release on parole.
5. Costs.

[4] I dismiss the application for judicial review and order that reasons for the 2022 decision be provided to the claimant.

Background

[5] The Parole Board is the statutory body vested with the responsibility to hear and determine applications by prisoners in Belize for parole under the Parole Act. In the exercise of its powers, the Parole Board is mandated under sections 4(2) and (3) to consider a specified list of factors, in addition to any other factor, when making its determination to grant or refuse any prisoner a release on license. The Parole Act also prescribes when prisoners are eligible for parole. By section 5(1)(c), the claimant became eligible for release on license in November 2021, having served half of his judge-imposed sentence.

[6] The claimant was charged with murder and committed to the Supreme Court in June 2014 for trial, where he pleaded guilty to the minor offence of manslaughter and was then sentenced to a term of 16 years imprisonment. The instant application is made against the

backdrop of a claimant with a relatively "good" prison record who had successfully engaged in numerous rehabilitative programs and satisfied almost all the statutory factors for parole. Pursuant to section 4(2), the claimant made representations on his own behalf, and complied with the statutory checklist of supplying letters of recommendation from stakeholders, involved in prisoner rehabilitation and reform, as well as from his prospective employer and his parents. After his application was denied with no reasons being proffered, the claimant caused a formal request for reasons to be made. The Chairman of the Parole Board, Mr. Kevin Arthurs, did not accede to this request. It was only after an order for specific disclosure was obtained at the leave stage that the claimant learnt that in addition to his representations and the several letters of recommendation from stakeholders that he had supplied, the Parole Board had at its disposal other documents, which it could have used during its determination. These included:

1. The Director of Prison's letter to the sentencing judge.
2. Six letters of recommendation on the Claimant's behalf for the 21st November 2021 hearing (i.e. the prior hearing).
3. Five letters of recommendation on the Claimant's behalf for the 24th November 2022 hearing.
4. A psychiatric evaluation dated 12th November 2021.
5. A letter from the victim's mother.
6. Parole application checklist.
7. The minutes of both hearings.
8. The Claimant's prison occurrences.

[7] Of the list of 14 recommendations before the Parole Board, only 3 matters might be considered as unfavourable of the claimant – the letter from the victim's mother; the psychiatric report and the 9 infractions noted against the claimant. The hearing on 24th November 2022 was conducted virtually. The Minutes (redacted) of that hearing disclosed the statements: (i) premature application; (ii) the claimant is not fully rehabilitated and (iii) "inmate says he is still looking for answers." The claimant says that the redacted Minutes were absent reasons and/or placed him in no position to discern the reasons. He was left without any understanding of why he was not being considered favourably for release.

[8] The parole application checklist ("the checklist") contained no reasonably adverse statement save for noting nine (9) prison infractions. The Minutes contained no facts, explanation,

discussion, or statement of what the infractions were. Also, the checklist had no markings about the infractions. The checklist stated that:

a. community response is favourable;
b. family response is favourable;
c. police response is favourable;
d. full admission of guilt;
e. good as opposed to fair or poor employment prospects;
f. good as opposed to fair and bad conduct; and
g. completion of prison programs and particularly recognized rehabilitation programs.

[9] In making its determination on parole, the Parole Board is mandated by the Parole Act to consider a clear list of factors, in addition to any other factor it deems relevant to making its decision. However, the claimant states that the heavily redacted Minutes together with the absence of reasons did not enable him to discern whether the representations made pursuant to section 4(2) were considered and in what way, and how and what weight was applied by the Parole Board to the section 4(3) factors singularly or cumulatively.

Grounds for Judicial Review

[10] In short, the claimant grounds his application on the allegation that the Parole Board acted unreasonably, irrationally, and erroneously in law when it: (i) failed to consider and take account of the section 4(2)&(3) factors in determining the claimant's application; (ii) decided to and did deny the claimant release on license against the weight of information before it for its consideration; and (iii) failed to provide reasons for its decision, showing how it arrived at its conclusion.

Submissions

[11] Ms. Pitts submitted that the Parole Board failed to exercise its statutory remit to consider and take account of the materials the claimant put before it during the 24th November 2022 hearing. It was required to act in a manner consistent with the provision of the statute and its failure to provide reasons shows that it did not. To date, the Parole Board has not provided reasons for its decision. This failure means that the decision was made devoid of

constitutional norms of rule of law and fairness. Its decision is contrary to the principles of natural justice, by failing to afford the claimant a procedure, which appreciates what is at stake for the claimant and society. The procedure used by the Parole Board was to erroneously rely on old information and not on the representations or materials supplied by the claimant. This procedure is unreasonable, irrational, and erroneous in law and is, therefore, a nullity. The refusal to provide reasons breaches the principles of natural justice and equal protection of the law.

[12] Ms. Gomez argued on behalf of the Parole Board that it acted within its statutory remit. It considered the relevant factors in denying parole to the claimant. The documents considered were detailed in the affidavit of Mr. Kevin Arthurs at paragraph 12. The Parole Board had before it materials in favour of and against parole to enable it to weigh all factors against the centralized issue of public safety. The materials against parole included the victim impact statement, 9 infractions and the psychologist report by Dr Matus Torres. The doctor's report stated that the claimant's probability of recidivism is 48% at 10 years and that the claimant's risk category is medium, not low. Ms. Gomez stated that the doctor's report is predictive and can be relied on for at least five to ten years. The Parole Board denied him parole because his application was premature, and it was not satisfied that the claimant was fully rehabilitated. These were its reasons, and they were enough. The Parole Board's decision and reasons, albeit concise, were communicated to the claimant on the same day. The claimant does not deny the fact that the decision was communicated to him, as he stated in his first affidavit at paragraph 24 as follows:

> 24. I again appeared before the Parole Board in the week of 21 November 2022 virtually. I recall that there were six persons who were on the panel of the Parole Board considering my case, … The entire hearing took about 15 - 20 minutes. The same day I was informed of the Parole Board's decision by a prison officer. I have not been formally informed of the Parole Board's decision to date.

[13] According to Ms. Gomez, the decision was made upon careful deliberation and evaluation of all the documents presented to the Parole Board, and it was satisfied that the claimant was not fully rehabilitated, and the application was premature. The decision was not irrational, unfair, or unreasonable. The Parole Board was not statutorily bound to supply reasons and its failure to do so does not invalidate its decision to refuse parole to the claimant.

Late Reasons

[14] I find it convenient to set out at this point the delayed reasons as provided in the affidavit of Mr. Kevin Arthurs dated 13th September 2023 at paragraph 21 and 24 in this claim. The reasons are:

> 21. At the conclusion of the hearing, the Parole Board deliberated, taking into consideration the law/factors under Section 4(3) of the Act, the representation of the Claimant, the victim impact recommendation/letter, the demeanour of the Claimant and the steps he had taken to improve behaviour while in prison and or to rehabilitate.
>
> …
>
> 24. The Defendant denied the Claimant's application for parole because the application was **premature in the sense that based on the evidence before the Defendant**, it was satisfied that the Claimant was **not fully rehabilitated**. [My emphasis]

[15] In oral submissions, Ms. Pitts advanced that the terms "premature application" and "not fully rehabilitated" are not section 4(3) factors to be considered so do not constitute adequate and intelligible reasons. Ms. Pitts reiterated that the claimant takes issue with the Parole Board's belated attempt in its affidavit in opposition to provide "reasons" for its decision. This delayed attempt at reasons conflicts with the statutory mandate for treating with these applications. Ms. Pitts asked that these *late* reasons be deemed inadequate, unreasonable, and erroneous in law. According to her, these late reasons show that the statutory factors were simply not considered. I disagree.

[16] I accept that the expression "premature application" is not the best choice of words, since once an offender is statutorily eligible for parole, or based on his judge-stipulated minimum period, he is entitled to apply for parole. His application cannot be deemed "premature" in that sense. In fact, Mr. Kevin Arthurs was clear that the expressions "premature application" and "not fully rehabilitated" were based on the evidence before the Parole Board. Therefore, "premature" does not refer to "timing" but to "readiness" for release upon consideration of the section 4(3) factors and any other factor the Parole Board considers relevant. These terms were not "factors" but conclusions arrived at, upon the consideration of the evidence and relevant statutory factors. In any event, there is nothing in the Act or cases that holds that

the language of reasons must be crafted or limited to the use of the terminology reflecting statutory factors.

Issues

[17] The broad issue, as the court finds it, is whether the decision to deny the claimant parole is unreasonable, irrational, or erroneous in law? As a corollary to this primary issue is whether the refusal to provide reasons (or the delayed reasons) breached his right to fair treatment?

The Parole Act

[18] At this stage, I find it convenient to set out in full the relevant provisions of the governing legislation. Sections 4, 5, 7, 11 and 13 of the Parole Act ("the Act") state as follows:

> 4.–(1) The functions of the Board include making decisions regarding–
> (a) the release on parole of an offender eligible for parole; and
> (b) the remission suspension or variation of any condition of parole of any parolee, or imposition on any such parolee of any additional condition of parole.
> (2) In considering any case for parole, the Board may request any person, including the offender himself, to provide information or to make representation which in the Board's opinion, may be of assistance in reaching a decision.
> (3) In considering any case for parole, the Board shall take into account–
> (a) the nature and circumstances of the offence for which the applicant was convicted and sentenced;
> (b) the sentence imposed by the court and any comments made by the court when the sentence was imposed;
> (c) the safety of the public, and of any person or class of persons who may be affected by the release of the offender;
> (d) any representations made by the victim of the offence or any person acting on his behalf, or of the relatives of the victim of the offence, or anyone acting on their behalf;
> (e) any representations made by the offender and his reformation and training while in the person;
> (g) the probable circumstances of the offender if released, especially the likelihood of his peaceful reintegration into society;
> (h) the likely response of the offender to supervision by the parole officer;
> (i) the reasonable probability that the offender will live and remain at liberty without violating laws; and
> (j) any other factor that the Board may consider relevant in reaching a decision.

5.–(1) An offender other than an offender sentenced to death, is eligible for consideration for release on parole upon the expiry of the following periods from the date of his reception in a prison after sentencing–

(a) …
(b) …
(c) one half of the term of imprisonment, in the case of any serious offender undergoing a sentence, other than an offender specified in any of the preceding paragraphs; and
(d) …

7. Where an offender is released on parole, the following general conditions apply –

(a) within twenty-four hours after his release on parole he shall report to the parole officer at the place stated in the Parole Order, or if he does not proceed directly to that place, then he shall report to some other parole officer within forty-eight hours of his release on parole;
(b) he shall report to the parole officer under whose supervision he is for the time being, as and when he is required to do so by the parole officer;
(c) he shall give to the parole officer and to the Director reasonable notice of his intention to move from his address and if he moves to any other address, he shall within forty-eight hours after his arrival at that address, notify his parole officer of his arrival, and give to him his new address, and the nature and place of his employment, if any;
(d) he shall not reside at an address that is not approved by the parole officer;
(e) he shall not continue in any employment, or continue to engage in any occupation, that is not approved by the parole officer;
(f) he shall not associate with any specified person, or with persons of any specified class with whom the parole officer has in writing warned him not to associate;
(g) he shall be of good behaviour and shall not commit any offence against any law; and,
(h) he shall comply with such other conditions as the Board may direct from time to time.

…

11. The Director or any other person authorized by him in that behalf shall submit an annual report in the prescribed form to the Board within two months after the end of each year, on the general condition of every offender who is undergoing–

(a) imprisonment for life; and
(b) any other sentence of imprisonment of one year or more.

…

13. The Minister may make regulations generally for administering this Act and for giving effect to its purposes, or with respect to any matter or thing by or under this Act which may be or is to be prescribed.

Discussion

Whether the decision to deny the claimant parole is unreasonable, irrational, or erroneous in law?

[19] The claimant is a serious offender as described in the Schedule (section 2) of Serious Offender Specified Offences. He was charged with the offence of murder and convicted for manslaughter. He is currently serving a 16-year imprisonment term with effect from 7th November 2013 at the Hattieville Prison. He became eligible to apply for parole in November 2021, having served one-half of his term of imprisonment. These facts are not in dispute. It is also not in dispute that the claimant has attended and successfully completed trainings, for which he was presented with several certificates evidencing same, and that he has provided recommendations from his parents, family members and a job offer. Despite these, the Parole Board has refused him parole.

[20] The broad issue, as I find it, relates to the duty and/or failure of the Parole Board to give reasons or to give delayed reasons that are hallowed. It is the nature of the functions being performed by the Parole Board, therefore, that concerns me. I have no intention of substituting my own decision for that of the Parole Board: see **R(DSD) v The Parole Board**.[1] That is not my role in the exercise of my supervisory oversight in such matters. My concern is with "the decision-making process and the manner in which the discretion was exercised, and whether it was exercised fairly."[2] To this end, I was mindful that the essential statutory question of the Parole Board in its deliberations is one of public safety as balanced against the hardship of a prisoner's continuing imprisonment. That decision is in the sole province of the Parole Board, not the court, and the Parole Board must determine this, by weighing various statutory and other considerations, whether an offender's continued confinement is no longer necessary for the protection of the public.

[21] I turn now to examine, in brief, the concepts of reasonableness and irrationality to determine if the refusal of parole was an irrational decision. I will then discuss the duty to give reasons for the refusal in the context of fairness or breach of the claimant's natural justice rights.

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[1] [1918] EWHC 694 (Admin).
[2] Zulfikar Mustapha v The Attorney General of Guyana et al [2019] CCJ 9 (AJ).

Reasonableness and Irrationality

[22] When a public authority exercises its discretion in making a decision, it must do so in accordance with law and must act reasonably in doing so. Reasonableness is, therefore, a valid ground of review.

[23] In **Associated Provincial Picture Houses Ltd v Wednesbury Corporation**[3] Lord Greene MR described reasonableness thus:

> It is true to say that, if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the Courts can interfere. That, I think, is quite right, but to prove a case of that kind would require something overwhelming …

[24] Irrationality was described in **Council of Civil Service Unions v Minister for the Civil Service**[4] by Lord Diplock:

> By "irrationality" I mean what can now be succinctly referred to as Wednesbury unreasonableness (See Associated Provincial Picture Houses Limited v Wednesbury Corporation [1947] 2 All ER 880; [1940] 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it…

[25] To be considered is whether the Parole Board in Belize, in refusing to grant the claimant release on license, made a decision that was so logically outrageous that no sensible person contemplating the question would have made that same decision. Parole (and its grant or refusal) is a specialist domain, the sole discretion for which lies with the Parole Board. The complexity of the role of the Parole Board has been pointed out in several cases. In **R (DSD) v The Parole Board**,[5] the Privy Council discussed whether the Parole Board's decision to grant parole was irrational and cited the pronouncement of Burnton J in **R (Alvey) v Parole Board**.[6] Burnton J crisply articulated the position on the law as it relates to Parole Boards and deftly distinguishes the roles of the Parole Board and the court. It benefits at this stage to quote the statement of Burnton J in full:

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[3] [1948] 1 KB 233.
[4] [1984] 3 All ER 935.
[5] [2018] EWHC 694 (Admin).
[6] [2018] EWHC 311 (Admin).

> The law relating to judicial review of this kind may be shortly stated. It is not for this court to substitute its own decision, however, strong its view for that of the Parole Board. It is for the Parole Board, not for the court, to weigh the various considerations it must take into account in deciding whether or not early release is appropriate. **The weight it gives to various considerations is a matter for the Board, as is, in particular, its assessment risk**, that is to say the risk of re-offending and the risk of harm to the public if an offender is released early, and the extent to which that risk outweighs benefits which otherwise may result from early release, such as a long period of support in the community, and in some cases damages and pressures caused by a custodial environment. [My emphasis].

[26] The Privy Council reinforced the difficulties facing the Parole Board when exercising its exclusive and unique functions by reference to yet another pronouncement in **R (Brooke) v Parole Board**.[7] In **R (Brooke)**, Lord Phillips CJ stated:

> Judging whether it is necessary for the protection of the public that a prisoner be confined is often no easy matter. The test is not black and white. It does not require that a prisoner be detained until the board is satisfied that there is no risk that he will re-offend**. What is necessary for the protection of the public is that the risk of re-offending is at a level that does not outweigh the hardship of keeping a prisoner detained after he has served the term commensurate with his fault.** Deciding whether this is the case is the board's judicial function. [My emphasis].

[27] The fact that the Parole Board must perform a weighing exercise, that is not straightforward or simple, but one that is fraught with complexities, is clear from the cases. Determining the risk of re-offending by any prisoner as against public safety issues requires a delicate balancing of factors and each case will be based on its own facts. There is no magic wand to be waved for a prisoner to know or understand how the Parole Board arrived at its decision or how, or if, he could address his shortcomings before his next appearance before the Parole Board. It is in these circumstances that reasons for the Parole Board's decision become all the more necessary. I accept that once a prisoner has served the punishment and deterrence element of his sentence set by the judge, "the only legitimate penological ground for continued detention can be societal protection or dangerousness." See **Gregory August et al v The Queen**.[8]

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[7] [2008] 1 WLR 1950 at 53.

[8] [2018] CCJ 7(AJ) where the Parole Act was assessed for its constitutionality, though prematurely so.

Duty to Provide Reasons

[28] There is no statutory requirement under the Act for the Parole Board to give reasons for its decision not to release an offender on parole. There is also no general and common law duty for the Parole Board to give reasons for the denial of parole. The cases below have confirmed this position that administrative tribunals are not required to give reasons, where their governing statutes or regulations do not require them to do so.[9] The duty to give reasons will depend on the circumstances of each case.

[29] In **Zulfikar Mustapha v The Attorney General of Guyana et al**[10] at paragraphs 49 & 50, the CCJ stated, citing **Re Hanoman (Carl)** with approval:

> 49. It is recognised that there is **no general duty for a public authority to give reasons, unless that duty is imposed by some procedure, rule or statutory provision.** It is accepted however that **whether such a duty exist depends on the circumstances of the case.** In **Re Hanoman (Carl)** the then Chief Justice of Guyana, Justice Desiree Bernard, considered whether the Minister of Health was obliged to give reasons for rejecting two of the nominees of the Guyana Medical Association, Bernard CJ observed:
>
> > In the absence of specific legislation obliging a public functionary to give reasons for a decision, **many cases indicate that the modern trend is towards openness, fairness and transparency regardless of the right that is infringed; personal, vested, public or rights acquired under schemes or plans. The overall objective is fairness based on long established principles of natural justice**. [My emphasis].
>
> 50. Bernard CJ further noted:
>
> > Public officials who are charged with the responsibility of making decisions particularly those which involve the exercise of a discretion whether by acting on advice or consulting **must do so with fairness and give reasons for the exercise of the discretion** in a particular way so that it can be ascertained whether the discretion was exercised reasonably and, according to Lord Greene MR in Wednesbury [1948] 1 KB 223, 'within the four corners of the principles' he enumerated. [My emphasis].

[30] The jurisprudence shows a clear development in the law, requiring public bodies to give reasons for purposes of good administration, openness, and fairness. Rajnauth-Lee JCCJ

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[9] Dale Austin v Public Service Commission et al [2022] JMSC Civ. 55.
[10] [2019] CCJ 9 (AJ).

explains the modern trend is necessary to expose "the process of transparency and accountability to avoid arbitrariness and engender public trust and confidence."[11]

[31] Reasons can be concise, but must be proper, adequate, and intelligible. The cases point to the fact that reasons given by public bodies must show the conclusion reached, and how the issue of law or fact was determined. Reasons must not give rise to substantial uncertainty about whether the decision maker erred in law. I find instructive some of the pronouncements in the caselaw and reference them below.

[32] **Dover District Council (Appellant) v CPRE Kent**[12] cited Lord Brown's broad summary for reasons in **South Buckinghamshire District Council v Porter (No. 2)** thus:

> The reasons for a decision must be intelligible and they must be adequate. **They must enable the reader to understand why the matter was decided as it was** and what conclusions were reached on the 'principal important controversial issues' disclosing **how** any issue of law or fact was resolved. **Reasons can be briefly stated**, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. **The reasons need refer only to the main issues in the dispute, not to every material consideration** … [My emphasis]

[33] A similar approach was taken in **Siobahn Nicola Gillespie et al v The Minister of Natural Resources and Labour**,[13] where that court stated that:

> … proper and adequate reasons must generally set out the authority's findings of fact. It must show that all relevant matters have been considered and that no irrelevant ones have been taken into account … **it must show by what process of reasoning the issues were resolved and how the various factors were weighed against each other**... [My emphasis]

[34] Despite the developments in the law, Ms. Gomez submitted that it is **not** the practice of the Parole Board to provide **written** reasons to offenders who are denied parole. She does not say whether it is the practice of the Parole Board to give *oral* reasons and I assume from Ms. Gomez's silence, it is not. Ms. Gomez argues, and I agree, that the sole discretion for parole

[11] Zulfikar Mustapha, supra
[12] (2017) UKSC 79
[13] Claim No. BVIHMT2013/0003.

lies with the Board. That is not in dispute here. However, Ms. Gomez maintains that it suffices that the claimant is afforded the opportunity to make representations and not get reasons, as these are not mandatory. It is at this point that I depart from Ms. Gomez's entrenched position. I will agree only to the fact that the absence of reasons for a decision, where there is no statutory duty to supply same, cannot, of and by itself, equate to or provide support for irrationality of any decision: see **R v Secretary of State for Trade and Industry ex parte Lonrho**.[14]

[35] The claimant has made representations pursuant to section 4(2) and the Parole Board would have undertaken its deliberations, as statutorily required under section 4(3) of the Act. Ms. Pitts has pointed to the absence in the Minutes or other tangible record that shows the process. She submitted that there was no evidence of discussions had, questions put, and answers received, and of how factors were weighed, and counter weighed so that any reason, rational or otherwise, could be discerned. In my view, the fact that the Parole Board did not provide reasons for its refusal of parole is not *prima facie* irrational or unfair. In the context of this case, however, particularly the section 4(3) factors and the primacy to be given to the protection of the public in the weighing exercise, the Parole Board should disclose how it arrived at its conclusion. This can easily be done by providing reasons for its decision. The question is whether the Parole Board has done so, albeit belatedly, and by its process has demonstrated the good administration and the kind of adequate treatment the statutory framework envisaged. Are non-reasons or late reasons for refusal of parole unfair or in breach of the natural justice rights of prisoners?

Natural Justice

[36] It is a cardinal principle of public law that where an individual will be prejudiced by a particular decision by a public authority, natural justice demands that that individual be given an opportunity to respond. In **R (Bennett) v Parole Board**[15] the court held that the Board's refusal to grant an oral hearing was unfair and breached the prisoner's rights under Article 5(4) of ECHR and the decision was quashed. This is not the case here. The instant claimant

[14] [1989] 1 WLR 525, 539H-540B.
[15] [2019] EWHC 2746.

was heard orally by the Parole Board so had the opportunity to make representation. The oral hearing took approximately 15 to 20 minutes. Ms. Pitts argued that the purpose of the oral hearing was not realized. It was to assist the claimant with understanding why his application was unfavourable. In the case of our claimant, no such understanding was obtained.

[37] In **R v Parole Board**[16] Lord Bingham's stated that:

> Even if important facts are not in dispute, they may be open to explanation or mitigation, or may lose some of their significance in the light of other new facts. While the Board's task certainly is to assess risk, it may well be greatly assisted in discharging it (one way or the other) by exposure to the prisoner or the questioning of those who have dealt with him. … **The prisoner should have the benefit of a procedure which fairly reflects, on the facts of the particular case, the importance of what is at stake for him, as for society**. [My emphasis].

[38] Ms. Pitts relied on the case of **Osborne v The Parole Board**[17] where Lord Reed laid down certain principles and explained the benefit to be derived from an oral hearing. In gist, the purpose of the oral hearing is to help the claimant in understanding why his application was unfavourable. The Parole Board should help him understand his treatment needs and how to address it. In **Osborne**, Lord Reed provided principles to achieve procedural fairness:

> The Board should guard against any tendency to underestimate the importance of issues of fact which may be disputed or open to explanation or mitigation.
> …
> The Board must be and appear to be **independent and impartial**. **It should not be predisposed to favour the official account of events, or official assessments of risk, over the case advanced by the prisoner**.
> …
> The board's decision, for the purposes of this guidance, is not confined to its determination of whether or not to recommend the prisoner's release or transfer to open condition, but includes any other aspects of its decision (such as comments or advice in relation to the prisoner's treatment needs or the offending behaviour work which is required) which will in practice have a significant impact on his management in prison or on future reviews.

[39] Ms. Pitts argued, in reliance on **Osborne**, that the Parole Board's procedure in our case was not independent and impartial but was predisposed to favour the official version of events over the prisoner's case. I have no evidence of such a predisposition. I agree though that an

[16] [2005] UKHL 1.
[17] [2013] UKSC 61.

oral hearing is a necessity especially when fairness to the inmate requires such a hearing in light of the facts of the case. In the present case, the claimant's parole hearing was not on paper, but the Parole Board used the oral hearing to assist it with its independent assessment of the risk. I do not find in any way that this approach is unfair or in breach of any natural justice rights.

[40] I hold a different view as regards the giving of reasons for refusing parole. The Parole Board as a public body is required to demonstrate fairness in its procedure throughout. Fairness mandates the giving of reasons for its decision. In **ex parte Doody**, the guiding principle for giving reasons is stated thus:

> The giving of reasons may be inconvenient, but I can see no ground at all why it should be against the public interest: indeed, rather the reverse. This being so, I would ask simply: Is refusal to give reasons fair? I would answer without hesitation that it is not.

[41] In the present case, the refusal to give reasons is unfair. Moreover, the provision of reasons only after a claim is filed is also unfair. Ms. Gomez argued that since reasons are not statutorily required, if it is provided late there is no unfairness to be found. I do not accede to this approach. Reasons from the Parole Board can in no way be viewed as against the interest of the Belizean public or likely to jeopardize same. While I find no fault with the Parole Board's compliance with its section 4(2) mandate in giving the claimant an opportunity to meet with and address the Parole Board for approximately 15 to 20 minutes, I do not similarly view its approach to the giving of reasons. The Parole Board simply dropped the ball by failing to provide reasons for its refusal of parole. I disagree though that, in the round, the parole procedure was in breach of the constitutional norms of rule of law or was contrary to the principles of natural justice. The evidence does not support this position. It also did not show that the Parole Board improperly conduct its weighing exercise to arrive at its conclusion, in light of the primary issue of public safety and dangerousness as against the risk of re-offending. There was no evidence of a breach of natural justice in the actual parole hearing. I also see no validity in the argument of the claimant that he was not afforded the equal protection of the law.

The Belize Position

[42] **Gregory August**[18] is the binding authority on the matter in Belize. The CCJ stated that the starting point is that the overarching considerations for eligibility for release on license is "the safety of the public and of any person or class of persons who may be affected by the release of the offender." Public safety, which is part of the section 4(3) considerations in the Act, is paramount. It means that the deliberation process of the Parole Board must identify public safety as its objective. The other section 4(3) factors must be read to assist the Parole Board in determining the protection of the public. In assessing public safety/risk, the Parole Board must show a deliberation process that contemplates section 7 release conditions, in weighing whether the release conditions are sufficient to secure public safety. According to Ms. Pitts the **Gregory August** approach was not followed in the instant case.

[43] Ms. Pitts submitted that the delayed reasons did not speak to the contemplation of the Parole Board of the section 7 release condition, although the Parole Board had information about where the claimant would be living (i.e. his parents) and his proposed place of employment. She decried the Parole Board's failure to indicate whether it considered the suitability of the claimant's living and work conditions and/or his family and friends' network. She submitted further that the decision to deny release on license was unreasonable, irrational, and erroneous in law because of the failure to take proper considerations into account or to show by reasons that it exercised its mandate by balancing the risk element with the conditions for the public safety. Ms. Pitts commended the approach in **R (DSD) v Parole Board** where a prisoner was psychologically evaluated no less than four times sometimes up to three hours on a single evaluation. All evaluations and materials before the tribunal were considered and weighed to grant the release on license. This is what she claims qualifies as independent and impartial risk assessment and the approach to be adopted in Belize. She was, therefore, critical of the approximately ten minute-assessment by Dr Matus Torres that the claimant got, shortly before his first parole hearing (i.e. 2021) and the failure of the Parole Board to treat with that report properly or fairly, but to take the findings wholesale.

[18] [2018] CCJ 7(AJ) where the Parole Act was assessed for its constitutionality, though prematurely so.

[44] I do not agree with Ms. Pitts that in providing reasons, the Parole Board must give full or exhaustive details of **all** material conditions considered by it including in-depth details of how it would manage the risk of re-offending of the same kind. The cases are clear that what is required is for the reasons to "refer only to the main issues in the dispute, not to every material consideration". It would suffice for the Parole Board in considering public safety issues to indicate that the section 7 release conditions were taken into account and what militated against his release, without exhaustively going into them. As stated above, reasons are not required to be lengthy but adequate, and concise reasons are not necessarily inadequate.

[45] In the instant matter, the reasons were short and provided late, and only after the claim was filed. They were not provided when the claimant requested them after the hearing or during the preliminary stages of this application, as counsel for the defendant was adamant that reasons are not an entitlement but a courtesy.

[46] Ms. Pitts insisted on detailed reasons. She claimed that the claimant had successfully completed several recognised rehabilitative programs and there was no indication how or if the rehabilitative efforts were satisfactory. The Parole Board also did not identify or recommend further rehabilitative programs that could assist the claimant's rehabilitative efforts. While the Minutes reflected that the claimant in his representation stated that, "he was still looking for answers" there was nothing in the record to assist how that was counted against him or how any other condition was weighed in light of the public safety issues. Regarding his conduct, the affidavit of Mr. Kevin Arthurs at paragraphs 8 & 9 rehearsed the infractions of the claimant, noting he had 9, although it stated that his conduct was good. The record did not reveal if the infractions were counted against him and why, and no questions were asked of him at the oral hearing to get any explanation/assistance in understanding the nature of the infractions.

[47] In response, Ms. Gomez submitted that the claimant was found guilty of all 9 infractions:

1. Possession of unauthorised article, 26th July 2014.
2. Disobeying an order to turn around so that he could be placed in handcuffs, 19th August 2015.
3. Inciting mutiny, 19th August 2015.

4. Disrespectful behaviour by pointing his finger in an officer's face, 19th August 2015.
5. Offending good order and discipline, 20th August 2015.
6. Disrespectful behaviour, on 20th September 2015
7. Disrespectful behaviour by calling an officer a bitch, 20th September 2015.
8. Failure to obey an order to end a phone call.
9. Giving away property without lawful authorisation, 16th April 2018

[48] According to Ms. Gomez, these infractions show that the claimant still disobeys prison guards and even threatens them. Such a factor bears great significance as it lends itself to the conclusion that the claimant is not likely to respond and/or respect authority. I did not concur with Ms. Gomez's argument. Of note is that these infractions occurred very early in time of his entrance into the prison population and long before his rehabilitative training occurred during the years 2019 to 2022. Further, I do not agree with Ms. Gomez that when the claimant was "informed of the decision" of the Parole Board on the same day by Mr. Fabian Ack, a member of the Parole Unit that this equated to the giving of reasons. That is not the evidence before me. In light of the facts and evidence in this case, the claimant ought to have been provided with adequate, intelligible reasons for refusal of his parole.

[49] The overarching consideration of the Parole Board in the exercise of its discretion to refuse parole is public safety or dangerousness (see **Gregory August**). I accept that it is a delicate and specialist function that is performed by the Parole Board to balance the protection of the public with all other factors including the risk of re-offending. I find that the procedure of the Parole Board in considering the claimant's application in 2022 was not manifestly unfair, unreasonable, or irrational. He was allowed to make representations, and to put materials for consideration before the Parole Board. In its deliberation, the Parole Board would have taken account of the section 4(3) factors in assessing if the public safety risk of releasing the prisoner significantly outweighs the benefit of releasing the prisoner. That decision is squarely within the **remit** of the Parole Board and not this court. On the evidence, the Parole Board performed its specialist mandate for hearing parole applications but failed or refused to provide reasons for its decision. Thereafter, it refused to accede to requests for reasons from the claimant doing so only when the claim was filed against it. There was no evidence that the Parole Board's procedure was compromised or lacking in independence or that it was predisposed to favour the official version of events over the claimant's case. I find no fault with the parole procedure itself, and I refuse the judicial review application.

[50] I find that the claimant should be supplied with reasons for the refusal of parole. The Parole Board is not to wait until a legal claim is launched against it to belatedly supply reasons in court papers. I, therefore, set aside as null and void the provision of late reasons through the affidavit of Mr. Kevin Arthurs, as slim in adequacy. Reasons for refusal of parole may be short, but they may not be hallowed and inadequate. The reasons must enable a prisoner to understand how the Parole Board came to its conclusion that the safety of the public requires the claimant's continued detention beyond the judge-stipulated minimum period. It should allow him to know what area(s) are to be worked on by him or improved for likely future favourable consideration. The Parole Board will not be allowed to hide behind the argument that they are entitled to distil hallow and inadequate reasons because there is no statutory requirement for the giving of reasons. The Parole Board's failure to supply reasons or its supplying of inadequate reasons late is not acceptable. I will order the Parole Board to provide the claimant with reasons for its refusal to grant him parole. These reasons must be adequate (even if short) and intelligible to assist the claimant with understanding how the factors the Parole Board considered militated against him getting parole.

Costs

[51] The claimant seeks costs on the basis that he was forced to litigate after the Parole Board undermined his rights at every turn. In the circumstances of this case, I will exercise my discretion and order the parties to bear their own costs.

Disposition

[52] It is ordered as follows:

i. The application for judicial review is dismissed.

ii. The defendant is directed to provide reasons to the claimant for its 2022 decision to refuse to grant him release on license within forty-two days of the date of this decision.

iii. Each party is to bear their own costs.

Martha Alexander

High Court Judge