

**NATIONAL PAROLE BOARD
APPEAL DIVISION
DECISION**

Name: LATIMER, Robert William
F.P.S.: 712177A
Institution: William Head Institution
Decision(s) Appealed: Day Parole Denied

The Role of the Appeal Division

The role of the Appeal Division is to ensure that the law and the Board policies are respected, and that the rules of fundamental justice are adhered to and that the Board's decisions are based upon relevant and reliable information.

The Appeal Division reviews the decision-making process to confirm that it was fair and that the procedural safeguards were respected.

The Appeal Division has jurisdiction to re-assess the issue of risk to reoffend and to substitute its discretion for that of the original decision makers, but only where it finds that the decision was unfounded and unsupported by the information available at the time the decision was made.

**Vote: Appeal allowed;
Decision of December 5, 2007 to deny day parole is reversed;
You are to be immediately released on day parole (pending the
availability of bed space) with the imposition of the following
special conditions:**

1. Not to have responsibility for, or make decisions for, any individuals who are severely disabled.
2. Participate in psychological counselling in order to address any personal/emotional issues and to further develop stress management and coping strategies to assist you in your reintegration into the community.

Leave Privileges are permitted in accordance with the National Parole Board (NPB) policy and the rules and regulations of the Community-based Residential Facility (CRF).

Summary of Appeal Decision:

You have appealed the National Parole Board's decision of December 5, 2007, to deny your day parole.

The Appeal Division has carefully reviewed your file and listened to the recording of the hearing. We have also considered the written submissions, prepared on your behalf by your lawyer, Mr. Jason Gratl, dated January 23, 2008.

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In arriving at our decision to allow the appeal, reverse the Board's decision of December 5, 2007 and release you on day parole with the above imposed special conditions, we have considered the following ground:

- Reasonableness of the Decision

Analysis of Ground:

- **Reasonableness of the Decision**

You submit that the Board's decision is unreasonable given all of the information available and that the Board erred in law by failing to consider the viability of a less restrictive option consistent with public safety.

First, you submit that contrary to subsection 101(b) of the Corrections and Conditional Release Act (CCRA), the Board failed to consider the stated reasons and recommendations of the sentencing judge, and any other information from the trial or the sentencing hearing. In that regard, you refer the Appeal Division to the 2001 decision of the Supreme Court of Canada in your case, which stated that the sentencing principles of rehabilitation, specific deterrence and protection are not triggered for consideration. The principle of denunciation was the only sentencing principle that applied to your case. You further refer the Appeal Division to the first jury's recommendation, which was that you should be eligible for parole as early as possible, and to the second jury's recommendation, which was that you should be eligible for parole after one year.

You further submit that the Board erred in arriving at its conclusion that you would present an undue risk to society if released on day parole. You refer the Appeal Division to the Board's Reasons for Decision which concluded that your lack of insight into your current offence is an indication that you present a risk of re-offending and a risk that you will breach the conditions of your parole. You state that none of the evidence before the Board demonstrated the existence of any propensity on your part to commit criminal offences. You add that Dr. Monkhouse, in his 2007 Psychological Report, assessed you as presenting a low risk for general and violent re-offending. You state that Dr. Monkhouse concluded that given the unique circumstances of the current offence, it is unlikely that you would commit a violent offence while on conditional release. You add that Dr. Monkhouse stated that your risk would increase only if you were to find yourself in a position where you would be responsible for a severely disabled person, particularly a son or daughter. You refer the Appeal Division to a 2001 psychiatric assessment which concluded

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that you would present no risk from non-compliance in the future. A Correctional Plan Progress Report dated September 21, 2007, concluded that you present as a high reintegration potential, a low risk to public safety, and that there are no outstanding risk factors requiring intervention in your case.

You explain that the situation within which the offence occurred was unique and that it is unlikely that you will encounter a similar situation in the future. You state that the Board had no information that could suggest that you intend to actively put yourself into a position of responsibility for severely disabled individuals. In your view, there is no evidence to support the conclusion that you are likely to confront such a situation if released on day parole.

You also submit that the Board erred in law by failing to consider whether a release condition preventing you from taking responsibility for a severely disabled or incapacitated individual would be consistent with the protection of society. In that regard, you refer the Appeal Division to subsection 101(d) of the CCRA which requires that the Board make the least restrictive determination consistent with the protection of society. You state that the Board had an obligation to consider whether supervisory conditions would sufficiently minimize the risk that you may present on day parole. In that regard, you argue that the Board had no information to suggest that you would be unwilling or unable to comply with any supervisory conditions. You explain that during the past 15 years, you have not breached any bail conditions, committed any prison disciplinary infractions, or caused any problems while on an Escorted Temporary Absence. You further refer the Appeal Division to the Community Strategy Report prepared by the Ottawa Parole Office which offered you support for a day parole release to the Ottawa area. Given all of the available information, you conclude that it was unreasonable for the Board to conclude that you would present a risk of not complying with any conditions imposed on a day parole. And even if the Board had a factual basis for concluding that you would present a danger to severely disabled individuals under your responsibility, it failed to consider whether such a risk could be managed with special conditions.

For these reasons, you ask the Appeal Division to order your release on day parole. In the alternative, you ask that a new review be ordered.

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Mr. Latimer, after reviewing your case, the Appeal Division is satisfied, pursuant to paragraphs 147(5)(a) and (b) of the Corrections and Conditional Release Act (CCRA), that (1) the Board's decision to deny day parole cannot be reasonably supported in law and on the basis of the information available to the Board in its review of your case and, (2) a delay in releasing you from imprisonment would be unfair.

Firstly, the Appeal Division finds that the information available to the Board does not reasonably support the Board's conclusion that you will, by reoffending, present an undue risk to society on day parole, pursuant to the criteria set out in section 102 of the CCRA. It is important to note that "undue" risk means a risk that is excessive or disproportionate. Furthermore, a "day parole" release is defined in section 99 of the CCRA and means that an offender on day parole is required to return to a designated correctional or residential facility each night, unless authorized in writing.

The Board's decision to deny your day parole was based on your responses and overall presentation at the hearing. In essence, the Board found that you lacked insight and understanding into the factors that contributed to your decision to end the life of your daughter. The Board found that you struggled to provide any coherent explanations and that you were unable or unwilling to answer questions.

The Appeal Division finds that the Board's determinations in this regard are unreasonable and unsupported. Your responses at the hearing reveal that you did in fact demonstrate insight and were able to explain why you decided to end the life of your daughter after thirteen years of caring for her. Although you needed to be refocused at times, you were not unwilling to answer questions. You did not state that you would not follow the law. Rather, you made it clear that, although you do not agree with the law as it stands with respect to the specific circumstances of your current offence, you would continue to pursue this issue through the appropriate legal channels.

Furthermore, the Board's determination to the effect that caring for a severely disabled family member is a "normal occurrence", is unreasonable. File information and clinical opinion indicate that the circumstances of your offence were indeed unique and that it was unlikely that you would find yourself in a similar high-risk situation. You clearly made the distinction between the specific situation you found yourself in, caring for your severely disabled daughter who was unable to make her own decisions and could not take certain medications, and the situation of a parent or family member who may be crippled or in pain and who could take better pain control medication.

Moreover, there is nothing to support the Board's statement that your desire to pursue your legal issues raised questions about your willingness to comply with the expectations of parole supervision. Your file reveals that your behaviour has been fully compliant for many years while on bail and while incarcerated and there is no

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information to suggest that, if released on day parole, you would not comply with the laws, regulations and conditions imposed on you in the community. You were also able to explain why you wished to reside in Ottawa on day parole in order to pursue advocacy work with respect to the imposition of your life sentence. You had family support in the area and employment opportunities. You further stated that, given the notoriety of your case, it would be best for now not to return to the family farm, as your situation has taken a toll on your immediate family members.

Even if it were reasonable to conclude that you did lack insight regarding your actions and motivations, we find that the Board's determinations in this regard are insufficient to support the Board's conclusion that you present an undue risk to society if released on day parole, when such determinations are assessed and weighed in light of all other relevant, reliable and persuasive information available to the Board. The other information available to the Board, in your file and at the hearing, reveals as follows:

- You have a limited criminal history, with no prior convictions involving violence.
- Police information reveals that you were a law-abiding citizen for many years and were an upstanding, hard working father and husband.
- Your current offence of Second Degree Murder, committed in 1993, has been described as situational in nature, uncharacteristic and was committed based on a specific set of circumstances. You decided to end the life of your daughter, for whom you cared over a thirteen-year period. Your daughter was severely disabled and suffered from a rare form of Cerebral Palsy. She experienced chronic pain. Your daughter was said to have the mental capacity of a four-month-old baby and was not capable of speaking or walking.
- At your first trial, the jury unanimously recommended that you should be eligible for parole as early as possible. At your second trial, the jury unanimously recommended that you should be eligible for parole after one year.
- Your behaviour since your current offence in 1993 has been fully compliant, including your eight years while on bail.
- Your institutional behaviour while incarcerated has been fully compliant and you have not incurred any institutional charges, raised any security concerns or shown any signs of aggression or violence.
- You have been classified as a minimum-security offender since 2003.
- You have successfully completed numerous Private Family Visits. You have strong family support.
- You have successfully completed one Escorted Temporary Absence for compassionate reasons to attend a family funeral in 2005.
- You have complied with your Correctional Plan requirements, by working and upgrading your education and employment skills. You successfully completed a series of psychological counselling sessions in 2001 to address personal/emotional issues. You were not required to participate in any

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correctional programming, as there are no outstanding risk factors requiring intervention. You are reported to have made positive use of your time while incarcerated.

- Actuarial scores and clinical opinion assess you as an overall low risk to reoffend, both violently and generally.
- The Psychiatric Report dated October 5, 2001, concluded that you are "*not a risk to the general population*". The psychiatrist assessed you as a low risk to reoffend violently and also stated that there was no risk of non-compliance in the future.
- The Psychological Report dated January 21, 2003, concluded that you are a low risk to reoffend violently. The psychologist stated that your "*present offence appears to be largely a deviation from his (your) regular pattern of overt behaviour, and it seems unlikely that that he (you) would be presented with a similar set of circumstances in the future...especially in terms of risk to the general public*". The psychologist further indicated that even though you had rigid and moralistic attitudes, you have conformed to the institutional rules and were assessed as a low escape risk.
- The recent Psychological Report dated March 16, 2007, completed for your day parole review before the Board, indicated that you accepted full responsibility for your current offence and presented as sincere. The psychologist assessed you as a low risk to reoffend, both generally and violently, and supported your release on day parole to Ottawa. Although the psychologist was of the view that your risk would increase significantly if you were to again find yourself responsible for a severely disabled person, particularly a son or a daughter, he concluded that, given the "*unique circumstances*" of your current offence, it was "*unlikely*" that you would commit another violent offence if granted parole.
- There was no information before the Board to suggest that you will be placed in a similar and unique situation where you will be responsible for a severely disabled person who is unable to make his/her own decisions. Your Parole Officer confirmed at the hearing that this issue had been discussed with you and that you had no immediate family members who were in a similar position. In her view, the risk of your being put in the same position where you would be responsible for a severely disabled person was "*incredibly minimal*" and in the unlikely event you were ever in that position, you would be required to report this information to your Parole Officer.
- The Board acknowledged at the hearing that "*there is nothing to suggest that the broad society is at risk*".
- You were assessed by the Correctional Service of Canada (CSC) as having a high reintegration potential and CSC recommended your release on day parole.
- Your release plan is viable and involves community and family support, as well as employment opportunities. You have been accepted at two community-based

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residential facilities (halfway houses) in Ottawa, where you will be closely supervised and monitored in a structured setting.

- Police representatives for Ottawa support your day parole release to Ottawa.

After having reviewed the above available relevant information in light of the legal criteria set out in section 102 of the CCRA as well as the guiding principles set out in section 101 of the CCRA, the Appeal Division finds that the Board's conclusion that you present an undue risk to society on day parole is unreasonable. Rather, the available information before the Board supports the conclusion that you are a low risk to reoffend and can be safely managed in the community on the proposed day parole release plan. Although clinical opinion indicates that your low risk to reoffend would increase if you were to have responsibility for a severely disabled person, particularly a son or a daughter, the Board failed to adequately consider and weigh that the reoccurrence of such a specific and unique situation in your case is unlikely and can be managed in the community by way of the imposition of a special condition. Accordingly, the available information reasonably supports the conclusion that the least restrictive determination consistent with the protection of society is to grant your day parole with the above-noted special conditions.

Secondly, the Appeal Division finds that, in light of the available information, there is no justifiable reason to delay your release into the community and any delay would be unfair. You do not present an undue risk to reoffend and your release on day parole will contribute to the protection of society by facilitating your reintegration into the community as a law-abiding citizen.

Accordingly, the Appeal Division, pursuant to subsection 147(5) of the CCRA, reverses the Board's decision of December 5, 2007, and releases you on day parole with special conditions, pending the availability of bed space at one of the halfway houses that have accepted you.

In arriving at our decision, it must be emphasized that we recognize the very serious nature of your offence. The Courts have determined that you must serve a life sentence. Our mandate is not to assess your innocence or guilt or make determinations about the moral and legal issues arising from the circumstances of your case. Rather, our role is to determine whether the Board's conclusion that you present an undue risk to society on day parole can be reasonably supported on the basis of the applicable law and the available relevant information, and we have concluded that it cannot.

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Conclusion:

For the reasons set out above, the Appeal Division is satisfied, pursuant to paragraphs 147(5)(a) and (b) of the CCRA, that (1) the Board's decision dated December 5, 2007, to deny your day parole cannot be reasonably supported in law and on the basis of the information available to the Board and, (2) a delay in releasing you from imprisonment would be unfair. Accordingly, your appeal is allowed, the Board's decision of December 5, 2007 is reversed and you are to be immediately released on day parole, pending the availability of bed space. The Appeal Division is imposing the following two special conditions pursuant to subsection 133(3) of the CCRA , as they are seen as reasonable and necessary in order to protect society and to facilitate your successful re-integration into society :

1. Not to have responsibility for, or make decisions for, any individuals who are severely disabled.

This special condition is seen as reasonable and necessary, given the circumstances of your current offence committed against your severely disabled daughter. The clinical opinion in your file indicates that, if you were to find yourself again in the unique situation of having responsibility for, and making decisions for, a severely disabled person, particularly someone to whom you have an emotional attachment such as a son or daughter, your risk would increase.

2. Participate in psychological counselling in order to address any personal/emotional issues and to further develop stress management and coping strategies to assist you in your reintegration into the community.

This special condition is seen as reasonable and necessary, given that your return to society after a significant period of incarceration and the notoriety of your case, may give rise to the need to develop additional stress management and coping strategies to facilitate your successful re-integration into the community.

Leave Privileges are permitted in accordance with the National Parole Board (NPB) policy and the rules and regulations of the Community-based Residential Facility (CRF). You will also be subject to the mandatory conditions prescribed by subsection 161(1) of the Corrections and Conditional Release Regulations.

C. Kennedy
Board Member

P. Dion
Board Member

DECISION DATE: February 27, 2008

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