Federal Court Cour fédérale

Date: 20250523

Docket: T-1166-24

Citation: 2025 FC 935

Ottawa, Ontario, May 23, 2025

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

JAMES MICHAEL MCLEAN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, James Michael McLean, seeks judicial review of a decision of the Parole Board of Canada (the "Board") dated March 6, 2024, revoking the Applicant's pardon pursuant to paragraph 7(b) of the *Criminal Records Act*, RSC, 1985, c C-47 (the "Act").

[2] The Applicant submits that the decision is unreasonable, as the Board disregarded his submissions and failed to properly assess whether he is no longer of good conduct.

[3] I agree. For the reasons that follow, this application for judicial review is allowed.

II. **Background**

A. *Legislative Framework*

[4] The Act establishes a framework for suspending the criminal record of an individual who has been convicted of particular offences under an Act of Parliament (the Act, s 2.3(b)).

[5] Pursuant to subsection 2.1(1) of the Act, "[t]he Board has exclusive jurisdiction and absolute discretion to order, refuse to order or revoke a record suspension." A record suspension may be granted if the Board finds an applicant is "of good conduct" and "the conviction in respect of which the record suspension is ordered should no longer reflect adversely on the applicant's character" (the Act, ss 2.3(a)(i), 2.3(a)(ii)).

[6] Pursuant to paragraph 7(b) of the Act, the Board may revoke a record suspension "on evidence establishing to the satisfaction of the Board that the person to whom it relates is no longer of good conduct." The Board's *Decision-Making Policy Manual for Board Members* (the "Policy Manual") stipulates that, "[i]n determining whether [an] applicant has been of good conduct, Board members should consider whether the applicant's behaviour is consistent with and demonstrates a law-abiding lifestyle" (s 12.1.20).

B. *Facts*

[7] The Applicant is a resident of British Columbia. He is 40 years old.

[8] In 2007, the Applicant was convicted of dangerous operation of a motor vehicle. He received a pardon for this conviction in 2013.

[9] The Applicant subsequently became a pilot. During the COVID-19 pandemic in 2020, the Applicant lost his job. He became isolated and his alcoholism worsened.

[10] In July 2021, the Applicant travelled to visit family in southern Ontario. Although the Applicant had previously installed a voluntary ignition interlock in his vehicle, he failed to transfer this device to his new vehicle prior to his departure.

[11] The Applicant was arrested after police received a call about a vehicle being driven in an erratic and dangerous manner. The Applicant demonstrated clear signs of intoxication during the arrest. Although he stated that he had "consum[ed one] drink at lunch," his blood alcohol levels were more than triple the legal limit.

[12] Following this incident, the Applicant was again charged with dangerous operation of a motor vehicle, in addition to operating a conveyance while impaired and having a blood alcohol content of 80 mgs or over within two hours of ceasing to operate a conveyance.

[13] In April 2023, the Applicant received a conditional discharge and a 12-month probationary period for dangerous operation of a motor vehicle. His two other charges were withdrawn.

[14] In November and December 2023, the Board contacted the Applicant with a proposal to revoke his pardon under paragraph 7(b) of the Act. The Board invited the Applicant to submit written representations.

[15] The Applicant submitted written representations in January 2024. He explained that his arrest in 2021 was "[his] rock bottom." The Applicant stated that, unlike at the time of his arrest, he has now "accepted that [he is] an alcoholic and to live [his] best life moving forward, [he] must forever abstain from any substance use."

[16] The Applicant stated that he began treatment for alcoholism shortly after his arrest. The Applicant reported that he has not consumed alcohol since July 2021, attributing this achievement to the support he received while in treatment. He stated that he works at one of the facilities he attended and has been promoted to a leadership position at this organization.

[17] The Applicant also described his enrolment in Aircrew Recovery Canada's Pilot Recovery Program. He stated that he is presently eligible to be reinstated under supervision for having "confirmed [his] continued sobriety" to the program's satisfaction over a period of two years.

[18] On March 6, 2024, the Board revoked the Applicant's record suspension. The Board recognized the Applicant's sobriety and his remorse for his 2021 arrest. However, the Board found that "there [were] several aggravating features of [the Applicant's] most recent discharged offence," including the speed at which the Applicant was travelling, his reckless behaviour toward other drivers, and his false claim to the police that he had only consumed one drink. The Board determined that, "[d]espite the passage of time since [his] 2007 conviction, given the seriousness of [his] conduct and the apparent similarity in the nature of [his] historic offence and [his] most recent discharged conviction…this is an appropriate case for revocation." This is the decision that is presently under review.

III. **Issue and Standard of Review**

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

[20] The parties submit that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25 ("*Vavilov*")). I agree.

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

administrative setting, the record before the decision maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

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

IV. **Analysis**

[23] The Applicant submits that the Board's decision is unreasonable. He submits that the Board failed to account for his sobriety and recovery from alcoholism in assessing whether he is no longer of good conduct. The Applicant submits that the Board disregarded the passage of time since his 2007 conviction and his efforts at rehabilitation following his 2021 arrest. The Applicant argues that the Board's decision is insufficiently responsive to his submissions and therefore unreasonable.

[24] The Respondent submits that the Board made no reviewable error. The Respondent asserts that the Board addressed the factors described in the Applicant's submissions, including his treatment for alcoholism and his sobriety since July 2021. The Respondent submits that the Board was entitled to weigh this evidence against police reports demonstrating the seriousness of

the conduct underlying the Applicant's arrest in 2021. It is the Respondent's position that the Board reasonably determined that a pardon revocation was justified on this basis.

[25] I agree with the Applicant.

[26] The Applicant rightly notes that the Board's decision is marked by a complete lack of engagement with the evidence before the decision-maker. The Board recited the factors raised by the Applicant in his letter and went no further. As a result, the chain of analysis provided in the decision fails to account for almost all the evidence before the Board, with the notable exception of the police report concerning the Applicant's arrest in 2021.

[27] The Board's treatment of the 2021 police report highlights the deficiencies in its engagement with the other evidence on the record. The Board summarized the findings of the police report and incorporated these findings into its analysis. The Board noted the manner in which the Applicant drove his vehicle, the extent of his impairment, and the impact of the Applicant's actions on public safety. In contrast, the Board's analysis is silent with respect to the Applicant's rehabilitative efforts. Although the Applicant's submissions are summarized in an earlier section of the decision, neither the Applicant's addiction nor his sobriety are mentioned in the analysis section of the Board's decision. On a plain reading of the Board's analysis, there is no indication that the Applicant has undertaken steps to manage his addiction at all.

[28] The Respondent submits that this proceeding is analogous to *Sauve v Canada (Attorney General)*, 2024 FC 1589 ("*Sauve*"), in which this Court held that "good conduct is a question of

fact" (at para 22). I do not find *Sauve* to be of assistance to the Respondent in this case. Unlike the applicant in *Sauve*, the Applicant in this matter did not deny the incident at the root of the Board's proposal to revoke his record suspension. The Applicant states that he "deeply regret[s] driving under the influence" and felt "horror" at "put[ting] so many lives at risk." The only instance in which the Applicant failed to take full responsibility for his actions was when he stated to police that he had consumed just one drink at the time of his arrest, a statement which was made when the Applicant was in an irrational and highly intoxicated state.

[29] In any event, the Applicant in this matter does not dispute the Board's factual findings. He submits the Board erred by failing to consider these findings in its assessment of whether the Applicant is of good character. Unlike in *Sauve*, where the Board was presented with contradictory evidence from the police and the applicant, the Board in this matter was not presented with divergent accounts of the Applicant's 2021 arrest (at para 25). The Applicant does not allege that the Board erred by preferring one account over another, but rather by disregarding its own factual findings in its analysis under paragraph 7(b) of the Act.

[30] In my view, the record before the Board demonstrates that the Applicant has made a lasting commitment to sobriety following his arrest in 2021. The Applicant submitted strong reference letters attesting to his "exceptional dedication, reliability," and "genuine commitment to his own recovery and the recovery of others struggling with addiction." The Applicant's mentor in the Pilot Recovery Program stated: "As a pilot I have the upmost [sic] confidence in [the Applicant] and would be proud to fly with him as well as my family." One could hardly imagine stronger assurance of the Applicant's change in character. The Board's only reference

to this evidence is a note that "[a]long with [his] letter [the Applicant has] provided two letters of support which the Board has reviewed." I therefore agree with the Applicant that the Board's decision is insufficiently responsive to his submissions. Reviewing the Board's written reasons, I am not persuaded that the Board "ha[s] actually *listened* to the parties" (*Vavilov* at para 127 [italics in original]).

[31] I further note that the Board's decision has troubling implications for individuals with alcoholism and substance use disorder more broadly. Following his arrest in 2021, the Applicant immediately enrolled in a treatment centre. He has not consumed alcohol since July 2021. He was hired by the treatment facility that he previously attended and has been promoted to a leadership role within this organization. Through the Pilot Recovery Program, the Applicant is now eligible for reinstatement of his pilot license, under supervision. This program alone required the Applicant "to blow into a Soberlink device four times a day for two years," as well as "[do] urine screens monthly and quarterly blood tests while working with an Aviation Medical Doctor."

[32] In light of this evidence, one must ask: if the above does not constitute good conduct, what does?

[33] The Respondent rightly notes that subsection 2.1(1) of the Act clearly gives very wide discretion to the Board to determine the answer to this question. However, the Board is nonetheless obliged to exercise this discretion in a manner consistent with the purposes of the Act (*Thanabalasingham v Canada (Attorney General)*, 2017 FC 190 at para 65

("*Thanabalasingham*"); *Vavilov* at para 108). A framework in which "the [A]pplicant may never be able to redeem himself" is not consistent with these objectives (*Thanabalasingham* at para 65).

[34] In my view, the Board in this case foreclosed the possibility that the Applicant could be capable of change, falling into the precise error described in *Thanabalasingham*. This is evident in the attitude of permanency which pervades the Board's assessment of the Applicant's 2021 arrest. The Board noted that the Applicant "drove a vehicle while…clearly impaired…in a reckless and erratic manner," "plac[ing] the public at considerable risk." On this basis, the Board found that the Applicant "ha[s] <u>continued</u> to make poor choices behind the wheel and continued to pose a threat to public safety" [emphasis added].

[35] Although this may be a fair description of the Applicant's conduct in 2021, the Applicant correctly notes that the statutory test is whether he "<u>is</u> no longer of good conduct," not whether he ever failed to be of good conduct in the past (the Act, s 7(b) [emphasis added]). In my view, this question cannot be reasonably answered without considering the Applicant's rehabilitative efforts since 2021. Failure to account for this evidence risks eliminating the Board's capacity to account for individuals' recovery from addiction and substance use disorder – a factor which is obviously central to the redemptive object of the record suspension provisions in the Act.

V. **<u>Costs</u>**

[36] The Applicant sought costs in this matter. During the hearing, the Respondent submitted that, if granted, costs should be fixed at $540. Considering that costs are ultimately in the

discretion of the Court, I find that this application does not warrant an award for costs (*Federal Courts Rules*, SOR/98-106, s 400(1)).

VI. **Conclusion**

[37] This application for judicial review is allowed. The Board's decision is not responsive to the Applicant's submissions and fails to account for the evidence on the record (*Vavilov* at paras 127, 126). No costs are awarded.

JUDGMENT in T-1166-24

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is allowed.

2. No costs are awarded.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1166-24
STYLE OF CAUSE:	JAMES MICHAEL MCLEAN v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO AND BY VIDEOCONFERENCE
DATE OF HEARING:	MAY 13, 2025
JUDGMENT AND REASONS:	AHMED J.
DATED:	MAY 23, 2025

APPEARANCES:

Brian H. Greenspan Michelle M. Biddulph	FOR THE APPLICANT
Melissa Gratta Nick Continelli	FOR THE RESPONDENT

SOLICITORS OF RECORD:

GREENSPAN HUMPHREY WEINSTEIN LLP Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT