



Parole hearing

Under section 21(1) of the Parole Act 2002

Wayne Leslie DOUGLAS

Hearing: 8 April 2015
at Auckland Prison

Members of the Board: Judge T Broadmore (Panel Convenor)
Mr R Crotty
Mr P Elenio

Counsel: (withheld)

Support People: (withheld)

DECISION OF THE BOARD

1. Wayne Leslie Douglas is 61 years of age. He is serving a sentence of imprisonment for eight years two months for serious criminal offending of a type popularly described as white collar crime. He pleaded guilty to and was convicted of two charges of breaching the Securities Act and unusually defended three charges of theft in a special relationship. The charges arose out of the collapse of Capital Merchant Finance Limited, of which he was a director.
2. Mr Douglas' sentence commencement date was 31 August 2012, his parole eligibility date is 10 April 2015, and his sentence expiry date is 18 September 2020.
3. Capital and Merchant Finance Limited went into receivership on 23 November 2007. It was subsequently ascertained that money invested in the company by about 7000 investors and amounting to some \$167 million had been entirely lost. In the High Court Wylie J considered that the offending of Mr Douglas (and his fellow directors Mr Neal Nicholls and Mr Owen Tallentire) was not directly responsible for this loss; but they were parties to transactions whereby interests associated with them received some millions of dollars from the company by way of advances which should never have been made.

4. We will not further explain the context of Mr Douglas' offending, because the detail is set out in the sentencing judgments respectively of Wylie J and Venning J in the High Court dated 31 August 2012 and 28 June 2013 respectively.
5. Before this offending, Mr Douglas had never been convicted of an offence. There can be no question but that Mr Douglas feels deep remorse for his offending, and for the losses caused to investors in the company following its collapse. In paragraphs 50 to 55 of Wylie J's judgment, the learned Judge deals with Mr Douglas' attitude to his offending and quotes passages from a letter which he had written to the Judge setting out his remorse and regret, acknowledging the errors which he had made in his governance of the company, and offering apologies to those affected. Those sentiments are also touched on in Venning J's judgment, though in much less detail, at paragraphs 23 and 24.
6. Ultimately Mr Douglas gained nothing from the offending transactions which were the subject of Wylie J's judgment. He told us that the cash component of the advance which he personally received amounted to some \$985,000. He invested most of that in a property development being undertaken by friend. The development failed, and he lost his investment. As a consequence, he was later made bankrupt.
7. Mr Douglas has done well in prison. He is IDU free and has no misconducts. He is described as compliant, polite and friendly, and communicates well. The dominating aspect of his sojourn in prison has been his discovery of a passion for gardening. He has been working in the offender employment nursery since September 2012 and has also been studying horticulture through the (withheld) and the study of text books. He requires little supervision at work, puts in long hours, and demonstrates high work standards.
8. Upon his release, Mr Douglas intends to continue his work and study in horticulture although we think it is fair to say that his precise plans have not yet been formulated.
9. If released on parole, he would resume living with (withheld) at her address in (withheld) where she owns and runs a livestock breeding business on a 100 acre farm.
10. Whilst in prison, Mr Douglas has not been eligible to complete any rehabilitative programmes or interventions, and the Department considers that he does not meet the criteria to attend any treatment programmes after release. It assesses Mr Douglas as being at low risk of offending. For his part, Mr Douglas told us that he had no intention of returning to business activity except perhaps in the context of horticulture.

11. Last year the Hon. J W Gendall QC was the convenor of a Parole Board panel considering the eligibility for parole of Mr Owen Tallentire, one of Mr Douglas' co-offenders. In the course of its decision, that Board said as follows:

“Issues of punishment and length of sentence are not relevant to the Parole Board’s function. They are the jurisdiction of the sentencing Judge. The Board is required by law to release an offender to serve the balance of a sentence whilst on parole and managed by the Probation Service, if the offender does not pose an “undue risk to the safety of the community.” With someone of the age of Mr Tallentire, his history of no convictions or offending until the present index offending, with the support that he has in the community, assessment of his risk has to proceed on a principled basis. It is apparent to us that no further rehabilitative measures are necessary. He has served the punitive element of his sentence as determined by the sentencing Judge.”

12. That passage applies precisely to Mr Douglas' situation. But it should also be mentioned that, in his case, the Crown submitted to Wylie J that he should impose a minimum period of imprisonment on Mr Douglas, but Wylie J rejected that submission and declined to impose a minimum period of imprisonment – see paragraphs 130 and 131 of his judgment.
13. It is clear to us, as it was clear to the Board considering Mr Tallentire's parole, that Mr Douglas meets the statutory criteria for release. We direct his release on 29 April 2015. He will be subject to standard and special conditions of release until his sentence end date on 18 September 2020. We note that in Mr Tallentire's case special conditions were imposed up until two years after his release date. However, the parole assessment report prepared in respect of Mr Douglas proposed release conditions continuing only to the sentence end date, it was on that basis that we discussed release conditions with Mr Douglas and his counsel, and we think that the interests of the community are sufficiently protected if the conditions end with the sentence.
14. It is necessary also to refer to the attendance before the Board of (withheld)I, (withheld) and (withheld), all of whom spoke both of their disappointment and concern at Mr Douglas' offending and of his qualities as a family man, and of their continuing support for him. We also note a number of letters of support from friends and colleagues. We also note a handwritten letter to the Board, we assume from an investor, stating that he is appalled that Mr Douglas and his co-offender Mr Nicholls are seeking parole. As to that, we can do no more than refer to our comments in paragraph 11 above.
15. The special conditions are as follows:

- (1) To undertake and complete any appropriate counselling/programmes/treatment if directed to do so by the Probation Officer and to the satisfaction of the Probation Officer and treatment provider.
- (2) To reside at (withheld), and not to move from that address without the prior written approval of a Probation Officer.
- (3) To obtain written approval from your Probation Officer prior to starting, terminating or changing your position or place of employment.
- (4) Not to undertake employment or accept appointment as a director or officer of any business enterprise either in a paid or unpaid capacity that involves the handling of business finances, directly or indirectly; not to offer financial, investment or business advice to others; nor to undertake any financial, investment or business transactions on behalf of a third party, without the prior written consent of a Probation Officer.
- (5) Not to communicate or associate, directly or indirectly, with co-offenders, specifically Mr Neal Medhurst Nicholls and Mr Owen Francis Tallentire, unless you have the prior written consent of your Probation Officer.

Judge T Broadmore
Panel Convenor