

Parole hearing

Under section 21(1) of the Parole Act 2002

**Rodney Michael PETRICEVIC**

**Hearing:** 18 June 2014

 at (withheld)

**Members of the Board**: Judge D Mather (Panel Convenor)

 Mr D Bailey

 Ms S Pakura

**Counsel:** (withheld)

**In Attendance:** Mrs M Petricevic (wife)

 Nick Petricevic (son)

 Tony Petricevic (son)

**Judgment:** 31 July 2014

**RESERVED DECISION OF THE BOARD**

1. Mr Petricevic is serving a sentence of six years 10 months. That comprises a sentence of six years six months imposed on 26 April 2012 following conviction on six counts under the Crimes Act of making false statements, two counts under the Companies Act of making false statements in directors’ certificates and 10 counts under the Securities Act of distributing offer documents containing false statements. A cumulative sentence of four months was imposed on 18 July 2012 for a further two charges of making a false statement, one of using a document for pecuniary advantage and one of theft by a person in a special relationship.
2. The offending for which he was sentenced on 26 April occurred between December 2006 and April 2007. The charges for which he was sentenced on 18 July 2012 relate to offending in 2002.
3. The 2006-2007 charges led to a trial which ran for some five and a half months. The charges arose out of Mr Petricevic’s actions as Managing Director of the Bridgecorp group of companies (“Bridgecorp”). The nature of the offending is summarised in the sentencing notes of Venning J on 26 April 2012.
4. Bridgecorp’s principal activity was the sourcing of funding and lending of money in relation to property financing transactions. That activity was funded primarily through investments from the public by issuing secured debentures to members of the public and through issuing redeemable preference shares to Bridgecorp. To raise money in that way Bridgecorp had to issue prospectuses and investment statements from time to time.
5. The relevant documents which gave rise to the charges were issued between December 2006 and April 2007. The High Court found the charges under the Crimes Act proved on the basis that Mr Petricevic knew the statement in the offer documents that Bridgecorp had never missed interest and principal payments was false and he intended to induce people to invest in Bridgecorp. So far as the Companies Act charges were concerned, the Court found that he furnished statements to the trustee that were false in that they failed to disclose Bridgecorp’s missed interest and principal payments.
6. The Securities Act charges were proved on the basis that the offer documents included a number of untrue statements relating to the financial circumstances of Bridgecorp.
7. During the period the relevant false offer documents were before the public, some 4,500 existing or new investors reinvested $91million and invested $28million of new money.
8. Bridgecorp was placed into receivership and then liquidation in July 2007. The Court estimated that investors would recover, at most, 10 cents in the dollar of their investment. No updated figures were provided to the Board as to the extent of investor losses or recoveries, apart from Mr Petricevic’s own estimate that there might have been a 15-20% recovery.
9. As (withheld)said in his submissions on behalf of Mr Petricevic, substantial investment was made by the public in Bridgecorp over an extended period including prior to Mr Petricevic’s offending. The losses attributable to his offending could be assessed as the funds invested as a consequence of the issuing of false prospectuses, identified by the High Court in the total sum of approximately $119 million (see para 7 above).

**Release on Parole**

1. Mr Petricevic, like any offender serving a prison sentence of more than two years, is entitled to be considered for release on parole after serving one-third of his sentence: Parole Act 2002, s 20. His parole eligibility date is 17 July 2014.
2. The Parole Act sets out a number of principles and directions which must be addressed when considering an offender for release on parole:
* When making any decision relating to the release of an offender the paramount consideration is the safety of the community: s 7(1).
* Offenders must not be detained longer than is consistent with the safety of the community: s 7(2)(a).
* Offenders must not be subject to release conditions more onerous or longer than is consistent with the safety of the community: s 7(2)(a).
* Decisions must be made on the basis of all the relevant information available to the Board at the time: s 7(2)(c).
* The rights of victims must be upheld and due weight given to their views and to any restorative justice outcomes: s 7(2)(d).
1. The primary focus of the Board when considering release on parole is governed by s 28(2) of the Act. The Board can only release an offender on parole:
* if satisfied on reasonable grounds that if released the offender will not pose an undue risk to the safety of the community or any person or class of persons until sentence end date;
* having regard to the support and supervision available to the offender following release;
* and having regard to the public interest in reintegration of the offender into society as a law-abiding citizen.
1. When addressing the issue of undue risk the Board must consider:
* the likelihood of further offending;
* the nature and seriousness of any likely subsequent offending: s 7(3).
1. It is important to record the statutory provision that an offender has no entitlement to be released on parole: s 28(1AA).

**Information before the Board**

1. The Board has had regard to the following information:
* Caption summary of facts prepared by the Securities Commission.
* The High Court sentencing notes of 26 April 2012.
* The District Court sentencing indication notes of 17 July 2012.
* The pre-sentence report provided to the High Court dated 19 April 2012.
* Mr Petricevic’s criminal history, which comprises only the offences for which he is presently serving a sentence of imprisonment.
* Papers filed by (withheld)on behalf of Mr Petricevic:
	+ Mr Petricevic’s letter of 6 May 2014.
	+ Joint letter from (withheld)and (withheld)dated 3 May 2014.
	+ Letter from (withheld)dated 24 March 2014.
	+ Medical certificate as to (withheld)health dated 28 February 2014.
	+ Medical certificate as to (withheld)dated 2 February 2014.
	+ Three letters from long-term friends of Mr Petricevic dated May 2014.
* Parole assessment report prepared by the Department of Corrections in May 2014.

**Events since start of sentence**

1. Mr Petricevic’s term of imprisonment to date has been stable and unremarkable. He has a RoCRoI risk assessment of .06024, which is based on static risk factors and assesses him as being at very low risk of reoffending or of imprisonment.
2. Since June 2012 he has had a minimum security classification. He has not featured in any misconduct or incident reports and is described as compliant and no problem to staff or other prisoners.
3. For some time he has been working in the prison grounds. He is also studying for a New Zealand Law Society Legal Executive Diploma where he is making good progress.
4. Given his assessed low risk of reoffending, no rehabilitation needs have been identified and his sentence plan does not include any specific programmes.
5. (withheld)are supportive and he has regular visits from (withheld)and (withheld)as well as frequent telephone contact with them.
6. In terms of release planning, he proposes returning to live with (withheld)at their rental address in (withheld)where (withheld)also has an office. He was declared bankrupt in 2008 but the High Court noted his discharge from bankruptcy shortly before he was sentenced. He was banned from being a director or a promoter of a company until 29 May 2014. He claims to not have any debts or assets. He says he will be reliant on New Zealand superannuation for his financial support following release.
7. So far as any future work is concerned, Mr Petricevic has said that he intends to be retired but complete his study and with a Legal Executive Diploma do research work, legal aid work, or work for the Citizens Advice Bureau. He also advised that he may help out with (withheld)property business.

**Offending and remorse**

1. The High Court Judge said this at sentencing:

[41] Mr Petricevic, I accept you did not set out to cause any of the investors harm,but you did deliberately make false statements with the intention of inducing peopleto invest in Bridgecorp at a time when you knew the company was in seriousfinancial trouble. It had even ceased new lending, which was its principal activity.The new money was effectively used to keep the company going and to meet therepayments of investors who wished to withdraw their moneys.

…

[46] …I do not consider your misplacedoptimism is a factor that reduces your culpability in relation to the offending. For aconsiderable time during this period, for example, you knew that you could not relyon receiving anything from Momi Bay. The belief that Bridgecorp would survivewas really your belief that you would get away with making the false statements,rather than a lack of knowledge that what you were doing was wrong.

…

[49] I emphasise that you are not before this Court to be sentenced because theproperty market collapsed or because the onset of the global financial crisis affectedfinance companies, or even because Bridgecorp failed as a business. You are forsentence because as a director you made false statements in offer documents andother documents which misled a substantial number of people into investing orreinvesting substantial sums in Bridgecorp and BIL when, if they had been told thetruth they would not have invested or, in the case of Covenant, if it had been told thetruth steps would have been taken to protect the position of existing investors.

1. So far as remorse is concerned, the High Court Judge expressed the view that he was not satisfied that Mr Petricevic had shown genuine remorse. He said:

[63] …Remorse is defined as a deep regret or guilt for doing something morally wrongwhich in your case requires an acknowledgement and understanding that youractions were wrong in way. You have said you are remorseful but at the same timepurport to maintain your innocence. You also told the probation officer that youbelieved the prospectus reflected the state of the economy at the time. Aspects of itmay have, but not the aspects the Court found to be misleading and which you knewwere misleading. You may be sorry the investors lost their money, but that is nottrue remorse. You do not accept responsibility for those losses. You still apparentlydo not consider you did anything wrong. You maintain your innocence. I do notaccept that you have shown genuine remorse and I am not prepared to give anycredit for remorse in those circumstances.

1. At this hearing (withheld)submitted that Mr Petricevic could properly be considered to be genuinely remorseful. He had clear insight into the impact on the victims of his offending and of their losses. For his part, Mr Petricevic conceded that he should have known that the content of the various offer documents was wrong. He said he sent them out believing that they were correct.
2. In his recent letter seeking parole he said:

“Since my conviction and imprisonment I have had a great deal of time to reflect on the nature and seriousness of my offending.

I acknowledge and take full responsibility for this offending, which was a direct result of my inadequacy as the Managing Director, and recognise the harm it has caused all investors.

Not only have the investors been seriously affected financially and emotionally but also their families. For this breach of trust I am truly remorseful. This is something that I will have to live with for the rest of my life.”

1. It does therefore appear that since the trial and Mr Petricevic’s maintenance of his pleas of not guilty he has come to terms with his offending and developed at least some degree of insight into his culpability. Against that he continues to attribute, as a contributing factor to his offending, the effects of the global financial crisis in 2006 leading up to his business collapse.
2. On his behalf (withheld)submitted that Mr Petricevic and his fellow directors faced a difficult decision when their business was deteriorating, as to whether to “pull the plug” or seek further funds. They did the latter as a commercial reality from their perspective. In doing so, of course, they included by commission or omission false statements in the offer documents which led to subsequent criminal proceedings.
3. We remain unpersuaded by Mr Petricevic assertions that he is genuinely remorseful. Notwithstanding our position we are cognisant of research that suggests a lack of full or genuine remorse or empathy has little bearing upon the risk of future offending.

**Decision**

1. In our view, despite Mr Petricevic’s age, expressions of remorse and contention that he has learned from his offending, we consider that the risk of reoffending remains. He told the case manager who wrote the parole assessment report that a lot of people still look to him for advice and he has a lot of knowledge in business. At this hearing he similarly told us that he has a lot of experience and has assisted prisoners when requested,and is “driven to give advice”.
2. (withheld)is involved in business and Mr Petricevic said he may get involved with that by way of appraising properties and research on business sites or building, but he would not be involved in the up-front aspect of (withheld)business. He saw no risk himself of reoffending in the way that led to this sentence of imprisonment.
3. We are mindful of Mr Petricevic’s involvement in a previous failed business in the 1980s – Euro-National Corporation. He told us, however, at this hearing, that no public funds were involved in that venture.
4. We accept that Mr Petricevic has excellent support from (withheld)and we acknowledge the public interest in his reintegration into society as a law abiding citizen. We also take into account the principle that offenders must not be detained longer in prison than is consistent with the safety of the community.
5. Mr Petricevic has no previous convictions. It is relevant, however, to take account of the 2002 offending, for which he was sentenced to a prison term of four months, cumulative on the six and a half years for the major Bridgecorp offending. We have now seen the District Court Judge’s sentencing indication notes, which led to the guilty pleas and the further four month sentence.
6. The 2002 offending involved Mr Petricevic, as a director of Bridgecorp, negotiating the purchase and financing of a boatcosting $1.65 million. This was done without Bridgecorp board approval, and involved the use of Bridgecorp cash and borrowings secured by Bridgecorp.Eventually the security holder exercised its rights against Bridgecorp, with a loss to that companyof $1.805 million. Two of the four charges arose from the failure of Mr Petricevic to advise Bridgecorp’s trusteeof the charge over Bridgecorp’s assets, thus depriving investors of important independent oversight of the company’s affairs.
7. The 2002 offending, when Bridgecorp was trading successfully, was in a quite different context to the 2006-2007 offending, and adds to our concerns as to the risk of reoffending.
8. In our view there is no evidence of any risk of Mr Petricevic reoffending other than in relation to financial affairs. While he acknowledges no intention to return to business in the way he did prior to this offending, we cannot rule out the possibility of him providing not only advice but also becoming involved in the management of other people’s assets which puts those assets at risk. Given the scale of Mr Petricevic’s offending leading to this sentence, any further offending is likely to be of a similar kind and be potentially serious and again involve large sums of money.
9. We are mindful of the period remaining until Mr Petricevic’s sentence expiry date in February 2019. It is the view of the majority of the panel, taking into account all the above factors, that we are not satisfied on reasonable grounds that if released now Mr Petricevic will not pose an undue risk to the safety of the community or any person or class or persons between now and February 2019, some four and a half years away. Imposing release conditions would not in our view adequately address the risks for that period of time.
10. The view of the minority member of the panel is that, while there is a risk that Mr Petricevic will again be in a position of giving advice on financial matters to others, with the potential for financial loss, this can be adequately managed by the imposition of release conditions. The factors weighing in favour of release on parole now are set out above.
11. Through no fault of his own, since starting his sentence Mr Petricevic has had no professional assessment, and engaged in no rehabilitative programmes of the kind offered to other prisoners with identified offending and rehabilitative needs. Notwithstanding his low RoCRoI, in order to determine the way forward for Mr Petricevic, we consider that the Board would benefit from a psychological assessment. We require this assessment to include a focus on what if any interventions are necessary to address the background to Mr Petricevic’s offending, his current view of his offending, and the risks of reoffending, all of which relate to the Board’s statutory functions when considering an offender for release on parole.
12. For those reasons we decline parole and direct Mr Petricevic’s reappearance before the Board in February 2015. Over that period we encourage him to develop a comprehensive and credible written release plan. That should, in particular, addressrisks and how he might avoid risks given his long involvement in the finance and business sector, and the potential for his giving advice and his engagement in that area to impact on him following release.

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D G Mather

Panel Convenor