

# The catch-22 facing innocent prisoners

## The Parole Board needs to do better for those who maintain their innocence

**Kathy Spencer**

Unfortunately, wrongful convictions are not rare in New Zealand.

Ministry of Justice statistics show that over the last 10 years, 841 people had convictions quashed, including 36 people convicted of homicide and related offences.

The very worst cases of wrongful conviction involve the withholding, tampering or fabrication of evidence, or coercion of witnesses, to convict people of murder. High-profile cases of this kind include those of Alan Hall, Gail Maney, Teina Pora, and Arthur Allan Thomas.

In these and other cases it took decades of dedicated and patient work by convicted people and their advocates for the miscarriages of justice to be acknowledged. Meanwhile, the people who actually committed the crimes in question remained at large.

### The parole deal

People given indeterminate sentences, such as life imprisonment for murder, are eventually able to apply for parole, usually after the minimum parole period of 10 years.

Those who become eligible for parole are expected to admit guilt and undertake rehabilitation programmes or “treatment” before being released. Acknowledging the offending is a pre-requisite for rehabilitation courses, putting prisoners who maintain their innocence in an impossible position.

In answer to my OIA request, former Chair of the Parole Board, Sir Ron Young, explained the Board’s approach to prisoners who maintain their innocence as follows:

*“There is no policy adopted by the Board which prevents release on parole for those who deny their offending. A number of offenders who denied their offending have been released on parole.*

*The test for release is that the offender must be less than an undue risk if released. There are a wide variety of ways in which an offender might convince the Board they are no longer an undue risk.”*

The language used in this answer denies even the slightest possibility that a person in front of the Board is actually innocent.

On 1 April this year, Kathryn Ryan of RNZ interviewed Young as he was leaving his role. When she asked him about prisoners who maintain their innocence, he asserted “we have to proceed on the basis of guilt”, and commented that “deniers are a really difficult problem”.

But while insisting that all those in prison must be presumed guilty, Sir Ron had no hesitation acknowledging that sometimes people are wrongfully convicted.

How can these two statements be reconciled?

Our Parole Board is not unusual in its approach. A 2024 Guide for the UK Parole Board lists no fewer than nine possible reasons why a convicted person might maintain their innocence. Perversely, the person actually being innocent is not one of them.

It's true that people convicted of murder in New Zealand can be paroled while maintaining their innocence – the first parole release of Gail Maney is an example.

But there have also been cases where people have been released on parole only when their conviction was about to be overturned. Teina Pora was finally released on parole after serving 21 years, less than a year before his convictions were quashed. He had made 13 prior applications for parole and continued to maintain his innocence.

Alan Hall was released on parole after serving 10 years, but was then recalled to prison for a non-criminal breach of his parole conditions. After serving a further 9 years, the Parole Board urged him to attend a hearing in February 2022 and he was released on parole in March. Three months later, the Supreme Court declared there had been a substantial miscarriage of justice and quashed his convictions.

Prosecutions of three people for their roles in Alan Hall's wrongful conviction are ongoing.

Looking at parole board reports online, it is clear that there are cases where a person has been assessed as low risk based on measures like their security risk level in prison, their track record of work, their housing arrangements if released, social support, and the ability to monitor them in the community. However, their failure to "acknowledge and address their crimes" is preventing their release on parole.

It seems to me that these cases contradict the board's official position that there are a variety of ways for "deniers" to convince the Board they are no longer an undue risk.

In a bizarre and cruel twist, someone who is wrongly convicted of a crime can serve longer in prison than a guilty person.

### **What's the alternative?**

A 2011 conference on this issue attended by British experts concluded: "there is a need for a different way of assessing prisoners maintaining innocence to ensure that they can progress through the prison system and achieve parole".

I think that is what we need here.

At least some of those who "deny their offending" are doing so because they are "factually innocent", despite having been convicted. While Parole Board members can't be expected to know who is in this group, they could consider how well the parole process is working for anyone in that very unfortunate situation.

Of course, it would be far preferable if wrongful convictions were rare and the few that happened were overturned promptly, well in advance of a person's eligibility for parole.

As things stand, however, the victims of wrongful conviction will continue to rely on the invaluable and tireless work of investigators like Tim McKinnel, and journalists like Mike Wesley-Smith, Mike White, Paula Penfold, Amy Maas, Adam Dudding, and many more. In my view, we owe these people a huge debt of gratitude.

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