

Federal Court



Cour fédérale

Date: 20170302

Docket: T-335-16

Citation: 2017 FC 258

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, March 2, 2017

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

PIERRE GAGNON

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Pierre Gagnon [Mr. Gagnon], is seeking the judicial review of the decision by the Parole Board of Canada's Appeal Division [Appeal Division], dated January 26, 2016. The Appeal Division confirmed the decision of the Parole Board of Canada [PBC] and denied Mr. Gagnon full parole [FP] and day parole.

[2] For the following reasons, I would dismiss the application for judicial review.

II. Background

[3] Mr. Gagnon's criminal and correctional record dates back to 1970. In 1973, Mr. Gagnon was incarcerated for two years after he committed arson by setting fire to the sugar shack of his spouse's parents. About two months after he began his incarceration in a minimum-security institution, Mr. Gagnon escaped. He discharged his firearm on his spouse a few days later and was found guilty of manslaughter. He was given a life sentence on March 17, 1975.

[4] Mr. Gagnon was granted day parole in 1980 and FP in 1981. His release was suspended three times between 1991 and 2000 because of violent reoffences against his former spouse.

[5] In 2005, when Mr. Gagnon was incarcerated at Montée-St-François Institution, he escaped during a group temporary absence; he remained unlawfully at large for about three months. Consequently, he was given a two-month custodial sentence.

[6] In 2008, while Mr. Gagnon was incarcerated at Ste-Anne-des-Plaines Institution, he took advantage of an escorted temporary absence to escape again. He remained at large for about two years and, in September 2010, he turned himself in to Archambault Institution, ending his time of being unlawfully at large. He was given a three-month sentence for that incident.

III. Impugned decisions

[7] The PBC found that the factors associated with Mr. Gagnon's criminal behaviour include emotional dependency, unstable emotional relationships, a spousal violence dynamic, aggression, immaturity, substance abuse, deficient problem-solving and idleness. The most recent psychological assessment reported that Mr. Gagnon presented [TRANSLATION] "borderline and histrionic" traits, and that his risk level was connected to the type of supervision and his intimate relationships. The PBC recognized that Mr. Gagnon had completed several correctional programs, including a problem-solving program, and that he showed a sincere interest in being involved with his case management team [CMT]. However, it found that Mr. Gagnon had not [TRANSLATION] "achieved all the targeted objectives." Consequently, the PBC followed the recommendation of his case management team and denied him FP and day parole.

[8] The Appeal Division analyzed the issues submitted by the applicant, namely, the lack of intelligibility, correctness and precision in the PBC's decision. The Appeal Division found that the decision contained adequate reasons to understand the conclusion. Furthermore, the Appeal Division found that the decision was supported by relevant, reliable and persuasive information. It found that the PBC's decision was reasonable and therefore confirmed it.

IV. Relevant legislation

[9] Section 101 of the *Corrections and Conditional Release Act*, SC 1992, c. 20 [the Act] sets out the principles that guide the Appeal Division and the PBC:

101 The principles that guide the Board and the provincial parole boards in achieving the purpose of conditional release are as follows:

(a) parole boards take into consideration all relevant available information, including the stated reasons and recommendations of

the sentencing judge, the nature and gravity of the offence, the degree of responsibility of the offender, information from the trial or sentencing process and information obtained from victims, offenders and other components of the criminal justice system, including assessments provided by correctional authorities;

(b) parole boards enhance their effectiveness and openness through the timely exchange of relevant information with victims, offenders and other components of the criminal justice system and through communication about their policies and programs to victims, offenders and the general public;

(c) parole boards make decisions that are consistent with the protection of society and that are limited to only what is necessary and proportionate to the purpose of conditional release;

(d) parole boards adopt and are guided by appropriate policies and their members are provided with the training necessary to implement those policies; and

(e) offenders are provided with relevant information, reasons for decisions and access to the review of decisions in order to ensure a fair and understandable conditional release process.

[10] Moreover, section 102 sets out the criteria that must guide the PBC in its decision whether or not to grant FP:

102 The Board or a provincial parole board may grant parole to an offender if, in its opinion, (a) the offender will not, by reoffending, present an undue risk to society before the expiration according to law of the sentence the offender is serving; and (b) the release of the offender will contribute to the protection of society by facilitating the reintegration of the offender into society as a law-abiding citizen.

[11] However, section 100.1 states that the paramount consideration is the protection of society.

V. Issues and standard of review

[12] This case raises the following issues:

1. Was the Appeal Division's decision reasonable?
2. Did the Board's decision follow the principles of procedural fairness?

[13] The first issue involves the Appeal Division's and the PBC's findings of fact, as well as the application of their enabling legislation to those findings of fact. Since both these tribunals are recognized as experts in conditional release, the standard of reasonableness applies (*Fernandez v. Canada (AG)*, 2011 FC 275, [2011] FCJ No. 320 at paragraph 20).

Reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 47 [*Dunsmuir*]).

[14] With regard to the second issue and the principle of procedural fairness, it is the standard of correctness that applies: see *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at paragraph 42.

VI. Analysis

A. *Reasonableness of the Appeal Division's decision*

[15] The applicant submits that the reasons for the decisions of the Appeal Division and the PBC are not adequate. He relies on the decision in *Andrade v. Canada (Citizenship and*

Immigration), 2012 FC 1490, [2012] FCJ No. 1594 at paragraph 12, which states that if a decision's reasons "allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the Dunsmuir criteria are met."

[16] Essentially, the applicant submits that the reasons do not respect paragraph 101(e) of the Act and that they do not allow him to understand the PBC's finding that Mr. Gagnon had not achieved all the targeted objectives.

[17] Mr. Gagnon raised these arguments before the Appeal Division, and I agree with that tribunal's reply:

[TRANSLATION]

The Board noted that your criminal history includes an extremely high level of violence, that a person's death was caused, and that one of the victims has experienced significant psychological after-effects. However, the Board noted considerable progress resulting from all your involvement during your sentence, but that, despite the significant number of correctional programs and psychological follow-ups that you completed, you have not achieved all the targeted objectives. The Board was of the opinion that the management of your emotions and frustrations as well as your problem-solving require significant work. The Board also took into consideration both instances of your THC use.

[18] Even though the Appeal Division and the PBC did not explicitly refer to the objectives in question, this Court can understand that Mr. Gagnon still had to improve on the management of his emotions. The findings were based on, and confirmed by, the 2015 psychological assessment, which states that Mr. Gagnon still presented certain behavioural problems. In fact, the applicant presents [TRANSLATION] "borderline and histrionic" traits, and his long-term risk of recidivism

was assessed as moderate to high. Mr. Gagnon also had his urine test positive twice for THC, in February 2014 and in January 2015. However, the PBC recognized several times that Mr. Gagnon had made many strides and that he had cooperated with his CMT. According to *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, the aforementioned reasonableness criterion in *Dunsmuir* is met if the reviewing court can understand why the tribunal made its decision and determine whether the conclusion is within the range of acceptable outcomes. That is indeed the case here.

[19] The applicant also criticizes the PBC for not properly applying the *Decision-Making Policy Manual*, in particular, section 2.1., which provides a list of factors for the PBC to consider when assessing the release plan. It is settled law that policy manuals do not have the force of law and therefore are not binding on the decision-maker (*Sychuk v. Canada (AG)*, 2009 FC 105, [2009] FCJ No. 136 at paragraph 11). They can nevertheless assist in determining “what constitutes a reasonable interpretation of the power” (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, SCJ No. 39 at paragraph 72). I agree with the respondent’s submission that the PBC considered at least two of the factors:

13a. the type of release and whether or not the community supervision strategies are appropriate and adequate to manage or address the offender’s risk factors and needs areas; and

13d. the offender’s support in the community.

[20] Furthermore, as argued by the respondent, the principle that must guide the PBC is the protection of society (see section 100.1 of the Act). The Appeal Division and the PBC were of the opinion that FP and day parole were not possible because it would present an undue risk to society if Mr. Gagnon were to reoffend before the end of his sentence.

[21] I must show deference to the Appeal Division's and the PBC's decisions and, in my opinion, their findings were entirely reasonable.

B. *The PBC's duty of procedural fairness*

[22] The applicant argues that the PBC did not respect the principles of procedural fairness. More specifically, he argues that it did not fulfill its mandate under paragraph 101(c) of the Act with respect to the decision's proportionality and that it failed to consider all the relevant evidence. In fact, the applicant submits that the PBC simply followed the Correctional Service of Canada's decision. I cannot agree with that argument, because the applicant is asking the Court to re-weigh the evidence.

[23] The PBC considered the various pieces of evidence, including several psychological and psychiatric assessments. The PBC was fully entitled to give more weight to the 2015 report than to the 2014 and 2013 reports. I would note that this is not, in my opinion, an argument based on procedural fairness.

[24] As the respondent noted, the principles of procedural fairness require the PBC to provide offenders with the information that was considered when the decision was made, as well as with reasons for the decision. The PBC provided the applicant with the documents relevant to its decision and gave him the opportunity to refute their reliability. The PBC therefore also fulfilled its duty to ensure that the information in that documentation was reliable and persuasive (*Mooring v. Canada (National Parole Board)*, [1996] 1 SCR 75, [1996] SCJ No. 10).

Consequently, the PBC respected the principles of procedural fairness, and it was reasonable for the Appeal Division to confirm that decision.

VII. Conclusion

[25] For the reasons set out above, the Appeal Division's decision, which confirms the PBC's decision, is reasonable, and I would dismiss this application for judicial review.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed without costs.

“B. Richard Bell”

Judge

Certified true translation
This 1st day of October, 2019

Lionbridge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-335-16

STYLE OF CAUSE: PIERRE GAGNON v. ATTORNEY GENERAL OF CANADA

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APPEARANCES:

Pierre Tabah
Catherine Daniel Houle
Claudia Gagnon
Elizabeth Cullen, student-at-law

FOR THE APPLICANT

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Labelle, Côté, Tabah et Associés
Counsel
St-Jérôme, Quebec

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of Canada
Montréal, Quebec

FOR THE RESPONDENT