Federal Court Cour fédérale

Date: 20170403

Docket: T-1083-15

Citation: 2017 FC 339

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, April 3, 2017

PRESENT: The Honourable Madam Justice Gagné

BETWEEN:

ROBIN RIVEST

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] Robin Rivest is applying for judicial review of a decision rendered on April 30, 2015, by the Correctional Service of Canada, whereby his two grievances were dismissed at the final level. In those grievances, the applicant contests his placement in segregation, the increase in his security classification, and his subsequent transfer to a maximum-security penitentiary. All these

decisions are the result of his involvement in the smuggling of contraband narcotics and cigarettes into Drummond Institution, where he is serving a life sentence.

[2] The applicant associates all his grounds for contesting the decision with breaches of procedural fairness, whereas the respondent sees them, with one exception, as issues associated with the unreasonableness of the Service's decisions. However, two of the grounds the applicant cites in his memorandum of fact and law to justify this Court's intervention were withdrawn during the hearing. Having failed to submit the notices required by the *Federal Courts Rules*, SOR/98-106 to the Attorney General of Canada and the provincial attorneys general, the applicant is no longer asking the Court to declare that the grievance procedure set out in the *Corrections and Conditional Release Act*, SC 1992, c 20 [CCRA] is unconstitutional, since it supposedly violates the rights guaranteed to inmates by section 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11. Furthermore, and contrary to what he argued in writing, the applicant acknowledges that the Service relied on subsection 27(3) of the CCRA to deny him certain information, the disclosure of which, according to the Service, would jeopardize the safety of others or an ongoing investigation.

[3] For the reasons that follow, the applicant's application for judicial review will be dismissed.

II. Facts

[4] On March 3, 2014, the applicant was placed in administrative segregation at Drummond Institution and his visiting rights were suspended. That segregation continued for a period of 91 days, following sporadic administrative reviews, up until the decision was made to reassess his security classification and to transfer him to Donnacona, a maximum-security institution.

[5] All these decisions stem from the fact that, based on the information received, the Service had reasonable grounds to believe that the applicant was involved in the smuggling of contraband narcotics and cigarettes at Drummond Institution. The applicant was informed upon his placement in segregation that the Service had reliable information linking him in general to contraband and, more specifically, to an incident that occurred during the week of February 24, 2014, during which an individual, who had recently been released from that institution, smuggled 50 grams of tobacco and 22 grams of marijuana (with a value of $3,016) using two arrows shot from the adjacent woods. According to the Service, these activities and incidents affect the safety of people inside the institution.

[6] The applicant refused to receive the first communication addressed to him on that matter.

[7] During the segregation review hearings, the Service gave the applicant some additional information, but he continued to deny the acts of which he was accused. The Service informed him that a Security Intelligence Report [SIR] would be prepared by a Security Intelligence Officer [SIO] regarding the following allegations:

> 1- Four reliable sources link the applicant to the smuggling of contraband into Drummond Institution using arrows;
>
> 2- The applicant used a fellow inmate's telephone card six times to contact an individual who had recently been released from Drummond Institution;
>
> 3- On February 27, 2014, the fellow inmate who had been released was apprehended and arrested by police near the perimeter of Drummond Institution in connection with the smuggling with arrows;
>
> 4- Two arrows, containing 50 grams of tobacco and 22 grams of marijuana, with a value of $3,016, were found in the yard of Drummond Institution.

[8] Although the applicant denies any involvement in contraband and the incidents of the week of February 24, 2014, he admits that he contacted the former inmate who was apprehended by the authorities, but to discuss boxing and other innocuous subjects.

[9] When it was completed, the SIR was given to the applicant. In the report, the SIO concludes that there is a major contraband smuggling network using arrows that are fired into the Drummond Institution yard. He also concludes that the applicant is a major player in this network and recommends reassessing his security classification to a "high" risk. The SIR essentially contains the information that had already been provided to the applicant, but specifies that certain information cannot be shared with him because it is covered by subsection 27(3) of the CCRA.

[10] In May 2014, the Service wanted to give the applicant the documents about his transfer to Donnacona Institution and the reassessment of his security classification, including the "Security Reclassification Scale." The applicant refused to receive those documents.

[11] In June 2014, the applicant was transferred to Donnacona Institution.

[12] In her decision, the Warden of Drummond Institution states that the applicant had the opportunity to submit representations on the proposed transfer in person or in writing.

[13] In a single decision rendered on April 30, 2015, the Senior Deputy Commissioner, on behalf of the Service, dismissed the applicant's two grievances regarding his administrative segregation and the reassessment of his security classification that led to his transfer to Donnacona Institution (reference numbers V30R00023736 and V30R00023737).

III. Impugned decision

[14] First, the same facts and incidents are the basis of the two decisions the applicant is contesting.

[15] In deciding on the applicant's grievances, the Service indicates that it considered and summarized the applicant's representations, the arguments of his counsel, as well as the information collected by the SIO, which includes the versions of the facts gathered from "believed reliable" sources. The Service concludes that the versions gathered were consistent with the applicant's behavioural history, with the arrest of the individual in connection with the smuggling of contraband using arrows, and with the fact that the applicant contacted that individual around the time of those incidents. The Service adds that the assessment and determination of the credibility of the information used by the SIO were performed in accordance with the requirements of Commissioner's Directive 568-2.

[16] As for the applicant's administrative segregation, the Service finds that this decision was justified because the security information clearly identifies him as being involved in a major smuggling of contraband intended for institutional trafficking. The Service adds that his initial placement satisfied the provisions of paragraph 31(3)(a) of the CCRA, since trafficking tobacco and prohibited substances in the institution constitutes a major threat to the security of the institution and safety of the correctional population and, as a result, there were reasonable grounds to believe that the safety of a person or the security of the institution could be compromised if that measure were not taken. Lastly, the Service states the opinion that, under the circumstances, the placement in segregation represented the only viable and appropriate option to ensure the security of the institution.

[17] The Service concluded that the information provided to the applicant throughout the process that led to his transfer informed him of the acts of which he was accused and clearly expressed its position. Subsection 27(1) of the CCRA requires that all the information considered in making the decision, or a summary of that information, be shared with the inmate before the decision is made. On several occasions, the applicant received a summary of the essential information collected, in accordance with the CCRA provisions. As the SIR specifies, the only information that was not disclosed is covered by subsection 27(3) of the CCRA.

[18] Lastly, with respect to the involuntary transfer to Donnacona Institution, the Service finds that in light of the concerns related to the security of the institution and the safety of its population and of the need to put an end to the applicant's segregation by reintegrating him into

a regular population, the transfer to an institution able to meet his need for maximum-security supervision was required.

[19] The Service considered the applicant's history of chaotic behaviour in the institution, including his adjustment difficulties, the fact that he has been a constant subject of interest since the beginning of his incarceration as a result of his involvement in illicit activities, his difficulties complying with institutional rules, his positive urinalysis for THC, and the lack of progress to improve the dynamic factors that contributed to his violent criminal history. It concluded that the applicant's transfer to a maximum-security institution is the most appropriate measure in his case.

[20] The applicant's two grievances were therefore dismissed.

IV. Issues and standard of review

[21] I concur with the respondent that this application for judicial review raises two issues:

A. *Is the Service's decision reasonable?*

B. *Was the disclosure of information to the applicant sufficient?*

[22] The decision rendered by the Service on a grievance at the third level raises questions of mixed fact and law. It is therefore reviewed on the standard of reasonableness (*Johnson v. Canada (Correctional Service)*, 2014 FC 787, at paragraph 37; *Bonamy v. Canada (Attorney*

General), 2010 FC 153, at paragraph 47; *Gallant v. Canada (Attorney General)*, 2011 FC 537, at paragraphs 14–15).

[23] Where the reasonableness standard applies, this Court's analysis "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, at paragraph 47). This Court cannot substitute its own conclusion for the one reached by the decision-maker "as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility" (*Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 SCR 339, at paragraph 59).

[24] Contrary to the applicant's arguments, the question of the adequacy of reasons also concerns the reasonableness of the decision (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, at paragraph 14), as with the question as to whether the Service considered the arguments submitted by the applicant.

[25] Finally, although the issue of whether the decision-maker disclosed sufficient information to the subject is generally one of procedural fairness (*Mission Institution v. Khela*, 2014 SCC 24, at paragraph 79), the disclosure of information in this case is governed in part by section 27 of the CCRA. The issue is therefore related to the application of the Act by an administrative decision-maker, in its field of expertise, and its decision in that regard will also be subject to the

reasonableness standard (*Ross v. Canada (Attorney General)*, 2015 FC 344, at paragraph 25; *Khela*, above, at paragraph 89).

V. Analysis

A. *Is the Service's decision reasonable?*

[26] The applicant argues that the Service acted unlawfully by not considering any alternative measures to his administrative segregation. As simply stating that it did so is insufficient, the Service was required to list the alternative measures considered and state why they were inappropriate in the applicant's case.

[27] The applicant also argues that the Service did not truly consider his representations and those of his counsel with respect to the reliability of the sources and information about him. He submits that the decision simply reports his representations, without taking them into consideration or responding to them. He submits that the Service failed to explain why the human sources consulted were deemed to be reliable and, finally, that the grounds provided in support of the decision are insufficient.

[28] The respondent points out that, even though in this case, the Service considered and responded to all the questions, the courts have consistently held that a decision-maker is presumed to have considered all the evidence (*Boeyen v. Canada (Attorney General)*, 2013 FC 1175 at paragraph 53). Observing that an aspect of a decision is inadequate or

insufficient is not enough to conclude that the decision is unreasonable (*Newfoundland Nurses*, at paragraph 16).

[29] In my opinion, the Service's decision to dismiss the applicant's grievances is entirely reasonable. The decision is comprehensive and responds to all the questions raised by the applicant.

(1) Alternative measures to segregation

[30] On reading the decision, it is clear that the Service addressed this question. In its final decision, the Service assessed the following factors: the wealth of information from sources believed reliable indicating that the applicant was involved in smuggling contraband and illicit substances using arrows; the fact that the applicant was seen using a fellow inmate's telephone card on six occasions to contact the individual apprehended at the institution's perimeter for sending arrows containing 50 grams of tobacco and 22 grams of marijuana; and the fact that the applicant was a constant subject of interest for involvement in illicit activities since the beginning of his sentence.

[31] In light of these facts, the applicant was placed in segregation, a measure that was described as being necessary, since the smuggling and trafficking of tobacco and prohibited substances in the institution, in addition to being illegal, are a major threat to the security of the institution and the safety of the correctional population. Given the nature of the behaviour, the Service noted that placement in segregation was the only viable option under the circumstances. In a letter sent to the applicant, the Service clearly laid out the alternatives considered, including

a change of cell, range or cell block, or even the intervention of the Inmate Committee, a correctional manager, chaplain, Elder or psychologist (see Respondent's Record, volume 1, respondent's certified record, [TRANSLATION] "involuntary placement in administrative segregation" at page 36), and it clearly justified the fact that segregation was the only appropriate measure in the applicant's case. It cannot be said that this decision is unreasonable.

(2) Applicant's representations

[32] The applicant submits that the Service did not truly consider his representations or those of his counsel, particularly with respect to the reliability of the sources and information about him. In my view, this allegation is unjustified. The applicant has not submitted any evidence that the Service ignored his representations. The decision-maker "is presumed to have considered all the evidence unless the Applicant provides evidence to the contrary" (*Boeyen*, above, at paragraph 53; *Florea v. Canada (Minister of Employment and Immigration)*, [1993] FCJ No. 598 (FCA)).

[33] In its decision, the Service clearly states that the information regarding the applicant is deemed to be credible, since it comes from a number of sources. In addition, the information provided by the sources corresponds to the observations made by the Preventive Security Department and is also corroborated by other elements in the applicant's file.

[34] It is true that the applicant and his counsel deny all the information collected by the Service, but that does not mean that the Service failed to consider all the evidence on file, as well

as the representations of the applicant and his counsel. The decision provides a detailed analysis of the evidence, and it is my view that the Service's conclusions are supported by that evidence.

B. *Was the disclosure of information to the applicant sufficient?*

[35] The applicant submits that the Service did not fulfill its obligation to provide him with all the information that was considered regarding his transfer. He submits that he asked for more information about the allegations against him on many occasions, but was unsuccessful.

[36] The applicant also submits that he never received the scoring matrix that was used in reassessing his security classification and that this constitutes a major breach of the disclosure obligations inherent in the duty of procedural fairness (*Khela*, above, at paragraphs 96–97; *May v. Ferndale Institution*, 2005 SCC 82 at paragraphs 117–119).

[37] The key issue here is to determine whether the applicant was able to fully participate in the decision-making process, and I find that he was. The applicant received a summary of the information about him, as required by section 27 of the CCRA, and had the opportunity to respond to the allegations. In my opinion, the applicant is simply dissatisfied with the little weight given to his explanations. The applicant knew exactly what was alleged against him, including the date, location, and other details regarding the incident. The only significant information that was not shared with the applicant is the names of the sources linking him to contraband in the institution. The respondent therefore submits that there is no violation of procedural fairness in this case.

[38] The applicant cannot complain about not having received the scoring matrix that was used in reassessing his security classification, since attempts were made to give it to him, along with other documents that he refused to receive (see Respondent's Record, volume 1, at page 128).

[39] The content of the duty of procedural fairness in this case is governed by the CCRA and the *Corrections and Conditional Release Regulations*, SOR/92-620 [Regulations]. The Regulations provide that inmates who are subject to an involuntary transfer have the right to submit representations (Regulations, paragraph 12(b)). When an inmate has the right to submit representations, subsection 27(1) of the CCRA provides that "all the information to be considered in the taking of the decision or a summary of that information" must be shared with the offender, subject to subsection 27(3) of the CCRA. That subsection allows the Service to refuse to disclose information if it has reasonable grounds to believe that the disclosure would jeopardize the safety of any person, the security of a penitentiary, or the conduct of any lawful investigation.

[40] The disclosure must be sufficient to enable the inmate to participate in a significant manner in opposing the transfer and to verify whether the transfer is based on a reasonable and serious concern (*Canada (Attorney General) v. Boucher*, 2005 FCA 77 at paragraphs 28–30; *Caouette v. Mission Institution*, 2010 BCSC 769 at paragraph 75; *Ross*, above, at paragraph 4).

[41] In this case, the Service provided the applicant with a summary of the information that was considered in making the decision, as required in subsection 27(1) of the CCRA. The

applicant had the opportunity to respond to the allegations, and he knew exactly what the allegations against him were, including the date, location, and the details of the calls made to his former fellow inmate, and the fact that four individuals believed to be reliable linked him to contraband in general and to the incidents of the week of February 24, 2014, in particular. The decision reveals that the information that was provided to the applicant on several occasions clearly set out the factors and evidence gathered.

[42] I therefore conclude that this argument should also be dismissed.

VI. Conclusion

[43] For the above-mentioned reasons, the application for judicial review is dismissed. The final decision is reasonable, and the disclosure of information is sufficient.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The applicant's application for judicial review is dismissed;

2. Costs in the amount of $300 are awarded to the respondent.

"Jocelyne Gagné"
Judge

Certified true translation
This 22nd day of October 2019

Lionbridge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1083-15
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APPEARANCES:

Erika Perron McLean	FOR THE APPLICANT
Pavol Janura	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Erika Perron McLean Counsel Montréal, Quebec	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT