Federal Court  Cour fédérale

Date: 20180117

Docket: T-96-17
T-97-17

Citation: 2018 FC 40

Ottawa, Ontario, January 17, 2018

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

TERRY THOMPSON

Applicant

and

CORRECTIONAL SERVICES CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This decision relates to two applications for judicial review brought by the Applicant, Mr. Terry Thompson, arising from the Respondent, Correctional Services Canada [CSC], having placed Mr. Thompson in administrative segregation at the Donnacona Institution in Donnacona, Québec, in December 2016. The first application (in Court file T-96-17) seeks judicial review of a decision, described in the Notice of Application as "made by Donnacona Institution on

December 16, 2016 denying the Applicant a right to counsel on a detention." The second application (in Court file T-97-17) seeks judicial review of a decision, described in the Notice of Application as "made by Donnacona Institution on December 23, 2016 denying the Applicant full disclosure before a hearing."

[2] Both applications were heard by the Court first sitting in Montreal on October 17, 2017, and then, following an adjournment for reasons explained in my Order dated October 18, 2017, by video conference from Halifax on December 11, 2017. Mr. Thompson, who is self-represented, participated on both hearing dates by video conference from the Québec Regional Reception Centre in Sainte-Anne-des-Plaines, Québec. At the request of the parties, their arguments in the two applications were presented concurrently, as both applications arise out of the same events. Consistent with that approach, the Court is addressing both applications through this one combined Judgment and Reasons.

[3] As explained in greater detail below, the applications are dismissed, because there is an adequate alternative avenue of relief applicable to the issues raised in these applications, and there are no compelling circumstances demonstrated in this case which would justify departing from the general principle that the Court should refuse to entertain an application for judicial review where there is an adequate alternative remedy.

II. Background

[4] Mr. Thompson is currently an inmate at a federal penal institution. At the time of the decisions that gives rise to these applications, CSC had just transferred him from the Atlantic

Institution in Renous, New Brunswick [Atlantic], to the Donnacona Institution in Donnacona, Québec [Donnacona]. Both are maximum-security facilities. The documentation in the record before the Court indicates that, on December 16, 2016, Mr. Thompson attacked another inmate in Donnacona. As a result of this incident, Mr. Thompson was placed in segregation on December 16, 2016, pursuant to s 31(3)(a) of the *Corrections and Conditional Release Act*, SC 1992, c 20 [CCRA]. This section empowers the institutional head to order that an inmate be confined in administrative segregation if the institutional head is satisfied that there is no reasonable alternative to administrative segregation and he or she believes on reasonable grounds that the inmate has acted, has attempted to act, or intends to act, in a manner that jeopardizes the security of the penitentiary or the safety of any person and that allowing the inmate to associate with other inmates would jeopardize the security of the penitentiary or the safety of any person.

[5] The record before the Court includes an unsigned copy of a document dated December 23, 2016, entitled Review of Offender's Segregated Status Fifth Working Day Review [the Fifth Working Day Review], which appears to document a decision to release Mr. Thompson from administrative segregation in order to reintegrate him into the regular population. The Fifth Working Day Review refers to an assessment that Mr. Thompson could not be returned to the H or E units of the sector 240 population in Donnacona, notes that he could be integrated with the sector 119 population but refused to do so, and concludes with a decision that he be released from segregation in order to reintegrate with the 119 population. A subsequent document, again unsigned but bearing the dates January 23, 2017 and February 8, 2017, entitled Assessment for Decision, appears to document a recommendation to transfer Mr. Thompson from Donnacona to

Saskatchewan Institution [Saskatchewan], in order to end a long-term placement in segregation at Donnacona.

[6] Mr. Thompson's first application for judicial review challenges a decision which he describes as denying him the right to counsel on December 16, 2017, the date he was originally placed in segregation at Donnacona. I note that the material before the Court includes a document entitled Inmate's Request dated December 17, 2016, from Mr. Thompson to Unit Staff, with the entry "Request duty counsel".

[7] Mr. Thompson's second application challenges the decision related to his segregation which appears to be reflected in the Fifth Working Day Review dated December 23, 2016, on the basis that he was not provided with disclosure of the reason he could not return to the sector 240 population before that decision was made. I note that, although the Fifth Working Day Review appears to release Mr. Thompson into the regular population at Donnacona, he states that both of his applications involve challenges to his transfer from Donnacona to Saskatchewan. This appears to be the transfer recommended in the subsequent Assessment for Decision document.

[8] The record before the Court also includes a document bearing the handwritten title "Grief Final", signed by Mr. Thompson on December 24, 2016, in which he states the following grievance:

> On Dec. 23 2016 I was told I couldn't go back to 240 population because of safety reason they offered me 119 population I stated that I couldn't go because of conflict of interest the Board did not put my statement and words in transcript and did not voice record this hearing also I was denied full disclosure at this hearing couldn't properly defend myself

[9] Mr. Thompson raised a similar concern in a document bearing the handwritten title "Complaint", signed by him on January 8, 2017, in which he states the following:

> Rebuttal for transfer I told the review Board I couldn't go to 119 population because a conflict of interest and I was told I couldn't go back to 240 population because of safety reasons they have not provided any evidence to support claims they are many ranges in the 240 population

[10] On March 30, 2017, in a document entitled Offender Final Grievance Response [the Grievance Response] which bears the same reference number as Mr. Thompson's grievance dated December 24, 2016, the Senior Deputy Commissioner issued a decision denying the grievance. I note that the Grievance Response refers to Mr. Thompson having been released from segregation on March 3, 2017, to facilitate his involuntary transfer to Atlantic.

[11] While not initially raised by the Respondent, at the first hearing date in this matter and in my Order dated October 18, 2017, I sought submissions from the parties on the issue as to whether the Court should exercise its discretion to decide these applications for judicial review, given the potential availability of an alternative administrative remedy through the grievance procedure provided by the CCRA and regulations made thereunder.

III. Issues

[12] Having considered the parties' written submissions and oral argument, I consider the issues raised by these applications to be as follows:

A. Is there an adequate alternative remedy for the issues raised in these applications and, if so, are there compelling circumstances in this case which would justify departing from the general principle that the Court should refuse to entertain an application for judicial review where there is an adequate alternative remedy?

B. Applying the appropriate standard of review, does the Applicant's first application for judicial review demonstrate a reviewable error by Donnacona?

C. Applying the appropriate standard of review, does the Applicant's second application for judicial review demonstrate a reviewable error by Donnacona?

IV. Analysis

[13] My decision to dismiss both applications for judicial review turns on the first issue described above, related to the existence of an adequate alternative remedy.

[14] The law is clear that the Court has the discretion to decline to exercise its jurisdiction to hear an application for judicial review where there is an adequate alternative avenue for relief (see, e.g., *Nome v Canada (Attorney General)*, 2016 FC 187 [*Nome*] citing, at para 19, *CB Powell Ltd. v Canada (Border Services Agency)*, 2010 FCA 61 at paras 31-32, and *Froom v Canada (Minister of Justice)*, 2004 FCA 352 at para 12). In *Nome*, at paras 20 to 22, Justice Roussel identified that the grievance procedure available to offenders under ss 90 and 91 of the CCRA and ss 74 to 82 of the *Corrections and Conditional Release Regulations*, SOR/92-620,

affords an adequate alternative remedy to judicial review and explained that judicial review will generally only be appropriate after a final decision is rendered in the grievance process.

[15] However, Justice Roussel also noted that there may be circumstances where a judge may be persuaded to exercise the Court's discretionary jurisdiction to hear an application for judicial review despite the availability of an alternative remedy. *Gates v Canada (Attorney General),* 2007 FC 1058 [*Gates*], represented an example of such a situation. In *Gates,* Justice Phelan found that compelling circumstances, in that case the urgency presented by falling temperatures in the applicants' detention unit and the fact that this placed their health in jeopardy, justified a departure from requiring inmates to use the administrative complaints process. Justice Phelan noted that actual physical or mental harm or clear inadequacy of the process represented a non-exhaustive list of what might constitute compelling circumstances that would justify such departure.

[16] Returning to the present case, I note that, while Mr. Thompson's two applications are framed as challenging decisions by Donnacona denying him counsel and disclosure, my view is that they can be better characterized as raising two separate grounds for challenging the decision or decisions by CSC at Donnacona to place Mr. Thompson in administrative segregation and not to release him into the sector 240 population. The parties acknowledge that both applications arise out of the same events. While Mr. Thompson characterizes both applications as involving challenges to his transfer from Donnacona to Saskatchewan, the documentary evidence before the Court suggests that the December 23, 2016 decision was to release him into the 119 population, that the recommendation or decision to transfer him to Saskatchewan was made

subsequently, and that he was later transferred to Atlantic in March 2017. As such, the events leading to these applications are not particularly clear. Regardless, I accept that the thrust of Mr. Thompson's concerns is that he should have been allowed to return to the 240 population and that he argues that the decision not to permit this return is reviewable by this Court, both because he was not provided access to counsel to assist him in addressing his placement in segregation and because he was not provided with information as to why CSC at Donnacona formed the view he could not return to sector 240.

[17] My conclusion is that there was an adequate alternative remedy available to Mr. Thompson to pursue these concerns. Indeed, I read the grievance that Mr. Thompson initiated on December 24, 2016, the date after that of the Fifth Working Day Review, as raising the allegation that Donnacona did not provide him with information as to why he could not return to the 240 population, and that allegation was expressly addressed in the Grievance Response. While Mr. Thompson did not include in his grievance the allegation about denial of access to counsel, I see no reason such argument could not have been raised either in his December 24, 2016, grievance or another grievance arising out of his placement in segregation.

[18] The Respondent argues that there are no compelling circumstances which would justify the Court exercising its discretion to decide these applications for judicial review despite there being an alternative remedy. The argument raised by Mr. Thompson is that he has already exhausted the alternative remedy that is available to him, as he has pursued the grievance process available under the CCRA and has received a final decision in the Grievance Response. In response, the Respondent's position is that the judicial remedy potentially available to Mr.

Thompson was to seek judicial review of the Grievance Response, which I understand the parties agree is the final decision available through the alternative administrative process.

[19] I agree with the Respondent's position. This issue was addressed recently by the Federal Court of Appeal in *Elliot v Canada*, 2017 FCA 145, in which the appellant sought to set aside a Criminal Profile Report prepared at Edmonton Institution which concluded that he had caused "serious psychological harm" to a victim. The Court noted at paragraph 12 that the appellant had unsuccessfully grieved the inclusion of the offending phrase to the Commissioner of Corrections and had not sought judicial review of the denial of his grievance, although that option was open to him. The Court held the CCRA had provided the appellant with an alternative remedy, the existence of which constituted a bar to a successful judicial review application regarding the underlying decision to include the phrase.

[20] In other words, the fact that the grievance process under the CCRA has run its course and Mr. Thompson has now received a final decision in that process does not entitle him to seek judicial review of the original administrative decision that was the subject of the process. Rather, it was that final decision, reflected in the Grievance Response, which Mr. Thompson had the option of challenging through an application for judicial review.

[21] I therefore find that there is an adequate alternative remedy applicable to the issues raised in these applications and that that there are no compelling circumstances which would justify a departure from the general principle that the Court should not exercise its discretion to decide an application for judicial review where there is an adequate alternative remedy. Having reached

this conclusion, I must dismiss these applications and therefore decline to consider the second and third issues articulated above, related to the specific grounds of review raised by Mr. Thompson.

V. Costs

[22] Each of the parties has claimed costs in these applications. The Respondent proposed that it be awarded lump-sum costs of $500.00 if successful. Mr. Thompson made no submissions in response to the Respondent's costs claim but argued that he should receive $1500.00 lump-sum costs if he were successful. As the Respondent has prevailed in these applications, it is entitled to costs, and I consider the lump-sum amount of $500.00 that it proposes to be a reasonable all-inclusive amount applicable to both applications.

JUDGMENT IN T-96-17 AND T-97-17

THIS COURT'S JUDGMENT is that:

1. These applications for judicial review are dismissed.

2. The Applicant shall pay the Respondent costs in the all-inclusive amount of $500.00.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-96-17 AND T-97-17
STYLE OF CAUSE:	TERRY THOMPSON v CORRECTIONAL SERVICES CANADA
PLACE OF HEARING:	MONTREAL, QUEBEC AND HALIFAX, NOVA SCOTIA
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APPEARANCES:

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