

Federal Court



Cour fédérale

Date: 20250114

Docket: T-456-24

Citation: 2025 FC 73

Ottawa, Ontario, January 14, 2025

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

KYLE CRAWLEY

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Kyle Crawley, seeks judicial review of the February 9, 2024 decision (“Decision”) of the Parole Board of Canada (“PBC”) that imposed a number of special conditions on his Long-Term Supervision Order (“LTSO”).

[2] The Applicant seeks to have this Court remove the condition that he reside in a specific place, and to modify the wording of the conditions not to have contact with children and not to use the internet.

[3] The Applicant alleges that the special conditions are unreasonable violations of 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), c 11 [*Charter*].

[4] For the reasons that follow, this application is dismissed.

II. Background and History of Proceedings

[5] The Applicant is a federal offender who has served a sentence of two years and six months for, among other things, luring a child under the age of 16, and is now subject to a 10-year LTSO.

[6] The record for this application illustrates that the Applicant sought out young, female children via the internet using social media platforms to communicate and lure for a sexual purpose. At the time of the relevant offences in 2016, the Applicant was on probation and subject to a lifetime prohibition pursuant to section 161 of the *Criminal Code*, RSC 1985, c C-46 [*Criminal Code*], which set out conditions that prevented him from communicating with persons under 16 years old as a result of prior convictions for sexual offences involving children (“section 161 order”). The Applicant was charged with multiple breaches of probation conditions in 2017 and arrested on additional charges. In 2018, he was convicted for failure to comply with a recognizance.

[7] At the sentencing hearing for the child luring offences, the Crown sought a dangerous offender designation in addition to the custodial sentence. Instead of the dangerous offender designation, the sentencing judge imposed the 10-year LTSO, a *Sex Offender Information*

Registration Act order for life, a section 109 weapons/firearms prohibition for life, and a section 487.051(1) DNA order.

[8] Pursuant to subsection 753.1(3) of the *Criminal Code*, where a court finds the offender is a long-term offender as established by the criteria set out in section 753.1, the court shall impose a sentence of imprisonment for a minimum of two years and order that the offender be subject to an LTSO for a period of no more than 10 years.

[9] The PBC is an independent tribunal that has exclusive jurisdiction and discretion to grant conditional release for offenders in federal, territorial, and some provincial institutions (*Corrections and Conditional Release Act*, SC 1992, c 20 [CCRA], sections 107–108). The jurisdiction of the PBC includes establishing conditions for LTSOs made pursuant to the *Criminal Code*.

[10] The PBC may impose any special conditions on an LTSO that “it considers reasonable and necessary in order to protect society and facilitate the successful reintegration into society of the offender” (CCRA, subsection 134.1(2)). Conditions imposed under subsection 134.1(2) are valid for the period specified by the PBC (CCRA, subsection 134.1(3)).

[11] The PBC may, at any time during an LTSO, relieve the offender from compliance with a condition, vary the application of any condition, or remove or vary conditions imposed (CCRA, subsection 134.1(4)).

[12] Finally, an offender who is supervised through an LTSO must comply with any instructions provided by a member of the PBC or given by the offender’s parole supervisor,

respecting any conditions of the LTSO “in order to prevent a breach of any condition or to protect society” (*CCRA*, subsection 134.2(1)).

[13] An offender is eligible for statutory release once they have completed two-thirds of their sentence (*CCRA*, subsection 127(3)).

[14] In anticipation of the Applicant’s statutory release date, the PBC issued a decision on April 27, 2023, wherein they imposed a number of special conditions on the Applicant’s release, to be in effect for the duration of his release, until the expiration of the complete sentence. The special conditions included:

- A residency restriction, where the Applicant must reside at a designated community-based residential or psychiatric facility approved by the Correctional Service of Canada (“CSC”);
- Not to be in the presence of any child under the age of 18 years and not to have communication or contact with a child under the age of 18 years;
- Not to access the internet via any telecommunication device without prior approval from a parole officer.

[15] The Applicant appealed this decision to the Appeal Division of the PBC.

[16] On September 28, 2023, the Appeal Division issued its decision. The Appeal Division found that it was unclear if the PBC considered all of the Applicant’s written submissions prior to issuing its April 27, 2023 decision. Therefore, the Appeal Division held that the PBC infringed the Applicant’s right to be heard and ordered a new in-office review of the April 27, 2023 decision to impose residency conditions and the wording of the condition concerning proximity to children’s areas.

[17] The PBC issued its revisited decision on October 25, 2023. As a result of the review, the wording of the condition concerning proximity to children's areas was modified to reflect that the Applicant is "not to attend places where children under the age of 18 are likely to congregate such as elementary schools and secondary schools, parks, swimming pools and recreational centers."

[18] The PBC noted that the condition concerning the Applicant's proximity to children's areas is similar to the section 161 order and serves as an "important risk management tool for the [CSC]." The Applicant's history of non-compliance and reoffending justify reasonable conditions to manage risks. In addition to prohibitions in attending areas where children congregate, the Applicant is also subject to a prohibition from communicating with children under 18.

[19] The PBC found that while the Applicant's behavior during the bail period showed some promise, the residency condition is still needed due to his history of breaches of recognizance, multiple breaches while on probation, and new charges laid while he was on probation.

[20] The PBC highlighted that the Applicant continues to demonstrate a propensity for sexual offences against children. Accordingly, a structured release into the community was warranted and the residency condition will be in effect until the expiration of the Applicant's sentence.

[21] A further assessment was conducted in anticipation of the start of the Applicant's LTSO, which took effect once the statutory release period ended. On February 9, 2024, the PBC decided to impose a number of special conditions on the LTSO based on recommendations from CSC.

[22] After weighing a number of factors, the PBC confirmed that the Applicant met the criteria to have a residency condition imposed on his LTSO. The PBC stipulated that the residency condition would be in effect for a period of 365 days, and that leave privileges to support the Applicant's reintegration would be authorized to permit the Applicant to live with his wife three days per week for a period of six months and with demonstration of compliance, increase to four days per week. The other special conditions confirmed by the PBC include:

- No contact with children – Not to be in the presence of any children under the age of majority and not to communicate with or contact a person under the age of 18 unless under specific supervision and with pre-approval from his parole officer;
- Not to be near children's areas – Not to attend places where children under the age of 18 are likely to congregate such as elementary and secondary schools, parks, swimming pools, and recreational centres; and
- Computer/internet restrictions – 1) Not to access the internet unless there is previous approval in writing by a Parole Supervisor; 2) Not to possess or use any device capable of accessing the internet; and 3) Not to use any electronic device to communicate with a person under the age of 18, or access the internet to maintain a personal profile or any social media site, social network, etc.

[23] The Applicant filed an application for judicial review of the PBC Decision on March 1, 2024.

III. Issues and Standard of Review

[24] The sole issue in this judicial review is if the PBC's Decision to impose the special conditions on the Applicant's LTSO is reasonable.

[25] The applicable standard of review in this case is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 25, 86).

[26] Reasonableness review is a deferential standard and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (Vavilov at paras 12–15, 95). The starting point for a reasonableness review is the reasons for decision. Pursuant to the Vavilov framework, a reasonable decision is “one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (Vavilov at para 85).

[27] To intervene on an application for judicial review, the Court must find an error in the decision that is central or significant to render the decision unreasonable (Vavilov at para 100).

[28] The Applicant also argued that the PBC did not review his written submissions or consider any information that was provided after October 2023. The Respondent takes the position that these arguments are without merit.

[29] I agree with the Respondent. Decision-makers are presumed to have weighed and considered all evidence, unless there is clear evidence to demonstrate the contrary (*Barr v Canada (Attorney General)*, 2018 FC 217 at para 45, citing *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 538 (FCA) (QL) at para 1). The PBC clearly set out what evidence was considered in making their Decision and explicitly referenced the submissions from the Applicant. The fact that the PBC’s reasons do not mention every single piece of evidence does not mean that this evidence was ignored or not considered (*Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

IV. Analysis

[30] The Applicant challenged the imposition of three conditions on his LTSO. The Applicant seeks an order to set aside the condition that he must reside at a specific place and an order that the Court vary the wording of the computer/internet and no contact with children conditions. The Applicant also argued that the residency condition and the wording of the conditions related to internet and no contact with children is a violation of his section 7 *Charter* rights.

[31] The Respondent argued that the Decision is justified, intelligible, and transparent, and that the Applicant did not discharge his burden to establish that there is an error in the Decision that warrants intervention by this Court.

A. *Residency condition*

[32] Subsection 134.1(2) of the *CCRA* gives the PBC broad discretion to impose residency conditions on long-term offenders to ensure the protection of society and to facilitate offender reintegration into society.

[33] The reasons for Decision demonstrate that the PBC considered the applicable law and policy related to residency conditions, as well as the evidence from the Applicant: “Previously you provided written representations in which you object to the imposition of a residency condition as well as wording of the special condition not to be near areas where children congregate. Based on your recent submissions, it appears that you maintain this position.”

[34] The Decision highlights numerous factors that were considered including the information concerning the Applicant’s spousal support and other community supports; the opinion of the Applicant’s therapist concerning his risk of re-offending; and the Applicant’s willingness to

continue to engage with sex offender treatment supports and an openness to therapeutic intervention.

[35] The reasons for Decision are clear that despite the positive factors emphasized by the Applicant, his history cannot be ignored and the positive factors must be balanced against the risk and severity of harm the Applicant is likely to cause should he re-offend. The PBC determined that a more cautious approach to reintegration was warranted:

This history demonstrates deeply engrained attitudes and behaviors. You have acknowledged challenges in controlling sexual impulses. You have demonstrated through your actions disregard for the law. Your file also raises concerns about treatment resistance and the protectiveness of your supports.... Thus, while you have made progress through programming and treatment, this is relatively [*sic*] new development against a lengthy history of offending behavior. In the Board's view, a cautious and gradual reduction of restrictions is in the interest of public safety and in your personal interest in reintegration.

[36] Further, the PBC noted that the Applicant's "primary motivation is the removal of restrictions," rather than focusing on concrete measures to facilitate successful reintegration and mitigate future risks.

[37] The PBC authorized leave privileges to support the Applicant's reintegration and provide him with "opportunities to gain credibility and strengthen bonds with [his] support network."

[38] In addition, the Applicant argued that the residency condition violates his rights section 7 *Charter* rights.

[39] The Applicant did not raise any *Charter* argument(s) or issue(s) before the PBC. Accordingly, this Court may not entertain these arguments raised for the first time on a judicial review for two reasons:

- As a general rule, it is inappropriate on judicial review for a reviewing court to consider an issue raised for the first time (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 22). Constitutional questions should be before the administrative decision maker. To raise the issue for the first time at the judicial review stage bypasses the ordinary process, thus ignoring Parliament's grant of jurisdiction to the administrative body and the expertise of that body (*Forest Ethics Advocacy Association v Canada (National Energy Board)*, 2014 FCA 245 at paras 43–46).
- The Applicant has not filed a notice of constitutional question as required by Rule 69 of the *Federal Courts Rules*, SOR/98-106.

[40] In any event, I note that courts have consistently held that imposing a residency condition on a long-term offender with a history of sexual offences against children is not a breach of their section 7 *Charter* rights and is reasonable (*Lalo v Canada (Attorney General)*, 2013 FC 1113 at paras 22–25; *Ross v Canada (Attorney General)*, 2011 FC 829 at paras 25–27).

[41] In addition, I note that the residency condition is valid for 365 days and the other conditions are applicable only until the LTSO expires, and the Applicant may make an application to vary those conditions (*CCRA*, paragraph 134.1(4)(b)).

[42] The PBC ultimately found, and I agree, that the residency condition is “reasonable and necessary.” The reasons for Decision are clear, intelligible, transparent, and justified. The Applicant has not demonstrated that the PBC unreasonably exercised its discretion in respect of this condition.

[43] The PBC found that additional special conditions were both reasonable and necessary to protect society and to facilitate the Applicant's successful reintegration into society, including the computer/internet and no contact with children conditions.

B. *Computer/internet conditions*

[44] The reasons for Decision state that:

The telecommunication restriction condition and the Internet restriction will serve to manage your digital activity. You utilized digital devices and the Internet to access the victims and subject them to abusive treatment. Your access to the Internet with its potential victim pool must be strictly monitored both in the interest of public safety but also to support your reintegration by restricting triggering situations.

[45] The Applicant argued that the computer/internet condition is not reasonable and a violation of his section 7 *Charter* rights. He argued that this condition impacts his ability to apply for and secure employment, and he questions how he is to successfully reintegrate into society when much of society interacts online.

[46] The Respondent argued that the condition is reasonable, and that the reasons are clear, transparent, and intelligible, and balance the nature of the Applicant's criminality with the legislative objectives of protection of society and successful reintegration of offenders into society.

[47] As stated previously, the Applicant's *Charter* issue cannot be considered by this Court on an application for judicial review because it was not previously raised before and considered by the PBC.

[48] That said, I agree with the Respondent that the computer/internet condition does not constitute a deprivation of the Applicant's liberty. It is well established that in the corrections context, the revocation of privileges is not a deprivation of liberty to the extent that the deprivation of liberty is necessary for the protection of public safety and strikes a balance between the interests of the offender and society (*Cunningham v Canada*, [1993] 2 SCR 143; *Whaling v Canada (Attorney General)*, 2012 BCSC 944; *Mapara v Ferndale Institution (Warden)*, 2012 BCCA 127 at paras 15–16). The special computer/internet condition applies until the LTSO expires, and the Applicant may make an application to vary this condition (CCRA, paragraph 134.1(4)(b)).

[49] The Decision is reasonable and takes into account the nature and history of the Applicant's criminality, risks to the public, and the evidence he provided concerning his supports and therapeutic progress. The computer/internet condition is reasonable and rationally connected to the evidence and factors before the PBC, and the reasons for Decision are clear, justified, and intelligible. I will also note that during the hearing of this application, the Applicant confirmed he has secured employment, in spite of this condition, which he argued impacts his employability.

C. *No contact with children condition*

[50] The reasons for Decision state that:

You have engaged in behaviors toward children that demonstrate a pattern of sexually predatory behavior toward vulnerable, young people. These behaviors resulted in an LTSO for ten years. While you have engaged in risk mitigation, you continue to be assessed as high risk to re-offend against children. These two conditions will restrict your access to children under the age of 18 unless you are properly supervised and with your parole supervisor's permission

and oversight. These conditions will mitigate the risk you represent while supporting you [*sic*] expressed intention not to re-offend.

[51] The Applicant stated that this condition impacts his ability to carry on in his everyday life and indicated that he lives in a “constant state of fear” that he may be in breach of this condition as “children are... everywhere in society.” He argued that there is a less restrictive term that could be used, and takes issue with the term “presence,” which he says is vague and open to interpretation. In support of this argument, the Applicant relied on *R v Heywood*, [1994] 3 SCR 761 [*Heywood*].

[52] The Respondent submitted that the interpretation advanced by the Applicant obfuscates the purpose of the condition and the legislative framework governing conditional release, because it would not be practical that the Applicant is in breach by merely crossing paths with a child. Second, for the reasons stated above, the Respondent objected to the Applicant raising *Charter* arguments in this application that were not before the PBC. Finally, the Respondent noted that this matter is distinguishable from *Heywood*.

[53] At the hearing, the Respondent argued that “presence” must be interpreted in a purposive fashion, in view of the legislative framework. While the Respondent acknowledged the Applicant’s point that “children are everywhere,” they note that the Applicant has not been found in breach of the condition; in other words, the condition has not been interpreted in an overly broad manner. In consideration of the Applicant’s criminality and the requirement to balance public safety, the Respondent argued that this condition is reasonable.

[54] I agree with the Respondent that *Heywood* is distinguishable from the present case. In *Heywood*, the challenge was to a criminal offence under subsection 179(1) of the *Criminal Code*,

not a condition under the *CCRA*. Second, the condition in *Heywood* applied for life, with no possibility of review. By contrast, this special condition expires with the ten-year LTSO, and the Applicant may apply to vary the condition (*CCRA*, paragraph 134.1(4)(b)).

[55] For the reasons stated above, the Applicant's *Charter* issue cannot be considered by this Court on an application for judicial review because it was not previously raised and considered by the PBC.

[56] In any event, the reasons for Decision provided by the PBC related to this condition are reasonable. They are transparent, justified, and intelligible, and demonstrate that the PBC balanced the Applicant's criminality with the importance of public safety and the need to gradually reintegrate the Applicant back into society. The Applicant has not demonstrated that the Decision is unreasonable or that this Court should intervene.

V. Conclusion

[57] The Applicant pointed to significant progress he has made and the support systems he has and argued that the conditions imposed on him by the PBC are unreasonable.

[58] I do not agree. I commend the Applicant on the steps he has taken to understand his behavior and to put in place supports and to develop strategies to avoid criminal behavior in the future. The nature of his criminality targeted the most vulnerable members of our society and the nature of the harms stemming from the Applicant's behavior is severe. The reasons for Decision illustrate that the PBC considered the submissions of the Applicant and weighed those considerations against the statutory objectives set out in the *CCRA*; namely, protecting society

and successful reintegration. In my view, the conditions are reasonable and necessary when considered in the context of the Applicant's history and the nature of his crimes.

[59] I understand that the Applicant is not in agreement with the conditions attached to his LTSO. Ultimately, these conditions are temporary and he is free to apply to have the conditions varied as he continues to make progress. The Applicant has not demonstrated that the conditions are unreasonable.

JUDGMENT in T-456-24

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No order as to costs.

“Julie Blackhawk”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-456-24

STYLE OF CAUSE: KYLE CRAWLEY v ATTORNEY GENERAL
OF CANADA

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 18, 2024

JUDGMENT AND REASONS: BLACKHAWK J.

DATED: JANUARY 14, 2025

APPEARANCES:

Kyle Crawley	FOR THE APPLICANT ON HIS OWN BEHALF
Emily Keilty	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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