

**Date: 20080206**

**Docket: T-1137-07**

**Citation: 2008 FC 153**

**Ottawa, Ontario, February 6, 2008**

**PRESENT: The Honourable Mr. Justice Phelan**

**BETWEEN:**

**SERGEY PASHKURLATOV**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. INTRODUCTION**

[1] Mr. Pashkurlatov is a Russian citizen who was convicted of aggravated assault and robbery following his guilty plea. He was sentenced to prison for five years, eight months. He was in Canada illegally at the time of the commission of the crime.

[2] The Applicant had applied to the National Parole Board (NPB) for full parole in anticipation of being deported to Russia – a prospect which he welcomed. The parole application was denied initially and on appeal to the Appeal Division, the denial was upheld.

[3] The main issues at the Appeal Division were the NPB's findings of fact regarding the crime and its assessment of the Applicant's risk to the community. The Appeal Division found the NPB's conclusion reasonable. This is a judicial review of the Appeal Division's decision.

[4] In this judicial review, the Applicant argues:

- 1) that the Appeal Division acted beyond its jurisdiction in that it shifted the burden to establish that the released person would have supervision in the receiving country;
- 2) that there was a breach of procedural fairness in the Appeal Division's referral to an altercation the day before the NPB's hearing about which there were no charges or conviction at the time of the NPB's hearing; and
- 3) that the Appeal Division erred in supporting the NPB's conclusion that the beating of the victim (the subject matter of the conviction) lasted three hours rather than 30 seconds as the Applicant alleged. This finding is said to be patently unreasonable.

## II. FACTUAL BACKGROUND

[5] The Applicant and an accomplice broke into the home of a jewellery store owner on May 7, 2004. Over the course of three hours they confined the victim to his apartment and beat him to obtain the keys to the store, the alarm code and the combination to the safe. They punched the

victim in the face and hit him several times on the head with a 20-pound dumbbell. The victim required 30 staples to close the head wound and 15 stitches to repair his ear.

[6] At his trial, the Applicant pleaded guilty to aggravated assault, robbery and break and enter with intent to commit an indictable offence. He already had a criminal record in Canada for possession of stolen property, fraud and uttering threats. He also had convictions in Russia as well.

### III. ANALYSIS

[7] The standard of review was said to be correctness as to jurisdiction and procedural fairness and patent unreasonableness on findings of fact (see *Cartier v. Canada (Attorney General)*, 2002 FCA 384). Having regard for Justice Major's comment in *Voice Construction Ltd. v. Construction & General Workers' Union, Local 92*, [2004] 1 S.C.R. 609, that the patent unreasonableness standard should be rare, even if the standard is reasonableness, the result will be the same.

#### A. *Jurisdiction*

[8] In deciding to grant parole, the Board is to be guided by a number of principles set forth in s. 101 of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20, two of which are particularly germane here:

- (a) protection of society; and
- (b) least restriction.

[9] There was no shifting of onus as alleged, but a recognition that there was insufficient evidence of a plan for supervision of the Applicant's parole in Russia. The Board is mandated to exercise caution in releasing persons before their sentence is served or the period for statutory release has been reached.

[10] It would seem incongruous that a foreign prisoner could obtain parole without any regard for later supervision upon deportation while a Canadian prisoner would have to be subject to supervision.

[11] I can find no error of jurisdiction in this regard.

B. *Procedural Fairness*

[12] The Applicant takes exception to the conclusion that the Applicant's pride has been an obstacle to his rehabilitation and is a continuing factor in his potential for violence. The Applicant says that it was improper to take into consideration an altercation for which, at the time of the NPB's hearing, he had not been charged or convicted.

[13] The conclusion about the Applicant's pride was based on several factors including that the violent crime was in order to obtain "flash money" – a symbol of success. The altercation was a factor because the Applicant admitted to its existence. There was a reasonable basis in the record for concluding that the Applicant had not exercised sufficient personal discipline to walk away from the situation.

[14] There was nothing unfair in addressing the significance of the fact of an altercation – a fact the Applicant did not deny. The Applicant argues with the conclusion which should be drawn but that is not a matter of procedural fairness.

C. *Finding of Fact*

[15] Lastly, the Applicant complains that there was a finding that the Applicant had beaten his victim for three hours when in fact it was only 30 seconds.

[16] Given that the beating (aside from slaps to the face) consisted of hitting the victim on and about the head with a 20-pound weight, any suggestion that there was a finding that this hitting with that instrument occurred for three hours non-stop is ludicrous. There is nothing in the record to suggest that either the NPB or the Appeal Division reached that conclusion.

IV. CONCLUSION

[17] I find absolutely no merit in this judicial review. Therefore, the application for judicial review is dismissed with costs.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** this application for judicial review is dismissed with costs.

“Michael L. Phelan”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1137-07

**STYLE OF CAUSE:** SERGEY PASHKURLATOV  
and  
THE ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** February 4, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Phelan J.

**DATED:** February 6, 2008

**APPEARANCES:**

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