Federal Court Cour fédérale

Date: 20100119

Docket: T-725-09

Citation: 2010 FC 49

Ottawa, Ontario, January 19, 2010

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

ERIC TURCOTTE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] On April 3, 2009, the Appeal Division of the National Parole Board (''Appeal Division'') affirmed a decision of the National Parole Board (''Board''), dated January 7, 2009, denying the applicant's release. This is the application for judicial review of that decision.

[2] It should be noted here that the applicant received sentences of two years and seven months' imprisonment to be served concurrently for several offences, including an offence of criminal harassment under section 264 of the *Criminal Code*, R.S.C. 1985, c. C-46 (''Code''). Criminal harassment is a Schedule I offence under the *Corrections and Conditional Release Act*, S.C. 1992, c. 2 (''Act''). On July 18, 2008, the applicant's case was referred to the Board by the Correctional Service of Canada (''Service'') under subsection 129(2) of the Act for review with a view to keeping him in detention during his statutory release period.

[3] According to the applicant, there was no legal basis for referring his case to the Board. On the one hand, the applicant claims there is no evidence in the record showing that he caused serious harm to one of his victims. On the other hand, the applicant argues that prior to the hearing, the Board failed to inquire as to whether, as required by both the Act and the Commissioner's Directive Number 705-8, the referral was consistent with section 129 of the Act. It follows then, according to the applicant, that the hearing and subsequent proceedings before the Board and Appeal Division are null. The applicant is therefore asking the Court to declare the decisions of the Board and Appeal Division unlawful. Moreover, in his originating notice, the applicant also requests that the Court order his immediate release.

[4] Both parties acknowledge the fact that this last part of the claim for relief has become moot, owing to the fact that the applicant began serving his sentence on May 7, 2007, and was released on December 6, 2009. Yet the applicant still insists that Court hear this application for judicial review. At the start of the hearing, counsel for the applicant, accompanied by his client, argued that the issue

of illegality raised in the proceedings was not moot since any future claim for damages would require that the impugned decisions be set aside. In fact, the applicant was in detention longer than he was supposed to have been, as a result of two illegally rendered decisions by the Board. Responding that, under section 154 of the Act, Board members benefit from immunity when acting in good faith in the performance of their duties, counsel for the respondent invited the Court to not exercise its discretion to hear the matter and to summarily dismiss this appeal.

[5] At the hearing, I decided to reserve the Court's final decision with respect to the consideration of whether or not to exercise my discretion to refuse to set aside the decisions under review or to declare them unlawful because the matter would be moot. Today, after hearing the parties on the merits, I have concluded that the applicant's arguments are without merit and that this application must therefore fail. In effect, it has not been demonstrated to the Court's satisfaction that the Board breached a principle of procedural fairness or otherwise acted contrary to the Act or contrary to any of the Commissioner's Directives that would apply to this case.

[6] The Act requires that the applicant's case be reviewed by the Service before the statutory release date. Under conditions set out in section 129 of the Act, the Service must *inter alia* refer the case and transmit to the Board any relevant information regarding an offence set out in Schedule I of the Act, if the Service <u>is of the opinion</u> that the offence caused the death of or <u>serious harm</u> to another person and where there are reasonable grounds to believe that the offender is likely to commit, prior to sentence expiry, such an offence (subparagraph 129(2)(*a*)(i)).

[7] In the case at bar, there is nothing in the record that would enable the Court to find that the Board disregarded the conditions set out in section 129 of the Act. On the contrary, according to the evidence in the record, prior to the hearing, the Board had all of the relevant information in hand, provided by the Service, including the assessment for decision. This information allowed it, at that stage, to review the applicant's case and to hold a hearing, which is consistent with subsection 130(1) of the Act, which authorizes the Board to ''review the case, and . . . cause all such inquiries to be conducted in connection with the review as it considers necessary''.

[8] Furthermore, nothing prevented the applicant from making submissions to demonstrate to the Board that he had not caused serious harm to the victim, as he claims. In addition, neither the Commissioner's Directive cited by the applicant, nor the principles of procedural fairness, require the Board to provide written reasons for the administrative and preliminary decision to review the case.

[9] Finally, according to the evidence in the record, it is clear that the Board considered all of the information in the applicant's file as well as all of the submissions made by the applicant. In the case at bar, the Appeal Division, after having listened to the hearing held before the Board on January 7, 2009, stated in its decision that the Board had invited the applicant on more that one occasion to express his point of view and raise his objections as to the question of whether the victim suffered serious harm.

[10] Having found nothing unlawful, nor any reasonable ground to intervene in or set aside the decisions in question, there is no need to examine the question of whether the Court should exercise its discretion to refuse to grant a remedy on grounds that the matter has become moot.

[11] In light of the result, the respondent will be entitled to costs.

JUDGMENT

THE COURT ORDERS that the applicant's application for judicial review be dismissed with costs to the respondent.

''Luc Martineau''

Judge

Certified true translation

Sebastian Desbarats, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-725-09
STYLE OF CAUSE:	**ERIC TURCOTTE v. ATTORNEY GENERAL OF CANADA**
PLACE OF HEARING:	MONTREAL, QUEBEC
DATE OF HEARING:	JANUARY 13, 2010
REASONS FOR JUDGMENT AND JUDGMENT:	MARTINEAU J.
DATED:	JANUARY 19, 2010

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