Federal Court  Cour fédérale

Date: 20120710

Docket: T-684-11

Citation: 2012 FC 870

Ottawa, Ontario, July 10, 2012

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

FRANK KIM

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant, Frank Kim, seeks judicial review of the dismissal of his grievance against decisions by the Correctional Service of Canada (hereafter CSC) relating to his security placement. Mr. Kim, a self-represented litigant, contests the decision rendered by Assistant Commissioner Ian McCowan on February 21, 2011. Among other things, he complains that his file contains incorrect information and claims damages for his placement in a maximum security institution.

[2] This is an application under s. 18.1 of the *Federal Courts Act*, RSC, c F-7. For the reasons that follow, I find that the application is, in part, moot as the applicant was transferred to a medium security institution shortly after the final grievance decision. I decline to exercise my discretion to consider that aspect of the matter but address the applicant's concern about the file information.

BACKGROUND:

[3] Mr. Kim is serving an indeterminate sentence as a result of having been declared a dangerous offender in October 2000.

[4] On September 22, 2007, while detained at Mountain Institution, a medium security penitentiary, the applicant was observed by a correctional officer to assault another prisoner. The other prisoner required hospital treatment for stab wounds. Mr. Kim was charged with a serious disciplinary offence. The charge was dismissed on January 16, 2008 in a hearing before an Independent Chair Person. Mr. Kim admits the assault but asserts that he was acting in self-defence in response to a threat of imminent harm by the other prisoner. No reasons were provided for the decision but it appears that the self-defence plea was supported by the witnessing officer.

[5] Following the incident, the applicant was segregated and then transferred to the Kent Institution, a maximum security penitentiary. On November 23, 2007, the applicant advised a CSC manager that his safety was in jeopardy and he was voluntarily placed in segregation. Shortly thereafter, he was transferred to an alternative housing unit within the prison where he had access to programs and services provided to the general population.

[6] On April 23, 2008 the applicant was involved in an altercation with another inmate. He allegedly cut the inmate's cheek. In an incident report, the other inmate alleged that the applicant had rushed at him and slashed his face and ear. Knives fashioned from razor blades and pens were found nearby. Mr. Kim was seen leaving the area, apprehended and again placed in segregation. He does not admit the assault but tacitly acknowledges he was involved in some type of a confrontation with the other inmate. The incident report was not disclosed to him prior to the Assistant Commissioner's decision. Had it been, Mr. Kim says, he could have submitted evidence to support his claim that he was not the aggressor including a witness statement from another inmate.

[7] On July 29, 2008 Mr. Kim was charged with a disciplinary offence under s. 40 (r) of the *Corrections and Conditional Release Act*, SC 1992, c 20 (hereafter the CCRA) which pertains to disobeying a written rule. The charge was dismissed by an Independent Chair Person on November 12, 2008 as having been laid under the wrong section and not under the provision dealing with assaults and fights.

[8] Mr. Kim remained in segregation between April 23, 2008 and May 28, 2009 save for a few days in the general population for assessment. On May 29, 2009 Mr. Kim was released from segregation and transferred to another maximum-security facility, the Atlantic Institution. He was involuntarily segregated again on July 23, 2009 after he told an officer that he was being threatened.

[9] Mr. Kim had agreed upon arrival at the Atlantic Institution to report threats and intimidation and not to respond to them with violence. On January 14, 2010, the applicant's case management

team recommended that he be given an institutional adjustment rating of moderate and be transferred to a medium security institution. This was supported by a Security Reclassification Scale score in an assessment by the applicant's Institutional Parole Officer (hereafter IPO). However, the Manager Assessment Intervention was of the opinion that the applicant had not demonstrated sufficient stability in an open population to justify downgrading the classification. This was in part due to a report that Mr. Kim had said he would stay and fight rather than "check in" to segregation when he advised the staff of the threat in July, 2009.

[10] In decisions rendered on January 25, 2010 and February 25, 2010, the Warden, Head of the Atlantic Institution, declined to approve the reclassification. This was based, in part, on information in the Offender Management System file in which Mr. Kim was referred to as the aggressor in the two stabbing incidents. The Warden also considered that Mr. Kim had not yet remained long enough in the general population (only 7 weeks in 28 months) to determine if he was ready to go back to a less secure environment.

[11] The applicant grieved both of the Warden's decisions. The grievances were merged and dealt with as a single complaint. In a second level decision dated August 23, 2010 the Warden's findings and decision were upheld. The applicant filed a third level grievance on September 20, 2010.

[12] At each level of grievance, the applicant objected to being labelled as an aggressor, particularly in reference to the two incidents for which charges were dismissed. He asked that his escape risk rating be reduced to low from moderate; that his institutional adjustment rating be

reduced to moderate and that the records relating to the stabbing and cutting incidents be corrected. In the second level response to his grievance Mr. Kim was advised that he must direct a request to his IPO as that officer was responsible for corrections. Mr. Kim did so on April 6, 2010.

[13] The IPO replied on April 8, 2010 that he required more than the regulation 15 day time limit to address the request. No further action appears to have been taken on this request. Mr. Kim raised it again in his submissions at the third level of the grievance procedure.

[14] The third level grievance was dismissed by the Assistant Commissioner in a February 21, 2011 ruling. The applicant was transferred to La Macaza Institution, a medium security facility, on March 26, 2011. This application for judicial review was filed on April 19, 2011.

DECISION UNDER REVIEW:

[15] The Assistant Commissioner noted that the analysis at the third level was based, among other things, on information in the applicant's Offender Management System file. This included four minor charges: one that was not proceeded with; another that had resulted in a conviction and two that had been dismissed. In addition, the applicant had received three serious charges. On the first, on July 4, 2003, the applicant had been found not guilty. The second, the September 22, 2007 incident described above, was dismissed, the Assistant Commissioner noted, "due to mitigating circumstances". The third from April 2008 was dismissed as he said "due to wrong designation of the charge".

[16] With respect to the dismissed charges, the Assistant Commissioner considered that although they did not result in convictions, offence and incident reports regarding the occurrences had been prepared by witnesses and placed in the applicant's files. The records indicated also that the applicant had admitted to committing the first assault. The Assistant Commissioner concluded that the incidents were documented in the reports notwithstanding the dismissal of the charges by the Independent Chair Persons. He considered that they had an impact on the level of risk presented by Mr. Kim and must be considered as part of the applicant's security assessment. For that reason, that part of his grievance was denied.

[17] As noted above, in April 2010, the applicant had made a request to his IPO that his file be corrected to indicate that the charges for the above-mentioned 2007 and 2008 incidents were dismissed. The IPO had requested more time to respond. The Assistant Commissioner considered that the applicant had not filed the appropriate first level grievance in accordance with paragraphs 1 and 27 of the Commissioner's Directive on Offender Complaints and Grievances (hereafter CD-081) in relation to the IPO's failure to act on the request. He, therefore, dismissed the grievance in respect of the file corrections.

[18] In his submissions, the applicant compared his case with that of another inmate whose situation was allegedly similar with the difference that the other inmate was classified as a medium-security placement. The Assistant Commissioner denied that part of the grievance on the basis that comparisons with another inmate would constitute a violation of the *Privacy Act*, RSC, 1985, c P-21.

[19] The applicant alleged that his voluntary segregation to avoid conflicts with other inmates should not be used against him in his security assessment. The Assistant Commissioner acknowledged that the IPO had commended the applicant for choosing segregation over violence. However, the Assistant Commissioner considered that this did not alter the applicant's history of violence and his long periods in segregation, which included considerable amounts of time in involuntarily segregation. The Assistant Commissioner supported the Warden's decision and denied that part of the grievance.

[20] The applicant claimed a monetary penalty for the alleged institutional errors. The Assistant Commissioner denied that part of the grievance because the claim did not fall within the scope of the authority in paragraph 63 of CD-081 to provide compensation for specific loss or damage to personal property or for the reimbursement of money that the Service is required to provide under legislation or CSC policy.

ISSUES:

[21] The applicant's Notice of Application and Memorandum of Fact and Law set out several prayers for declaratory and other relief including an Order for an immediate transfer to a medium security institution, corrections to his institutional files and compensation of $500 per day for each day the applicant was detained in a maximum security prison due to the file indications that he was the aggressor in the incidents relating to the charges dismissed in January and November 2008. He seeks an Order to treat this application as an action and award punitive, exemplary and aggravated damages of $50,000 and costs.

[22] As preliminary issues, the respondent submits that the application was not filed in a timely manner in accordance with the time limit of 30 days set out in s. 18.1(2) of the *Federal Courts Act* and that the matter is now effectively moot as the applicant has been transferred to a medium security institution. I conclude, for reasons discussed below, that an extension of time should be granted and that the application is, at least in part, moot because of the transfer.

[23] It is trite law that this Court does not have the power to award damages under s. 18.1 of the *Federal Courts Act*: *Al-Mhamad v Canada (Radio-Television and Telecommunications Commission)*, 2003 FCA 45 at para 3; and *Canada (Attorney General) v TeleZone Inc*, 2010 SCC 62 at paras 51-52. As stated by the Supreme Court at paragraphs 52 of *TeleZone*, the traditional administrative law remedies listed in s. 18(1) (a) do not include an award of damages. If a claimant seeks compensation, he or she cannot get it on judicial review.

[24] The applicant submits that under the authority of *TeleZone*, above, he is entitled to have this application converted to an action for damages. This is not an appropriate case in which to convert the application to an action under s. 18.4 (2) of the *Federal Courts Act*. No motion to do so was brought before the Court and the parties have not had an opportunity to prepare pleadings, obtain discovery and examine witnesses. The matter has proceeded on the documentary record alone.

[25] The applicant has not presented any evidence or argument that would support a finding that the Assistant Commissioner erred in his ruling that the claim for compensation was outside the scope of the grievance procedure. For that reason, I do not propose to deal with that aspect of the decision.

[26] At the hearing, Mr. Kim complained that his computer and disks had been seized thereby making it difficult for him to prepare his oral submissions. The respondent submitted the affidavit of a correctional security officer to explain why the computer had been seized and to describe the efforts made to ensure that Mr. Kim had access to another computer and to the files on his disks.

[27] In considering whether there was any substance to this complaint, I noted that Mr. Kim is not a stranger to litigation as he represented himself in the proceedings that led to his conviction and sentencing, on numerous motions and appeals and in other judicial review applications before this Court. I noted also that the respondent filed its record on September 15, 2011 and the applicant's computer was seized on February 9, 2012. He therefore had almost five months to prepare his oral arguments and prepare to reply to the respondent's arguments.

[28] In the result, I was satisfied that in this matter, Mr. Kim had access to the documents he required to fully present his case. To ensure that he had a full opportunity to comment on the relevance of authorities raised at the hearing by the respondent, I allowed him to make additional post-hearing submissions in writing when he had an opportunity to read the cases. The authorities in question were recent decisions which were not relevant to any issue in this matter and are not, therefore, addressed in these reasons.

[29] What remained to be determined on this application is the issue of the contested information in the applicant's record. I concluded that there continues to be a live controversy about that information as it may be used by CSC in any future security assessment respecting the applicant unless it is amended or removed.

RELEVANT LEGISLATION:

[30] Section 24 of the *Corrections and Conditional Release Act 1992*, SC 1992, c 20 reads as follows:

24. (1) The Service shall take all reasonable steps to ensure that any information about an offender that it uses is as accurate, up to date and complete as possible.	24. (1) Le Service est tenu de veiller, dans la mesure du possible, à ce que les renseignements qu'il utilise concernant les délinquants soient à jour, exacts et complets.
(2) Where an offender who has been given access to information by the Service pursuant to subsection 23(2) believes that there is an error or omission therein,	(2) Le délinquant qui croit que les renseignements auxquels il a eu accès en vertu du paragraphe 23(2) sont erronés ou incomplets peut demander que le Service en effectue la correction; lorsque la demande est refusée, le Service doit faire mention des corrections qui ont été demandées mais non effectuées.
(*a*) the offender may request the Service to correct that information; and	
(*b*) where the request is refused, the Service shall attach to the information a notation indicating that the offender has requested a correction and setting out the correction requested.	

[31] Sections 17 and 18 of the *Corrections and Conditional Release Regulations*, SOR/92-620 state the following:

17. The Service shall take the following factors into consideration in determining the security classification to be assigned to an inmate pursuant to section 30 of the Act:	17. Le Service détermine la cote de sécurité à assigner à chaque détenu conformément à l'article 30 de la Loi en tenant compte des facteurs suivants :

(*a*) the seriousness of the offence committed by the inmate;

a) la gravité de l'infraction commise par le détenu;

(*b*) any outstanding charges against the inmate;

b) toute accusation en instance contre lui;

(*c*) the inmate's performance and behaviour while under sentence;

c) son rendement et sa conduite pendant qu'il purge sa peine;

(*d*) the inmate's social, criminal and, if available, young-offender history and any dangerous offender designation under the *Criminal Code*;

d) ses antécédents sociaux et criminels, y compris ses antécédents comme jeune contrevenant s'ils sont disponibles et le fait qu'il a été déclaré délinquant dangereux en application du *Code criminel*;

(*e*) any physical or mental illness or disorder suffered by the inmate;

e) toute maladie physique ou mentale ou tout trouble mental dont il souffre;

(*f*) the inmate's potential for violent behaviour; and

f) sa propension à la violence;

(*g*) the inmate's continued involvement in criminal activities.

g) son implication continue dans des activités criminelles.

18. For the purposes of section 30 of the Act, an inmate shall be classified as

18. Pour l'application de l'article 30 de la Loi, le détenu reçoit, selon le cas :

(*a*) maximum security where the inmate is assessed by the Service as

a) la cote de sécurité maximale, si l'évaluation du Service montre que le détenu :

(i) presenting a high probability of escape and a high risk to the safety of the public in the event of escape, or

(i) soit présente un risque élevé d'évasion et, en cas d'évasion, constituerait une grande menace pour la sécurité du public,

(ii) requiring a high degree of supervision and control within the penitentiary;

(ii) soit exige un degré élevé de surveillance et de contrôle à l'intérieur du pénitencier;

(*b*) medium security where the inmate is assessed by the Service as

b) la cote de sécurité moyenne, si l'évaluation du Service montre que le détenu :

(i) presenting a low to moderate probability of escape and a moderate risk to the safety of the public in the event of escape, or

(i) soit présente un risque d'évasion de faible à moyen et, en cas d'évasion, constituerait une menace moyenne pour la sécurité du public,

(ii) requiring a moderate degree of supervision and control within the penitentiary; and

(ii) soit exige un degré moyen de surveillance et de contrôle à l'intérieur du pénitencier;

(*c*) minimum security where the inmate is assessed by the Service as

c) la cote de sécurité minimale, si l'évaluation du Service montre que le détenu :

(i) presenting a low probability of escape and a low risk to the safety of the public in the event of escape, and

(i) soit présente un faible risque d'évasion et, en cas d'évasion, constituerait une faible menace pour la sécurité du public,

(ii) requiring a low degree of supervision and control within the penitentiary.

(ii) soit exige un faible degré de surveillance et de contrôle à l'intérieur du pénitencier.

ANALYSIS:

Standard of Review

[32] As a general rule, questions of natural justice or procedural fairness are to be reviewed on the basis of the correctness standard of review: *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43. This applies equally in the context of reviews of decisions made in the offender grievance process: *Sweet v Canada (Attorney General)*, 2005 FCA 51 at para 16.

[33] The standard of review for questions of fact and mixed fact and law arising under the CCRA is reasonableness: *Tehrankari v Canada (Correctional Services)*, 2001 FCT 845 at paras 15-16; *Crawshaw v Canada (Attorney General*), 2011 FC 133 at paras 24-27.

Timeliness of the application

[34] S. 18.1 (2) of the *Federal Courts Act* requires that an application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated to the party directly affected by it, or within any further time that the judge of the Federal Court may fix or allow before or after the expiration of those 30 days.

[35] The respondent submits that the applicant filed his application approximately 64 days after the decision on the third level grievance was made and communicated to the applicant. The decision was rendered on February 21, 2011 and the application for judicial review was served on the respondent on April 27, 2011. The applicant has filed no motion requesting an extension of time and while he is representing himself, he is familiar the Federal Court time limits having litigated several other applications for judicial review. Thus, the respondent argued, that extension of time should not be granted

[36] In response, the applicant contends that the decision was communicated to him on March 21, 2011 as he states in the Notice of Application for Judicial Review signed on March 24, 2011. The respondent has filed nothing to dispute the date of communication. The Notice of Application was filed on April 19, 2011 and served on the respondent on April 27, 2011.

[37] Considering that the applicant is an inmate under the control of the CSC and that it had the means to both communicate the decision and record the date on which that was done, the benefit of the doubt went to the applicant. I elected to grant an extension of time in keeping with the principles set out in *Jakutavicius v Canada (Attorney General)*, 2004 FCA 289.

Mootness

[38] The respondent also objected to the matter proceeding on the ground that it is now moot as the applicant has obtained the primary relief that he sought in his grievance and through this application, that he be transferred to a medium security institution.

[39] *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 establishes a two step analysis to determine if a moot case should be heard by a court: (1) whether there remains a live controversy; and (2) whether the Court should exercise its discretion to hear the case. The Court should consider three factors to determine if it should exercise its discretion: (a) whether the dispute retains its adversarial nature; (b) judicial economy; and (c) whether special circumstances warrant the use of scarce judicial resources.

[40] The respondent submits that since the applicant's transfer to La Macaza Institution, a medium-security facility, in March 2011, the main controversy between the parties no longer exists. Since there is no live issue between the parties, resolving the questions raised by the applicant would be a purely academic exercise. Furthermore, the respondent contends, this case does not deal with any novel issue in law or with an issue of particular importance to the parties. Therefore the Court should not exercise its discretion to hear the case.

[41] The applicant concedes that he was transferred to a medium security institution and in that respect has achieved a significant part of what he set out to achieve through the grievance. He contends that there continues to be a live controversy because of the contentious material in his file relating to the prior incidents which could be used against him in future decisions respecting his security classification. He cites *Bonamy v Canada (Attorney General)*, 2010 FC 153, a decision of Justice Mainville when he was a member of this Court.

[42] In *Bonamy,* above, Justice Mainville found that the doctrine of mootness did not apply in the context of an application for judicial review where the applicant had benefited from a statutory

release and was consequently no longer in the penitentiary. In the particular circumstances of that case, an application for declaratory relief with respect to the correctional grievance process and direct access to the Federal Court for the review of correctional decisions, Justice Mainville found that a live controversy continued to exist between the parties and that the applicant remained subject to the procedure notwithstanding that he had been released.

[43] In my view, the circumstances in *Bonamy* are not analogous to this matter. In that case, the applicant represented a group of offenders who sought changes to the grievance procedure. Moreover, the decision under review was in conflict with an earlier grievance decision in which the applicant had been partially successful and granted a remedy which was not implemented. Moreover, the applicant claimed to have suffered adverse consequences from bringing the grievances.

[44] Here the applicant has achieved most of what he sought to obtain through the grievance procedure, namely reversal of the decision to overturn the recommendation of his case management team that he be transferred to a medium security institution. I note that he was in fact transferred before this application was filed. In that respect, therefore, the controversy with respect to the reclassification is moot and I see no point in exercising my discretion to decide the merits of the application on that aspect of the Assistant Commissioner's decision.

Did the Assistant Commissioner unreasonably dismiss the grievance with respect to the contested information in the applicant's institutional records?

[45] The Assistant Commissioner dismissed the part of the applicant's grievance that addressed the accuracy of the information in his file records because it had not been raised at the first grievance level directly with the officer responsible, IPO Mark Hare. The Assistant Commissioner concluded that he could not bypass the normal grievance procedures. This was a reasonable conclusion, in my view, and a complete answer to the applicant's complaint. I think it useful, however, to comment further on the applicant's submissions should the controversy arise again.

[46] At the hearing, the applicant confirmed that he was aware that he could have brought a grievance against IPO Hare regarding the correctness of the information in his file. He contends, however, that he had raised the issue from the outset in his grievances against the Warden's decisions and that it is unfair to require him to initiate a separate grievance procedure. The difficulty with that position is that the grievance procedure requires that requests to correct information in the offender's file be directed to the official responsible for entering the information and maintaining the file. In this case, that was IPO Hare and not the Warden.

[47] The applicant submits that in continuing to rely on the information about the dismissed offences in deciding his security classification, the CSC has effectively overruled the decisions of the Independent Chair Persons. This, he submits, is contrary to s. 24 of the CCRA which requires that the Service take all reasonable steps to ensure that any information about an offender that it uses is as accurate, up to date and complete as possible. He relies on *Tehrankari v Canada (Correctional Services)*, [2000] FCJ No 495 at paragraph 55 [*Tehrankari (2000)*].

[48] The stabbing incidents which led to the dismissed charges against the applicant are referred to several times in the third level response. After describing the charges and stating that they were dismissed, in the first case "due to mitigating circumstances" and, in the second case because of the wrong designation of the charge, the Assistant Commissioner stated the following:

> Mr. Kim, although these two (2) charges were dismissed by the Independent Chair Person (ICP), we must still consider that both incidents are documented on the above-noted incident reports. We must also consider that you admitted to carrying out one of these assaults. As these incidents have a direct impact on the level of risk you represent, they must be considered as part of the assessment of your security classification.

[49] Discussing the applicant's complaint that information relating to his periods in segregation, including those in which he voluntarily entered segregation because of threats from other inmates, was being used against him to keep his Institutional Adjustment rating as high, the Assistant Commissioner referred to the report dated January 14, 2010 by IPO Hare in which the stabbing incidents are again mentioned.

[50] In *Tehrankari 2000* Justice Lemieux dealt with a risk assessment decision by the CSC where the offender denied certain allegations included in his institutional files. He denied an assault allegation for which charges were dismissed when the prison guard witnesses did not attend the hearing. The offender also denied an allegation that he had attempted an escape from a Canadian jail cell and contested references to his escape from Iran.

[51] With regard to the assault allegation in *Tehrankari 2000*, Justice Lemieux stated the following at paragraph 55 of his reasons:

> The OSLRDS report said the applicant assaulted another inmate. He denies it. The applicant was charged and found not guilty. It matters little the prison guard

> witnesses did not show up. In the circumstances, it is not accurate to assert, as a fact, he assaulted the other inmate particularly when regard is had to the reports of the prison guards who witnessed the incident. At best, as the matter stands today, he was suspected of assaulting another inmate. The Citizens' Advisory Committee recommended that this assault information be removed from his file.

[52] Mr. Kim cites this paragraph as supporting his contention that it does not matter how he was found not guilty. The dismissal of the charges is sufficient to establish that the information underlying the charges is incorrect and should not be included in his file, he contends. I note that in the paragraph reproduced above Justice Lemieux found that it was not accurate to assert that the assault in question occurred as a fact, "particularly when regard is had to the reports of the prison guards who witnessed the incident." That suggests that on the strength of the information in the file the assault allegation could not be substantiated.

[53] Justice Lemieux reached a similar conclusion with respect to an allegation that the offender had attempted an escape. The assertion that hacksaw blades had been found in the offender's cell was not erroneous, rather it was the inference the CSC had drawn from that fact that was not sustainable. At best he could have been suspected of planning an escape: *Tehrankari 2000*, at paragraphs 56-61.

[54] In the present matter, applying the criminal law standard of proof beyond a reasonable doubt, the Independent Chair Person dismissed the first charge apparently on the ground that the applicant had stabbed the other inmate because of a fear of imminent harm. The Assistant Commissioner's choice of words to describe the reason for the dismissal, "mitigating circumstances", may not have been precise but did not alter the essential facts reported by the

correctional official who observed the event. It is apparent that the decision-maker was aware of the full circumstances including the applicant's claim of self-defence.

[55] The second charge was dismissed on a technical ground. The applicant does not deny his involvement in that incident but asserts that the available evidence, including a witness statement from a third inmate, would not have supported a conviction even if the correct charge had been laid. Whether that is correct or not is beyond the scope of this application. The fact remains that the applicant's file contains an incident report in which the other inmate accused the applicant of rushing at and slashing him. The correctional officials could not ignore that report.

[56] Justice Blais, as he then was, dealt with an analogous situation in *Côté-Savard v Canada (Attorney General)*, 2006 FC 653. In that case, the applicant had grieved a security reassessment which stemmed from the discovery of a bladed weapon in his cell. A serious offence report was issued. The Independent Chair Person ordered a stay of proceedings in the disciplinary court owing to excessive delay. The Commissioner relied on the report notwithstanding the dismissal. That was found by the Court to be reasonable.

[57] I agree with the following analysis of Justice Blais at paragraph 13 of *Côte-Savard*, above:

> …even if the applicant had been acquitted, the authorities could still refer to the discovery of a bladed weapon in the applicant's cell as justification for raising his security classification…the burden of proof in disciplinary matters requires that the chair-person of the disciplinary tribunal be persuaded beyond a reasonable doubt of the commission of the offence, which is not the case in the context of such administrative measures as the review of a security classification or an involuntary transfer.

[58] This Court is considering the reasonableness of the Assistant Commissioner's decision. It must decide if, considering the evidence before him, the Commissioner could reasonably rely on the incident reports and on facts related to the incident in dismissing the third level grievance. As the Assistant Commissioner noted, it remained open to the applicant to bring a separate grievance to correct the information in his file if it was in fact inaccurate.

[59] In carrying out this task, this Court owes a high degree of deference towards the Assistant Commissioner due to his expertise in managing penitentiaries, maintaining institutional security and evaluating inmates' institutional adjustment and other risk factors: *Tehrankari (2000)*, at para 36; and *Canada (Attorney General) v Boucher*, 2005 FCA 77 at para 16.

[60] Imposing a requirement that correctional officials could not rely on incident reports when the resulting charges were dismissed would unduly burden the CSC in the execution of its responsibility to determine the security placement of inmates. Disciplinary hearings and security placement decisions are separate and different processes and their respective objects, procedures, consequences and evidentiary standards must be acknowledged and respected.

[61] Considering the expertise of the CSC, s. 17 of the *Corrections and Conditional Release Regulations*, SOR/92-620, s. 24(1) of the CCRA, the above cited jurisprudence, and the absence of clear legislative wording imposing a higher standard, it is reasonable for the Service to rely on incident reports stating facts related to a dismissed charge so long as the facts are reliable and as accurate as possible considering the circumstances. If they are not accurate, the inmate concerned may grieve the inclusion of the information in his or her institutional records.

[62] Accordingly, the application is dismissed. As the applicant claims to be impecunious I see no point in awarding costs in favour of the respondent.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. The parties shall bear their own costs.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-684-11
STYLE OF CAUSE:	FRANK KIM and THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	Ottawa, Ontario (heard via video-conference)
DATE OF HEARING:	March 27, 2012
REASONS FOR JUDGMENT AND JUDGMENT:	MOSLEY J.
DATED:	July 10, 2012

APPEARANCES:

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