Federal Court Cour fédérale

Date: 20130827

Docket: T-1127-12

Citation: 2013 FC 905

Ottawa, Ontario, August 27, 2013

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

WILLIAM A. JOHNSON

Applicant

and

**THE INDEPENDENT CHAIRPERSON,
WARKWORTH INSTITUTION
DISCIPLINARY COURT**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, the applicant seeks to review a disciplinary decision of the respondent fining him $20, suspended for 21 days, after finding him guilty of a disciplinary offence of disobeying an order.

Facts

[2] It is not disputed that the applicant told the instructing officers that “they can shove it up their ass” on being instructed on multiple occasions by multiple correctional officers to attend at the Visitors and Correspondence Office [V & C Office] for the purpose of accepting legal documents being served on him. He was charged with disobeying an order in violation of section 40 of the *Corrections and Conditional Release Act,* SC 1992, c 20 (“40. An inmate commits a disciplinary offence who (*a*) disobeys a justifiable order of a staff member”), although this was reduced to a charge of a minor offence pursuant to section 30(3) of the *Corrections and Conditional Release Regulations*, SOR/92-620.

Issues

[3] The applicant raises two issues: first whether there is a distinction as to whether the applicant was “directed” or “ordered” to attend at the V & C Office; and second whether the direction or order was justified considering his purported right to evade service of legal documents.

Standard of review

[4] The standard of review for both issues is one of reasonableness. See *Sweet v Canada (Attorney General)*, 2005 FCA 51 at para 14:

> 14 In assessing the standard of review for prisoners' grievance decisions, the Applications Judge adopted the analysis set out by Lemieux J. in Tehrankari v. Correctional Service of Canada (2000), 188 F.T.R. 206 (T.D.) at paragraph 44. After conducting a pragmatic and functional analysis, Lemieux J. concluded that a correctness standard would apply if the question involved the proper interpretation of the legislation, a standard of reasonableness simpliciter would apply if the question involved an application of the proper legal principles to the facts, and a patently unreasonable standard would apply to pure findings of fact.

Analysis

[5] The determination of what was said to the applicant and whether the language constituted an "order" within the meaning of section 40 of the *Corrections and Conditional Release Act* is a question of mixed fact and law.

[6] The respondent introduced evidence of dictionary definitions for the verbs "order" and "direct" which indicated that they are synonyms of each other. No merit can be found in the applicant's attempt to distinguish between these common terms, particularly in the context of the daily administration of a correctional institution.

[7] The respondent considered the evidence and found that the applicant was guilty beyond a reasonable doubt of disobeying an order. The Court is being requested to reweigh the evidence. This is not a proper ground for judicial review. See *Brar v Canada (MEI)*, [1986] FCJ No 346 (QL) (FCA).

[8] In respect of the applicant's alleged right to evade service of documents, he misunderstands the purpose of service of legal documents. The requirement to serve originating and subsequent documents in a legal proceeding is for the purpose of upholding a person's right to be advised of actions by the state brought against him engaged at the behest of a legal party. This allows the person to know the reasons why he or she is being engaged in the legal proceedings so as to be able to defend the proceedings. Moreover, any person seeking to evade service would be implicitly

acknowledging the legitimacy of the proceedings being brought against him or her and thereby seeking to frustrate the administration and proper course of justice.

[9] As the applicant is an inmate incarcerated in a penal institution, the respondent is required, both for the purpose of protecting the inmate's rights to procedural fairness and for the purpose of contributing to the promotion of the administration of justice, to permit and facilitate the service of documents on inmates when requested to do so by persons engaged in lawful legal proceedings.

[10] Accordingly, there is no right for a prisoner in an institution to evade service of legal documents and therefore no justification to disobey an order by prison authorities to attend for that purpose.

Conclusion

[11] The application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed.

"Peter Annis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1127-12

STYLE OF CAUSE: WILLIAM A. JOHNSON v THE INDEPENDENT CHAIRPERSON, WARKWORTH INSTITUTION DISCIPLINARY COURT

JUDICIAL REVIEW HELD VIA VIDEOCONFERENCE ON JULY 9 AND 16, 2013 FROM TORONTO, ONTARIO AND BRIGHTON TOWNSHIP, ONTARIO.

REASONS FOR JUDGMENT AND JUDGMENT: ANNIS J.

DATED: AUGUST 27, 2013

APPEARANCES:

William A. Johnson	FOR THE APPLICANT (ON HIS OWN BEHALF)
Andrew Law	FOR THE RESPONDENT

SOLICITORS OF RECORD:

William A. Johnson Brighton Township, Ontario	FOR THE APPLICANT (ON HIS OWN BEHALF)
William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT