Date: 20080514

Docket: A-425-07

Citation: 2008 FCA 185

CORAM: **DESJARDINS J.A.**
SEXTON J.A.
EVANS J.A.

BETWEEN:

PLAMEN KOZAROV

Appellant

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

Heard at Vancouver, British Columbia, on May 14, 2008.

Judgment delivered from the Bench at Vancouver, British Columbia, on May 14, 2008.

REASONS FOR JUDGMENT OF THE COURT BY: EVANS J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Vancouver, British Columbia, on May 14, 2008)

EVANS J.A.

[1] This is an appeal by Plamen Kozarov from a decision by Justice Harrington of the Federal Court (2007 FC 866) dismissing his application for judicial review of a decision by the Minister of Public Safety and Emergency Preparedness. In that decision, the Minister refused to consent to Mr Kozarov's return to Canada to serve the remainder of the sentence imposed on him by a court in the United States following his conviction for serious drug offences.

[2] In December 2007, after Justice Harrington had released his decision, Mr Kozarov, a Canadian citizen, was deported to Canada. In our view, Mr Kozarov's return renders this appeal moot. However, counsel for both parties argue that we should nonetheless exercise our discretion to hear the appeal.

[3] They say that the appeal raises an important question of constitutional law, namely, the applicability of section 6 of the *Canadian Charter of Rights and Freedoms* to provisions of the *International Transfer of Offenders Act*, S.C. 2004, c. 21. This question is the subject of conflicting decisions in the Federal Court. In addition, other cases raising the same question are under way, or are being held in abeyance pending the outcome of this appeal. The appeal should be heard, they submit, because the disputed question still arises in an adversarial context and both parties are now ready to argue it fully. The interests of judicial economy and the public interest in the speedy removal of uncertainty on an important question of pure law, which affects many other Canadian citizens in foreign prisons, also indicate that the Court should hear and determine the appeal on its merits.

[4] Despite the able arguments of counsel, we are not persuaded that we should depart from the general principle that courts do not decide cases that are moot. The fact that the question raised in this case is likely to recur, and, indeed, has recurred, does not in itself warrant our hearing a moot case. The following passage from the reasons of Justice Sopinka in *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342 at 361 is particularly apt here:

> The mere fact, however, that a case raising the same point is likely to recur even frequently should not by itself be a reason for hearing an appeal which is moot. It is preferable to wait

> and determine the point in a genuine adversarial context unless the circumstances suggest that the dispute will have always disappeared before it is ultimately resolved.

[5] It is important to emphasize that the question in dispute here is not "evasive of review": (*Borowski* at 364). Counsel for Mr Kozarov is acting for clients in similar cases: given the length of the sentences, and the amount still to be served, there will be ample time for him to ensure that a case reaches this Court before the offender has served his sentence and is removed to Canada. We note also in this context that the present case has come to this Court only two years after the Minister's refusal to consent to the transfer, and that at least one of the other cases is already in the Federal Court and is presently adjourned pending this decision.

[6] In these circumstances, to delay the resolution of the disputed constitutional issue until a live case reaches the Court does not seem to us to involve such a saving of judicial resources, or such a high "social cost of uncertainty in the law" (*Borowski* at 361), as to outweigh the benefits of adhering to the general principle that courts should not adjudicate moot cases.

[7] Nor are we persuaded that determining this appeal is likely to have significant "practical side effects on the rights of the parties" (*Borowski* at 364).

[8] For these reasons, the appeal will be dismissed for mootness.

"John M. Evans"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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