Federal Court  Cour fédérale

Date: 20150421

Docket: T-1666-14

Citation: 2015 FC 510

Ottawa, Ontario, April 21, 2015

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

CORY ALLAN HALL

Applicant

and

CANADA (PAROLE BOARD OF)

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the decision dated June 18, 2014 by the Parole Board of Canada, Appeal Division [Appeal Board] to uphold the Parole Board of Canada's [the Board] decision to revoke the Applicant's full parole.

[2] The Applicant was convicted on December 18, 1999 of second degree murder, and sentenced to life imprisonment without eligibility for parole for ten years.

[3] On March 1, 2000, the Applicant was assessed a Statistical Information on Recidivism [SIR] score of 2, indicating that 2 out of 3 similar offenders will not commit an indictable offence after release.

[4] On August 31, 2009, the Applicant underwent psychiatric assessment where he described a past relationship with a female whose rape had in part motivated his index offence.

[5] On January 20, 2010, the Applicant applied for parole in the form of unescorted temporary absence. At this point he had completed all correctional programs, eighteen escorted temporary absences, three sixty day perimeter security clearance passes, and one half of a six month work release program, without incident.

[6] In March of 2010, the Applicant's Correctional Plan Progress Report reflected positively on him.

[7] On April 6, 2010, the Applicant underwent psychological assessment, which recognized his relationships with women to be a potential risk factor connected with the circumstances underlying his index offence.

[8] In a report dated April 22, 2010, the Applicant's case management team [CMT] supported granting him day parole with special conditions: that he abstain from intoxicants, and participate in psychological counselling.

[9] The Applicant was granted day parole on July 5, 2010.

[10] The Applicant was granted full parole on June 7, 2011 with the full support of his CMT, and was subject to the following conditions:

a. to report all relationships, including friendships, with women to his parole supervisor;
b. to undergo psychological counselling;
c. to abstain from intoxicants; and
d. to not associate with any person he knows, or has reason to believe is involved in criminal activity and/or substance misuse.

[11] On February 22, 2013, the Board decided to remove the Applicant's psychological counselling condition, stating that it would not elevate his risk to an "undue" level.

[12] On December 11, 2013, warrants of apprehension and suspension were executed for the Applicant. On December 12, 2013, his parole supervisor suspended his parole on the basis of information received from the Victoria Police Department that the Applicant was suspected of defrauding a woman of $240,000, and that he had been having sexual relations with her in exchange for monetary compensation over the course of the year.

[13] On December 13, 2013, the Applicant's parole supervisor confronted him with some of the above allegations. The Applicant denied having had a relationship with the woman, but said she had become infatuated with him after sharing some of his writings. He stated she had paid him approximately $7,000, and that he had won approximately $200,000 at the casino in the previous six months. The casino confirmed the Applicant's winnings between May and October of 2013 to be $207,000, but did not confirm what he had spent to win that amount.

[14] The Applicant's parole supervisor wrote a Community Assessment dated December 19, 2013, providing details that arose from information obtained from a police intelligence meeting on December 11, 2013.

[15] On December 23, 2013, the Applicant submitted a Notice of Appeal to the Board requesting that all special conditions be removed from his full parole, stating that there is no information to suggest that non-disclosure of relationships with women would be an immediate risk for him to re-offend.

[16] On January 6, 2014, the Applicant's parole supervisor wrote an Assessment for Decision, which provided reasons for the suspension of the Applicant's full parole and recommended its revocation.

[17] The Applicant made a written submission to the Board on January 8, 2014, in which he responded to the allegations against him. He claimed that his interactions with the woman were of a "physical nature" with "no intimacy or courtship" exchanged. He also stated that he had mentioned going to the casino to his parole supervisor, who had expressed disapproval. He further stated that he and his parole supervisor did not speak about relationships and allegedly stated he "was exhausted with the idea". The Applicant denies making this statement.

[18] Prior to the Applicant's Appeal Board review, he reviewed and signed the Procedural Safeguard Declarations, which acknowledges receipt of the associated Information Sharing

Checklists. The latter indicates that the Community Assessment and Assessment for Decision were shared with the Applicant on January 10, 2014.

[19] The Board decided to revoke the Applicant's full parole in a decision dated January 27, 2014.

[20] The Applicant appealed this decision to the Appeal Board on February 3, 2014 on four grounds:

a. the Board failed to observe a principle of fundamental justice in failing to disclose information prior to the Applicant's review pertaining to his suspension despite Board policy to the contrary;
b. the Board relied on discordant information not properly before it concerning data retrieved from text messages, social media and electronic mail;
c. the Board deemed such information to be "reliable and persuasive", contrary to Board policy; and
d. the Board based its decision on incomplete or erroneous information.

[21] The Board's decision was upheld by the Appeal Board, and the application dismissed on June 18, 2014. The Appeal Board confirmed that the Applicant's behavior contravened the Applicant's parole restrictions.

I. Issues

[22] The issues are:

A. Did the Board member breach procedural fairness in failing to disclose relevant and relied-upon information to the Applicant prior to rendering her decision?

B. Did the Board and Appeal Board reasonably decide that the Applicant's parole should be revoked?

II. Standard of Review

[23] The appropriate standard of review for the issue concerning procedural fairness is correctness. The standard of reasonableness should be applied to the second issue (*Tremblay v Canada (Attorney General)*, 2012 FC 1546, para 16; *Dunsmuir v New Brunswick*, 2008 SCC 9, para 47).

III. Analysis

[24] The relevant legislation is attached as Appendix A.

A. *Did the Board breach procedural fairness in failing to disclose relevant and relied-upon information to the Applicant prior to rendering her decision?*

[25] At the hearing, the Applicant's counsel provided the Court with the Applicant's recent, revised day parole special conditions, dated January 14, 2015, which list as follows:

i. avoid gambling establishments;
ii. report relationships – immediately report all intimate sexual and non-sexual relationships and friendships with females to your parole supervisor;
iii. financial disclosure as per a schedule to be determined by the parole supervisor;
iv. not to gamble

[26] These new conditions add three conditions previously not part of the Applicant's parole special conditions (i), (iii) and (iv), and remove psychological counselling, abstaining from intoxicants, and associating with any person he knows or has reason to believe is involved in criminal activity and/or substance abuse.

[27] The Applicant submits that an issue of procedural fairness will invalidate a parole decision. He further submits that section 141(1) of the CCRA forms the basis for part 10.1(4) of the Parole Board of Canada Policy Manual, which requires that an offender be provided "all relevant information considered by the Board for decision-making" at least 15 days prior to the day set for the review of their case.

[28] The Applicant submits that this disclosure requirement was canvassed in *Mymryk v Canada (Attorney General)*, 2010 FC 632 at paras 20, 27-29 [*Mymryk*], where section 27 of the CCRA was considered, and compared with s. 141(1). Both provisions have been found to be satisfiable with a summary of all relevant information. In determining what should be disclosed, the Board must balance different interests while holding the protection of society as most important; however, only information that is necessarily withheld should be kept from the offender. Transparency is required of the Board in this decision making process.

[29] The Applicant states that it is evident from the various assessments for decision on the Record that his parole supervisor and CMT relied on information from the Victoria Police investigation in their reports, which were in turn relied upon by the Board in reaching their decision. The Applicant was assessed and rejected without being provided access to this information.

[30] When asked why he did not report the relationship with the woman he had met on the internet to his parole supervisor, the Applicant explained it was because he did not believe it was reportable. In rejecting this position, the Board found that the Applicant had been receiving

"large sums of money for sex". The Board also notably made a finding that the Applicant`s relationship with this woman was "lengthy", a determination that had to be based on information that could only have come from the police investigation. The Board`s knowledge of their online introduction, and that their meetings and fees increased over time also clearly showed reliance on information from the police investigation, none of which was disclosed to the Applicant.

[31] Further, in considering that the Applicant had spent large amounts of money to make his sizeable winnings at the Great Canadian Casino, the Board was speculating based on information connected to the police investigation.

[32] The Respondent cites *Miller v Canada (Attorney General)*, 2010 FC 317 at para 54, for the assertion that section 141 of the CCRA does not contemplate "an open-ended duty to actively seek potentially relevant information from [Correctional Services Canada [CSC]]"; rather, the Board is required "to take into consideration all information received from the CSC that is relevant to a case" and "ensure that any such information upon which it may act is reliable and persuasive."

[33] The Respondent argues that the disclosure obligation imposed by section 141 can only apply insofar as the Board actually has information in its possession. Further, information is required to be shared with an offender to allow them to adequately state their case and answer any objections raised against them. The sources of the information need not be revealed to an offender (*Strachan v Canada (Attorney General)*, 2006 FC 155 at para 25; *Ross v Kent Institution (Warden)*, (1987) 34 CCC (3d) 452 at para 30).

[34] Moreover, the Respondent states that based on the information in the Assessment for Decision from January 6, 2014 and his own knowledge, the Applicant gave a narrative of events that demonstrated he had sufficient information to answer the salient details asked of him.

[35] By January 10, 2014, the Applicant had reviewed the Procedural Safeguard Declarations as well as the associated Information Sharing Checklists (which set out the Community Assessment from December 19, 2013, and the January 6, 2014 Assessment for Decision). He signed the Procedural Safeguard Declarations to confirm the information listed had been given to him. The accuracy of the checklist has not been challenged by the Applicant; instead, he complains that he was not given the material from the Victoria Police investigation, copies of text messages and Facebook data collected in particular.

[36] The Applicant is correct that the Board has a responsibility to share relied-upon information with him, in full or in the form of a summary, to the exclusion only of information it is strictly necessary to withhold. It is important for him to have such information to be able to respond to concerns and allegations he might be questioned on in his review (*Mymryk*, above, at para 16; *Christie v Canada (Attorney General)*, 2013 FC 38 at paras 20, 27-29).

[37] While it appears that the Respondent must have in some way relied upon information from the Victoria Police Investigation, for if they had not, there would not have been a sudden review of his parole, or a warrant issued, I do not agree with the Applicant that the relevant information relied upon by the Board was withheld from him. The Applicant, in writing his response to the January 6, 2014 Assessment for Decision (response dated January 8, 2014) had

clearly reviewed this assessment. He later, on January 10, 2014, signed a checklist acknowledging the disclosure of this among other documents. He further was confronted by his parole supervisor about many of the allegations from the investigation in a discussion on December 13, 2013.

[38] While the Applicant might not have been provided copies of the actual police report, or whatever his CMT and parole supervisor relied upon in their assessments prior to his parole hearing, the Applicant was clearly aware of the salient points, and a summary thereof. His response to the January 6, 2014 Assessment for Decision addressed all its major points, and demonstrated understanding of the concerns he faced. As stated above, a summary of information has been found to satisfy the disclosure requirement under section 141 of the CCRA.

[39] I find that there was no breach of procedural fairness in that the Board adequately met the section 141 disclosure requirement.

B. *Did the Board and Appeal Board reasonably decide that the Applicant's parole should be revoked?*

[40] The Respondent argues that the decision was reasonable and supported by the information correctly before Appeal Board. In assessing risk, it is most important that protection of society is paramount. The decision was based on the information before the Board, which allegedly did not include undisclosed information from the police investigation. The Respondent argues that CSC and the Board did not have undisclosed information as alleged by the Applicant, and thus could not have disclosed it to the Applicant. The GO Report associated with the

investigation indicates it was vetted for disclosure on September 3, 2014 and then provided to the Applicant's CMT and the Board. However, from the record, it appears that the police report was available to the Board at the relevant time.

[41] The Board and Appeal Board found that the Applicant's level of risk in the public was undue because of a lack of transparency and the breach of a special condition of his parole in not disclosing his relationship involving sex for money. While I might disagree with the decision to revoke the Applicant's parole on the basis of not reporting a relationship with a female that would arguably not trigger re-offense, the relationship constituted a violation of his parole restrictions and the Appeal Board's decision is reasonable.

[42] Reports on the Applicant's file show that he committed his index offense out of "a twisted sense of justice over the wrongdoing of a woman who was close to" him. The special condition on his parole to report all female relationships is born out of concern that intimate connection with a female might lead to a drive to avenge potential wrongdoing that might happen to her. Should the Applicant have wished to vary or remove the restriction, he should have applied to do so through the proper channels rather than reinterpret this restriction himself and act upon it.

[43] While I understand the Applicant's frustration in the matter, whatever arrangement existed between him and this woman clearly constituted a relationship, whether or not it was intimate in his opinion.

[44] The Appeal Board's requirement to impose the least restrictive sanctions that uphold societal safety is in line with revocation of the Applicant's parole based on the facts here. The Applicant contravened his parole restrictions for an extended period of time, and lied about his relationship with the woman when initially confronted by his parole supervisor.

[45] The Board's exercise of discretion must have a sound basis in fact to be considered reasonable, and its decision must comply with the CCRA, to the effect that it uses the least restrictive conditions available consistent with the protection of society.

[46] I find that the Board's decision to revoke the Applicant's full parole to be reasonable. While I acknowledge the Applicant's frustration with his previous requirement to report all relationships with females, and even his frustration with his parole supervisor's personal views of his behavior, it was not proper for him to reinterpret his parole restrictions and act based on those interpretations. The mistrust bred by his contraventions lead to the reasonable conclusion of the Appeal Board to uphold the Board's revocation of his parole.

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

"Michael D. Manson"
Judge

APPENDIX "A"

Corrections and Conditional Release Act (S.C. 1992, c. 20)

Information to be given to offenders

27. (1) Where an offender is entitled by this Part or the regulations to make representations in relation to a decision to be taken by the Service about the offender, the person or body that is to take the decision shall, subject to subsection (3), give the offender, a reasonable period before the decision is to be taken, all the information to be considered in the taking of the decision or a summary of that information.

Idem

(2) Where an offender is entitled by this Part or the regulations to be given reasons for a decision taken by the Service about the offender, the person or body that takes the decision shall, subject to subsection (3), give the offender, forthwith after the decision is taken, all the information that was considered in the taking of the decision or a summary of that information.

Exceptions

(3) Except in relation to decisions on disciplinary offences, where the Commissioner has reasonable grounds to believe that disclosure of information under subsection (1) or (2) would jeopardize

(a) the safety of any person,

(b) the security of a penitentiary, or

(c) the conduct of any lawful investigation,

the Commissioner may authorize the withholding from the offender of as much information as is strictly necessary in order to protect the interest identified in paragraph (a), (b) or (c).

Communication de renseignements au délinquant

27. (1) Sous réserve du paragraphe (3), la personne ou l'organisme chargé de rendre, au nom du Service, une décision au sujet d'un délinquant doit, lorsque celui-ci a le droit en vertu de la présente partie ou des règlements de présenter des observations, lui communiquer, dans un délai raisonnable avant la prise de décision, tous les renseignements entrant en ligne de compte dans celle-ci, ou un sommaire de ceux-ci.

Idem

(2) Sous réserve du paragraphe (3), cette personne ou cet organisme doit, dès que sa décision est rendue, faire connaître au délinquant qui y a droit au titre de la présente partie ou des règlements les renseignements pris en compte dans la décision, ou un sommaire de ceux-ci.

Exception

(3) Sauf dans le cas des infractions disciplinaires, le commissaire peut autoriser, dans la mesure jugée strictement nécessaire toutefois, le refus de communiquer des renseignements au délinquant s'il a des motifs raisonnables de croire que cette communication mettrait en danger la sécurité d'une personne ou du pénitencier ou compromettrait la tenue d'une enquête licite.

Droit à l'interprète

(4) Le délinquant qui ne comprend de façon satisfaisante aucune des deux langues officielles du Canada a droit à l'assistance d'un interprète pour toute audition prévue à la présente partie ou par ses règlements

Right to interpreter

(4) An offender who does not have an adequate understanding of at least one of Canada's official languages is entitled to the assistance of an interpreter

(a) at any hearing provided for by this Part or the regulations; and

(b) for the purposes of understanding materials provided to the offender pursuant to this section.

d'application et pour la compréhension des documents qui lui sont communiqués en vertu du présent article.

Disclosure to offender

141. (1) At least fifteen days before the day set for the review of the case of an offender, the Board shall provide or cause to be provided to the offender, in writing, in whichever of the two official languages of Canada is requested by the offender, the information that is to be considered in the review of the case or a summary of that information.

Idem

(2) Where information referred to in subsection (1) comes into the possession of the Board after the time prescribed in that subsection, that information or a summary of it shall be provided to the offender as soon as is practicable thereafter.

Waiver and postponement

(3) An offender may waive the right to be provided with the information or summary or to have it provided within the period referred to in subsection (1). If they waive the latter right and they receive information so late that it is not possible for them to prepare for the review, they are entitled to a postponement and a member of the Board or a person designated by name or position by the Chairperson of the Board shall, at the offender's request, postpone the review for the period that the member or person determines. If the Board receives

Délai de communication

141. (1) Au moins quinze jours avant la date fixée pour l'examen de son cas, la Commission fait parvenir au délinquant, dans la langue officielle de son choix, les documents contenant l'information pertinente, ou un résumé de celle-ci.

Idem

(2) La Commission fait parvenir le plus rapidement possible au délinquant l'information visée au paragraphe (1) qu'elle obtient dans les quinze jours qui précèdent l'examen, ou un résumé de celle-ci.

Renonciation et report de l'examen

(3) Le délinquant peut renoncer à son droit à l'information ou à un résumé de celle-ci ou renoncer au délai de transmission; toutefois, le délinquant qui a renoncé au délai a le droit de demander le report de l'examen à une date ultérieure, que fixe un membre de la Commission ou la personne que le président désigne nommément ou par indication de son poste, s'il reçoit des renseignements à un moment tellement proche de la date de l'examen qu'il lui serait impossible de s'y préparer; le membre ou la personne ainsi désignée peut aussi décider de reporter l'examen lorsque des renseignements sont

information so late that it is not possible for it to prepare for the review, a member of the Board or a person designated by name or position by the Chairperson of the Board may postpone the review for any reasonable period that the member or person determines.

Exceptions

(4) Where the Board has reasonable grounds to believe

(a) that any information should not be disclosed on the grounds of public interest, or

(b) that its disclosure would jeopardize

(i) the safety of any person,

(ii) the security of a correctional institution, or

(iii) the conduct of any lawful investigation,

the Board may withhold from the offender as much information as is strictly necessary in order to protect the interest identified in paragraph (a) or (b).

communiqués à la Commission en pareil cas.

Exceptions

(4) La Commission peut, dans la mesure jugée strictement nécessaire toutefois, refuser la communication de renseignements au délinquant si elle a des motifs raisonnables de croire que cette communication irait à l'encontre de l'intérêt public, mettrait en danger la sécurité d'une personne ou du pénitencier ou compromettrait la tenue d'une enquête licite.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1666-14
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