Federal Court  Cour fédérale

Date: 20161019

Docket: T-2095-15

Citation: 2016 FC 1158

[ENGLISH TRANSLATION]

Ottawa, Ontario, October 19, 2016

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

YOUNG-TAILLON, NICOLAS

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review under subsection 18.1(1) of the *Federal Courts Act*, R.S.C., 1985, c. F-7 of the decision made by the Independent Chairperson of the Disciplinary Tribunal at Cowansville Institution (the Chairperson) on November 12, 2015, that found Nicolas Young-Taillon (the applicant) guilty of the disciplinary offence of "fights with,

assaults or threatens to assault another person" set out in paragraph 40(h) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (the Act).

II. The facts

[2] The applicant, an inmate at Cowansville Institution (the Institution) received a disciplinary offence report on April 7, 2015. He was accused under paragraph 40(h) of the Act of fighting with another inmate on March 22, 2015.

[3] The events in question took place in an institution where the inmates are partially released and can move about freely. The Institution has a common room with a kitchen and a hallway that leads to the inmates' bedrooms. The applicant's bedroom is located at the end of the hallway, approximately 40 feet from the common room.

[4] The events occurred during a change in staff when no staff members were present to witness the incident. The staff only found out about the incident when a staff member noticed a scar on the applicant's face. After that, the surveillance footage was watched to determine the cause of the scar. That is when the applicant was accused of the disciplinary offence.

[5] The only evidence on file is the video recording and the testimony of Karine Dutil, a member of the correctional staff, who described what she had noticed when watching the video. The applicant did not testify or present any evidence.

[6] Hearings took place on September 2 and 30, 2015, and the Chairperson made his decision on November 12, 2015.

A. *The video footage*

[7] During the hearing, the Chairperson showed the video recording of the incident. The sequence of events was as follows:

1. the applicant and the other inmate had a heated discussion in the common room, during which they were facing one another, a few feet apart;
2. the applicant shoved the other inmate once, which made the inmate fall to the ground;
3. the applicant shoved the other inmate a second time, throwing the other inmate slightly off balance;
4. the applicant left the common room and went down the hallway to his room;
5. during his absence, the other inmate went to get an object from the kitchen cupboard, which the assessor believed to be a knife, but which was, regardless, a weapon within the meaning of paragraph 267(a) of the *Criminal Code*, R.S.C., 1985, c. C-46;
6. the other inmate left the common room with the weapon in his hand and followed the applicant;

7. the applicant briefly entered his room, which was at the end of the hallway, but immediately turned back to the hallway, where he saw the other inmate moving quickly toward him with the weapon in his hand;

8. seeing the other inmate approaching, the applicant moved toward him and the two fought and quickly went into the bathroom, where there was no camera;

9. a few minutes later, the applicant, who appeared to be touching a cut on his face a few times, left the bathroom and went to the common room and then to his bedroom;

10. at that time, someone who can be assumed to be a staff member cleaned what appeared to be blood in the hallway outside the bathroom and between the bathroom and the applicant's room;

11. the applicant then left his room to get an object from the kitchen cupboard himself;

12. while the applicant was in the common room, the other inmate left the bathroom and returned to his room;

13. the applicant returned to his room and then went to the bathroom door, removing the object he had taken from the kitchen from his pocket;

14. a few moments later, he went to another room with the object in his hand;

15. in the meantime, someone who appears to be a staff member went into the bathroom with a mop and bucket;

16. the applicant finally entered the other inmate's room, out of view of the cameras, holding the object in his right hand; and

17. a few minutes later, he came out of the other inmate's room and went to the common room.

B. *The hearing*

[8] During the hearing, the assessor admitted that the events after the fight, from the moment when the applicant left the bathroom to go to his room, i.e., the fact that he went to get a weapon, are not the acts for which he was accused. It is only the events that took place in the hallway that are at issue. The applicant's counsel also pointed out that the shoving that took place before the fight in the hallway was not part of the offence, because it did not lead to a fight.

[9] The assessor states [TRANSLATION] "that fighting is not the only way to resolve a conflict in the institution." For example, one could notify staff or use the emergency alarms in the bedrooms. The assessor also pointed out that it was implausible that the applicant and the other inmate could have managed to live together for several days trying to conceal the fight if someone had acted in self-defence. Neither inmate informed the staff that they had been assaulted or had to defend themselves.

[10] The applicant's counsel raised the argument of self-defence. She carefully set out the elements of the defence for the Chairperson and analyzed the facts based on those elements. She argued that the burden of proof had not been discharged and that it was the Correctional Service's responsibility to prove beyond a reasonable doubt that self-defence did not apply. She pointed out to the Chairperson that, with regard to self-defence, it is the perception of the accused that is important.

[11] The applicant's counsel argued that a reasonable person in the applicant's situation would have felt threatened and acted as the applicant had. When the applicant left his room, he saw the other inmate coming toward him with a weapon. She claims that, in this situation, he had to [TRANSLATION] "act in the moment." There was no guard, gatehouse or alarm button.

[12] She argues that the context was imperfect:

> [TRANSLATION] This was a context where a person can seek revenge, where, in a penitentiary, it is necessary to respond immediately, to act in the moment. A person cannot just run away. It is not just a matter of shutting oneself away in his cell and then seeing what happens a few days later. That is the type of context we are dealing with.

[13] She also states that the applicant's reaction was proportionate. Her client was injured during the fight and used the necessary force to disarm the other inmate.

III. Impugned decision

[14] During the hearing on November 12, 2015, the Chairperson rendered his decision, of which the entire part on the basis of self-defence is as follows:

> [TRANSLATION] What is...What is being claimed...What the defence is claiming, is self-defence, and that the accused acted in a reasonable manner.
>
> I then had the opportunity to watch the video very carefully. One thing I was able to notice when watching calmly and glued to the screen, I saw those men, not only did they...I will use the expression scuffle, but at one point both of them were armed. It is clear to me that those two inmates fought. That is what your client

> is accused of. As a result, I find him guilty of the charge. I also understand that he was placed in segregation...
>
> [My emphasis]

[15] The applicant was sentenced to three days of time served and a fine of thirty-five dollars, suspended for a period of ninety days.

IV. Relevant Act

[16] The Chairperson found the applicant guilty of the offence set out in paragraph 40(h) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20:

Disciplinary offences	*Infractions disciplinaires*
40 An inmate commits a disciplinary offence who	**40** Est coupable d'une infraction disciplinaire le détenu qui :
[…]	[…]
(h) fights with, assaults or threatens to assault another person;	**h)** se livre ou menace de se livrer à des voies de fait ou prend part à un combat;

V. Issues

[17] This case raises the following issues in dispute:

1. Was the Chairperson's analysis of the defence of self-defence reasonable?
2. Did the Chairperson breach procedural fairness?

VI. Standard of review

[18] Where the applicant argues that the Chairperson's reasons contain flaws or defects, the reasonableness of the decision must be reviewed (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 21–22). In that regard, what must be reviewed is the "justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." (*Dunsmuir v. New Brunswick*, *2008 SCC 9* at para 47). As for the issues of procedural fairness raised by the applicant, the standard of review will always be correctness (*Mission Institution v. Khela*, 2014 SCC 24, at para 79).

VII. Analysis

[19] The applicant is accused of the disciplinary offence set out in paragraph 40(h) of the Act of having participated in a fight. That paragraph also prohibits less serious acts such as assaulting or threatening to assault another person, which would result in a less severe sentence. Nevertheless, the applicant was accused of the most serious offence under paragraph 40(h), which is fighting. As a result, the relevant facts concern only the events that occurred in the hallway when the applicant and the other inmate fought.

[20] There is no question that a fight took place. Since the applicant acknowledged having participated in the fight, the only issue the Chairperson of the Tribunal had to examine was whether his participation could be justified as being self-defence, as the applicant argues.

[21] Given this defence, the objective of the analysis of the facts should have been to determine whether the applicant's decision was reasonable to participate in a fight when he saw the other inmate approaching him with a weapon in his hand.

[22] Given that the other inmate was armed and was approaching the applicant in the hallway, it seems reasonable to assume that his fear for his personal safety would increase considerably compared to the shoving that had occurred in the common room.

[23] Accepting that the applicant's personal safety was jeopardized when he was facing the armed inmate, the real question before the Chairperson was to determine whether the applicant had other reasonable options to avoid that imminent danger. We must keep in mind that the applicant had about two or three seconds to come up with an action plan.

[24] The Attorney General pointed out that there were obvious solutions, including alerting the guards or withdrawing to his room and pressing the alarm button to alert the authorities. The applicant argues that, given the imminence of the danger, those options were not realistic. In particular, the guards were changing shifts and there was no alarm in the hallway.

[25] If the Chairperson had conducted such an analysis, as presented by the applicant's counsel, he would have been able to appreciate the applicant's perception of the other inmate's approach considering the events that occurred prior to and during the fight. This would have enabled him to determine whether the correctional authorities had discharged their burden to

establish beyond a reasonable doubt that the applicant was not in a self-defence situation justifying his involvement in the fight.

[26] What was irrelevant and what the Chairperson could not take into account was the events after the fight. There is no evidence that a fight took place following the events that occurred in the hallway when the applicant, holding an unidentified weapon he got from the kitchen, went into the other inmate's room. The assessor admitted that those events are not part of the charge in question.

[27] Therefore, it is obvious that the Chairperson's reasons, which were also too brief, were based on irrelevant facts to reject the applicant's self-defence argument. The Chairperson's statement that at one point both inmates were armed referred to the events that occurred after the fight in the hallway. Those facts have no connection to the self-defence argument.

[28] As a result, the Chairperson's reasons for rejecting the applicant's defence are unreasonable because they disregarded the relevant evidence and were based instead on irrelevant evidence.

[29] Having found that the Chairperson's analysis was unreasonable, it is unnecessary to address the questions of procedural fairness.

[30] The decision is therefore set aside, and the case is referred back to the Tribunal to be heard by a different Independent Chairperson.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review be allowed with costs, and the decision be referred back to the Tribunal for redetermination on the basis of these reasons.

"Peter Annis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2095-15
STYLE OF CAUSE:	YOUNG-TAILLON, NICOLAS v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	SEPTEMBER 14, 2016
JUDGEMENT AND REASONS:	ANNIS J.
DATED:	OCTOBER 19, 2016

APPEARANCES:

Marie-Claude Lacroix	FOR THE APPLICANT
Véronique Forest	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Marie-Claude Lacroix Montréal, Quebec	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT