

**Date: 20041105**

**Docket: T-255-04**

**Citation: 2004 FC 1487**

**BETWEEN:**

**ALAIN CHARRON**

**Applicant**

**- and -**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS FOR ORDER**

**PINARD J.**

[1] This application for judicial review is from a decision by the National Advisor, Sentence Management, to treat the date of June 28, 2001 as that of the beginning of the applicant's sentence and apply sections 11 and 11.1 of the *Transfer of Offenders Act*, R.S.C. 1985, c. T-15, to determining the latter's statutory release.

[2] In 1990 the applicant was charged in Canada with committing the criminal offence mentioned in paragraph 465(1)(c) of the *Criminal Code* and subsections 4(1) and (2) of the *Narcotic Control Act*.

The applicant went to the Bahamas in February 1996 with the permission of the Canadian authorities, but was arrested by Bahamian police officers on February 17, 1996 pursuant to an extradition application by the U.S. authorities. From that date onward, until he was extradited to the U.S. on July 18, 2000, the applicant remained in custody in the Bahamas.

[3] On March 19, 2001 the applicant pleaded guilty before Justice Richard J. Arcara of the United States District Court for the Western District of New York to charges under sections 843b and 846 of Title 21 of the *United States Code* and section 2 of the Title 18 of the *United States Code*, all relating to “controlled substance felonies”. On June 28, 2001 Justice Arcara imposed two consecutive terms of 48 months on the applicant, expiring eight years after the date the applicant was imprisoned in the Bahamas.

[4] On June 19, 2002 the applicant was transferred to Canada pursuant to the *Treaty Between Canada and the United States of America on the Execution of Penal Sentences*.

[5] The *Transfer of Offenders Act* (the Act) applied to the applicant when he was transferred from the U.S. to Canada in June 2002 in respect of the eight-year term to which he had been

sentenced. The date that term expired was March 11, 2003 and the statutory release date was December 13, 2002: that is not in dispute.

[6] On December 5, 2002 the applicant pleaded guilty before Judge Claude Parent, a judge of the Court of Quebec sitting in the district of Joliette, to the 1990 charges under the *Criminal Code*. On March 6, 2003 the applicant was sentenced by Judge Parent to serve two concurrent five-year terms and to pay a fine of \$75,000 on each count, or alternatively consecutive terms of one year. It accordingly appeared that this sentence was imposed five days before the eight-year sentence imposed in the U.S. expired.

[7] On May 29, 2003 the applicant received from Correctional Service Canada (CSC) a document confirming that the date of his eligibility for statutory release was April 10, 2006.

[8] On December 5, 2003 the applicant made a request to Suzanne Godin of Sentence Management at the Leclerc Institution to determine under what provision of the Act the *Transfer of Offenders Act* applied to this new overall sentence. In her reply, Pauline Mailhot referred the applicant to section 8 of the *Transfer of Offenders Act*.

[9] On December 22, 2003 the applicant, through his counsel, sent a letter to the National Advisor, Sentence Management, submitting that the *Transfer of Offenders Act* did not apply to his new overall

sentence, that his term began on February 16, 1996 and the date of his statutory release was February 28, 2004.

[10] On January 8, 2004 Michel Laprade, representing the National Advisor, Sentence Management, CSC, sent counsel for the applicant a letter in which he repeated that sections 11 and 11.1 of the *Transfer of Offenders Act* applied to the applicant and that the date of his statutory release had to be determined accordingly: hence the application for judicial review at bar.

\* \* \* \* \*

[11] The relevant provisions of the Act are the following:

**11.** A Canadian offender transferred to Canada shall, at the date of the transfer, be credited with any time toward completion of a sentence imposed by a court of a foreign state that, at that date, had actually been spent in confinement in the foreign state or that was credited, by the foreign state, towards completion of the sentence.

**11.1** (1) Where a Canadian offender transferred to Canada is detained in a penitentiary, the offender is entitled to be released on statutory release on the day on which the offender has served the portion of the sentence that remains to be served after deducting the portion of the sentence with which the offender was credited in accordance with section 11 less

(a) any credits, given by the foreign state, towards release before the expiration of the sentence; and

(b) one third of the portion of the sentence that remains to be served after deducting the portion referred to in paragraph (a).

**12.** Subject to sections 11 and 11.1, a Canadian offender transferred to Canada is subject to the *Corrections and Conditional Release Act* or the *Prisons and Reformatories Act*, as the case may be, as if the offender had been convicted and the sentence imposed by a court in Canada.

**11.** Il est tenu compte pour le délinquant canadien transféré au Canada, au jour du transfèrement, du temps véritablement passé en détention et des remises de peine que lui a accordées l'État étranger dont un tribunal l'a condamné.

**11.1** (1) Si le délinquant canadien transféré au Canada est détenu dans un pénitencier, la date de sa libération d'office est celle à laquelle il a purgé la partie de la peine qu'il lui reste à purger conformément à l'article 11, moins :

a) d'une part, toute réduction de peine que lui a accordée l'État étranger;

b) d'autre part, le tiers de la partie de la peine qu'il lui reste à purger, une fois déduite toute réduction de peine visée à l'alinéa a).

**12.** Sous réserve des articles 11 et 11.1, le délinquant canadien transféré au Canada est assujéti à la *Loi sur le système correctionnel et la mise en liberté sous condition* ou à la *Loi sur les prisons et les maisons de correction*, selon le cas, comme s'il avait été condamné au Canada et si la peine lui y avait été infligée.

[12] The relevant provisions of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20, read as follows:

**127.** (1) Subject to any provision of this Act, an offender sentenced, committed or transferred to penitentiary is entitled to be released on the date determined in accordance with this section and to remain at large until the expiration of the sentence according to law. . . . .

(3) Subject to this section, the statutory release date of an offender sentenced on or after November 1, 1992 to

**127.** (1) Sous réserve des autres dispositions de la présente loi, l'individu condamné ou transféré au pénitencier a le droit d'être mis en liberté à la date fixée conformément au présent article et de le demeurer jusqu'à l'expiration légale de sa peine.

. . . . .

(3) La date de libération d'office d'un individu condamné à une peine d'emprisonnement le 1er novembre 1992 ou par

imprisonment for one or more offences is the day on which the offender completes two thirds of the sentence.

**139.** (1) Where a person who is subject to a sentence that has not expired receives an additional sentence, the person is, for the purposes of the *Criminal Code*, the *Prisons and Reformatories Act* and this Act, deemed to have been sentenced to one sentence commencing at the beginning of the first of those sentences to be served and ending on the expiration of the last of them to be served.

(2) This section does not affect the time of commencement, pursuant to subsection 719(1) of the *Criminal Code*, of any sentences that are deemed under this section to constitute one sentence.

la suite est, sous réserve des autres dispositions du présent article, celle où il a purgé les deux tiers de sa peine.

**139.** (1) L'individu assujéti à une peine d'emprisonnement non encore expirée et qui est condamné à une peine d'emprisonnement supplémentaire est, pour l'application du *Code criminel*, de la *Loi sur les prisons et les maisons de correction* et de la présente loi, réputé n'avoir été condamné qu'à une seule peine commençant le jour du début de l'exécution de la première et se terminant à l'expiration de la dernière à purger.

(2) Le présent article n'a pas pour effet de modifier la date fixée par le paragraphe 719(1) du *Code criminel* pour le début de l'exécution de chacune des peines qui, aux termes du présent article, sont réputées n'en constituer qu'une.

[13] The relevant provision of the *Criminal Code*, R.S.C. 1985, c. C-46, reads as follows:

**719.** (1) A sentence commences when it is imposed, except where a relevant enactment otherwise provides.

(2) Any time during which a convicted person is unlawfully at large or is lawfully at large on interim release granted pursuant to any provision of this Act does not count as part of any term of imprisonment imposed on the person.

(3) In determining the sentence to be imposed on a person convicted of an offence, a court may take into account any time spent in custody by the person as a result of the offence.

**719.** (1) La peine commence au moment où elle est infligée, sauf lorsque le texte législatif applicable y pourvoit de façon différente.

(2) Les périodes durant lesquelles une personne déclarée coupable est illégalement en liberté ou est légalement en liberté à la suite d'une mise en liberté provisoire accordée en vertu de la présente loi ne sont pas prises en compte dans le calcul de la période d'emprisonnement infligée à cette personne.

(3) Pour fixer la peine à infliger à une personne déclarée coupable d'une infraction, le tribunal peut prendre en compte toute période que la personne a passée sous garde par suite de l'infraction.

\* \* \* \* \*

[14] In my opinion, the application of section 11 of the Act in the present circumstances causes no problem. There is nothing in that provision to prevent its being applied on the day the applicant was transferred to Canada, so that under section 12 of the Act the application of section 11 must take precedence over that of the *Corrections and Conditional Release Act*. The sentence reductions and remissions set out in section 11 came into effect at the time of the international transfer and cannot be withdrawn when the inmate is subject to an additional sentence after his return to Canada (see *R. v. Bodenstein*, [1998] O.J. No. 982 (QL), affirmed by the Ontario Court of Appeal (133 C.C.C. (3d) 127)). Accordingly, the date of expiry of the sentence imposed in the U.S. continues to be March 11, 2003.

[15] However, I cannot accept the respondent's argument that subsection 11.1(1) of the Act, the purpose of which is to determine the date of the statutory release of a Canadian offender transferred to Canada and held in a penitentiary, applies to the case at bar, any more than I can accept the applicant's argument that the "beginning of the first of those sentences" mentioned in subsection 139(1) of the *Corrections and Conditional Release Act* is the date on which his imprisonment in the Bahamas began rather than that on which his sentence was imposed in the U.S.

[16] It is apparent simply from reading subsection 11.1(1) of the Act, in both its French and English versions, that the provision only applies to "the" sentence mentioned in section 11, which is the sentence imposed by a court of the foreign state, to the exclusion of any other sentence.

[17] As in the case at bar a new sentence was imposed on the applicant in Canada after his transfer, before the expiry of the term imposed on him in the U.S., the date of his statutory release can no longer be determined in accordance with subsection 11.1(1), and pursuant to section 12 of the Act it is the *Corrections and Conditional Release Act*, which must be applied. The effect of applying subsection 139(1) of the latter Act is that, for the purposes *inter alia* of the *Criminal Code* and the *Corrections and Conditional Release Act* the applicant is deemed to have been sentenced to only one term “commencing at the beginning of the first of those sentences to be served and ending on the expiration of the last of them to be served”.

[18] Subsection 719(1) of the *Criminal Code* indicates that a sentence commences when it is imposed, except where a relevant enactment otherwise provides, an exception which is not applicable in the case at bar. However, subsection 719(3) allows a court to take into account any time spent in custody by a convicted person as a result of the offence. To a certain extent this is also the case in the U.S., where the Federal Bureau of Prisons clearly states in its *Sentence Computation Manual* that “in no case can a federal sentence of imprisonment commence earlier than the date on which it is imposed”. Section 3585b of the *United States Code* also provides that “a defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences . . .”.



[19] Accordingly, pursuant to subsection 139(1) of the *Corrections and Conditional Release Act*, and taking into account both the Canadian *Criminal Code* and the *United States Code*, the applicant in the case at bar is deemed to have served only one term commencing at the beginning of the first of the sentences, namely June 28, 2001, when the first sentence was imposed on him in the U.S., and in view of the application of section 11 of the Act in the applicant's favour, ending on the expiration of the last sentence to be served, namely on or about March 5, 2008 (it will be for the sentence managers to make this determination specifically).

[20] The date of the applicant's statutory release must be determined by applying subsection 127(3) of the *Corrections and Conditional Release Act*, and is the date on which the applicant will have served two-thirds of his term, considered as a single term under subsection 139(1) of the *Corrections and Conditional Release Act*.

[21] Consequently, the Court finds that the date of the applicant's statutory release is the date on which he will have served two-thirds of his sentence beginning on June 28, 2001, the date of the imposition of his first sentence in the U.S., and ending on or about March 5, 2008, at the expiry of his second sentence.

[22] In the circumstances, no costs will be awarded.

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YVON PINARD  
JUDGE

OTTAWA, ONTARIO  
November 5, 2004

Certified true translation

Jacques Deschênes, LLB

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-255-04

**STYLE OF CAUSE:** ALAIN CHARRON v. ATTORNEY  
GENERAL OF CANADA

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** October 6, 2004

**REASONS FOR ORDER BY:** Pinard J.

**DATED:** November 5, 2004

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