Federal Court  Cour fédérale

Date: 20120119

Docket: T-5-11

Citation: 2012 FC 65

Ottawa, Ontario, January 19, 2012

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

RICHARD GOULET

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, Richard Goulet, is a federal inmate serving a sentence of seven years and three months at the Allenwood Low Security Correctional facility in White Deer, Pennsylvania for the offences of conspiracies to distribute and to import marijuana into the United States.

[2] Mr. Goulet is a Canadian citizen. On July 10, 2008 he applied under the *International Transfer of Offenders Act*, SC 2004, c 21 (Act) for a transfer to a Canadian correctional facility. The Minister of Public Safety and Emergency Preparedness (Minister) denied Mr. Goulet's

application by a decision rendered on December 8, 2010. It is from this decision that this application for judicial review arises.

Background

The Decision Under Review

[3] In order to fully appreciate the parties' arguments, it is helpful to consider the impugned decision in the context of the evidence that was before the Minister.

[4] The record discloses that in January 2009 the United States Department of Justice approved Mr. Goulet's request for transfer to Canada. Information provided by the United States authorities at that time confirmed that Mr. Goulet supplied and smuggled significant quantities of marijuana from Quebec into the United States and that he conspired with others in the United States to deliver the marijuana to Florida. The significance of this illegal activity was undoubtedly the basis for the lengthy period of incarceration he received in the United States District Court.

[5] Other background information indicated that Mr. Goulet was working in the food service department at the Allenwood facility and that his conduct record was clear. He was also receiving lithium to treat a pre-existing bipolar disorder and had lost considerable weight.

[6] A report prepared for the Minister by a Correctional Service Canada Director provided a summary of Mr. Goulet's offences and an assessment of the factors listed in section 10 of the Act to determine if his transfer to Canada was warranted. That report indicated the following:

A. WHETHER THE OFFENDER'S RETURN TO CANADA WOULD CONSTITUTE A THREAT TO THE SECURITY OF CANADA (as per ITOA Subsection 10.(1)(a))
Following verification with the Correctional Service of Canada's counterparts in the Security and Intelligence areas and the Canadian Security Intelligence Service (CSIS), the information obtained to date does not lead one to believe that Mr. Goulet's return to Canada would pose a threat to the security of Canada.

B. WHETHER THE OFFENDER LEFT OR REMAINED OUTSIDE CANADA WITH THE INTENTION OF ABANDONING CANADA AS THEIR PLACE OF PERMANENT RESIDENCE (as per ITOA Subsection 10.(1)(b))
Mr. Goulet was born in Magog, Quebec, as verified and confirmed by the Consulate General of Canada in Buffalo, New York on December 8, 2008. There is no indication that Mr. Goulet intended to abandon Canada as his place of residence. Mr. Goulet lived in the United States temporarily for a period of 8-12 months after his bankruptcy in 2003. During this time, Mr. Goulet worked in construction and lived with some colleagues during the week and returned to Canada every weekend. At the time of his arrest, Mr. Goulet lived in Ayer's Cliff, Quebec.

C. WHETHER THE OFFENDER HAS SOCIAL OR FAMILY TIES IN CANADA (as per ITOA Subsection 10.(l)(c))
The community assessment completed on November 28, 2008 with the subject's mother, father, brother and sister who reside in Ayer's Cliff, Quebec attests that his social and familial ties remain very supportive and they maintain contact through daily telephone calls and written correspondence. His family is willing to offer support in terms of accommodation, although they state that he will most likely live with his wife in Ayer's Cliff, Quebec upon release. His brother and sister attended the trial in the United States and have visited him on three occasions. Distance and cost preclude regular visits. His wife, who was with him at the time of arrest, has been unable to visit him because of the trauma caused by the incident. They maintain daily contact by telephone.

D. WHETHER THE FOREIGN ENTITY OR ITS PRISON SYSTEM PRESENTS A SERIOUS THREAT TO THE

OFFENDER'S SECURITY OR HUMAN RIGHTS (as per ITOA Subsection 10.(1)(d))
The United States or its prison system does not present a serious threat to the offender's security or human rights. He has remained employed in the food service department and has maintained clear conduct. His adjustment is reported as positive.

However, it should be noted that Mr. Goulet suffers from a severe case of bipolar disorder, which requires a specific regimen of medicine and testing. It has been reported by the family and his attorney that Mr. Goulet has suffered significant weight loss and appears ill and over medicated. The failure to monitor Mr. Goulet's condition can potentially have lethal consequences. The Canadian Consulate in Buffalo, New York is investigating the family's allegation that he is not receiving adequate medical care.

E. WHETHER, IN THE MINISTER'S OPINION, THE OFFENDER WILL, AFTER THE TRANSFER, COMMIT A TERRORISM OFFENCE OR CRIMINAL ORGANIZATION OFFENCE WITHIN THE MEANING OF SECTION 2 OF THE CRIMINAL CODE (as per ITOA Subsection 10.(2)(a))
Given the results of verification with the Correctional Service of Canada's counterparts in the Security and Intelligence areas and the Canadian Security Intelligence Service (CSIS), the information obtained to date does not lead one to believe that he would, after the transfer, commit an act of terrorism or organized crime, within the meaning of section 2 of the Criminal Code.

F. WHETHER THE OFFENDER WAS PREVIOUSLY TRANSFERRED UNDER THIS ACT OR THE TRANSFER OF OFFENDERS ACT, CHAPTER T-15 OF THE REVISED STATUTES OF CANADA, 1985 (as per ITOA Subsection 10.(2)(b))
Mr. Goulet has never been transferred under the *International Transfer of Offenders Act* or the *Transfer of Offenders Act*, chapter T-15 of the revised Statutes of Canada (1985).

[7] The above report also stated that Mr. Goulet could be deported from the United States to Canada as early as October 3, 2014 in which event he would not be subject to any parole

supervision or control. The Correctional Services public safety risk assessment of Mr. Goulet indicated that he had no criminal record in Canada, no identified ties to an organized crime group and no history of sexual crimes. He was also found to be unlikely to reoffend (a SIR-RI score of plus 16).

[8] The Minister provided the following reasons for denying Mr. Goulet's application:

> The purposes of the *International Transfer of Offenders Act* (the Act) are to contribute to the administration of justice and the rehabilitation of offenders and their reintegration into the community by enabling offenders to serve their sentences in the country of which they are citizens or nationals. These purposes serve to enhance public safety in Canada. For each application for transfer, I examine the unique facts and circumstances as presented to me in the context of the purposes of the Act and the specific factors enumerated in section 10.
>
> The applicant, Richard Goulet, is serving a sentence of seven years and three months imprisonment in the United States (U.S.) for the following offences: "Conspiracy to Distribute in Excess of 50 kg. of Marijuana"; "Conspiracy to Import in Excess of 50 kg. of Marijuana"; and, "Criminal Forfeitures". In February 2006, Larry Bowen was arrested with 191 pounds (86.6 kilograms) of hydroponic marijuana in his vehicle. Mr. Bowen informed U.S. Immigration and Customs Enforcement agents that he had made 10 trips during 2005 and 2006 to [Eric Tetreault] and that the source of the marijuana was Richard Goulet. Mr. Bowen agreed to participate in a controlled delivery of marijuana to Mr. Tetreault. Mr. Goulet instructed Mr. Bowen on the delivery of the drugs to Mr. Tetreault, who was arrested as he attempted to take possession of the drugs. On June 2, 2006, Mr. Goulet was arrested. Another accomplice, Stéphane Ruel, who also acted as a driver in deliveries initiated by Mr. Goulet, was implicated with this transaction.
>
> The Act requires that I consider whether, in my opinion, the offender will, after the transfer, commit a criminal organization offence within the meaning of section 2 of the *Criminal Code*. In considering this factor, I note that, in addition to the offender, at least three accomplices were involved in the commission of the offence, a sophisticated operation involving large quantities of marijuana. There is information on file that identifies the applicant as a senior participant of the drug smuggling operation, and the individual who

> engaged, directed and paid others for helping smuggle the drug shipment. Furthermore, there is information on file indicating that the applicant has coordinated and organized drug trips in the past, purported to typically involve approximately 100 pounds (45 kilograms) of marijuana. The applicant's accomplice has testified that the applicant's family members may have accompanied the applicant on these trips and his daughter allowed her house to be used to store and transfer the drugs. Furthermore, two accomplices testified that large amounts of money were involved in the drug transactions that were transported back to the applicant. In this case, the applicant was involved in the commission of a serious offence that, if successfully committed, would likely have resulted in the receipt of a material or financial benefit by the individuals and the group of individuals involved in the transaction.
>
> The Act requires that I consider whether the offender has social or family ties in Canada. I recognize the family ties of the applicant in Canada, including the fact that the applicant's parents, brother, sister, and wife remain supportive.
>
> The Act also requires that I consider whether the foreign entity or its prison system presents a serious threat to the offender's security or human rights. I note Mr. Goulet's medical condition, specifically his bipolar disorder and the significant weight loss that appears to have taken place since he was: incarcerated.
>
> Having considered the unique facts and circumstances of this application and the factors enumerated in section 10, I do not believe that a transfer would achieve the purposes of the Act.

Issues

[9] Mr. Goulet argues that the Minister's decision is unreasonable because it fails to fulfill the requirements of transparency, intelligibility and justification as stipulated by *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 151, [2008] 1 SCR 190. The Minister contends that it is possible to understand the basis of the decision from the reasons provided and that his discretion is sufficiently broad that judicial deference is owed.

Analysis

[10] The determinative issue raised on this application is one of mixed fact and law and, in particular, whether the Minister's decision falls within a range of possible acceptable outcomes that are defensible in light of the evidence and the law: see *Del Vecchio v Canada (MPSEP)*, 2011 FC 1135 at para 20, [2011] FCJ no 1395 (QL). The standard of review requires the Court, therefore, to consider the reasonableness of the Minister's decision.

[11] For the reasons expressed by my colleagues Justice Anne Mactavish in *Del Vecchio*, above, and by Justice James O'Reilly in *Tangorra v Canada (MPSEP)*, 2011 FC 1433, [2011] FCJ no 1733 (QL), I have concluded that the Minister's decision is unreasonable and that Mr. Goulet's application must be redetermined on the merits and in conformity with the Act.

[12] A decision that contains nothing more than the recitation of a few relevant facts and a bare conclusion is not one that is legally defensible under the Act. The provision of reasons, as required by section 11 of the Act, is not accomplished in the absence of an analysis of the evidence in the context of the stated legislative purposes and the criteria set out in section 10 of the Act. Indeed, it is impossible to tell from these reasons what factors caused the Minister to deny Mr. Goulet's application or for the Court to determine if the decision was made in reasonable conformity with the Minister's statutory obligations.

[13] Counsel for the Minister points to authorities from this Court which seemingly endorse the reasonableness of decisions similar to the one made in this case: see *Newberry v Canada (MPSEP)*, 2011 FC 1261, [2011] FCJ no 1544 (QL); *Lebon v Canada (MPSEP)*, 2011 FC 1018, [2011] FCJ

no 1261 (QL); *Duarte v Canada (MPSEP)*, 2011 FC 602, [2011] FCJ no 805 (QL); *Holmes v Canada (MPSEP)*, 2011 FC 112, [2011] FCJ no 82 (QL); *Tippett v Canada (MPSEP)*, 2011 FC 814,[2011] FCJ no 1015 (QL). It is not evident from all of these decisions that the Minister's decisions were as perfunctory as the decision rendered in Mr. Goulet's case. However, to the extent that the above authorities support ministerial decisions that were essentially bare conclusions, I decline to follow them. Instead, I adopt the reasoning in *Del Vecchio*, above, and *Tangorra*, above, as well as the many other previous authorities that have set a standard for reasons that requires something more than what was provided to Mr. Goulet.

[14] Although counsel for the Respondent is correct that the Minister has broad discretion to weigh relevant evidence in accordance with his authority under the Act, that authority must always be exercised in accordance with the governing legislative principles. This was a point made many years ago in *Roncarelli v Duplessis*, [1959] SCR 121, [1959] SCJ no 1 (QL), where Justice Ivan Rand observed:

> In public regulation of this sort there is no such thing as absolute and untrammelled "discretion", that is that action can be taken on any ground or for any reason that can be suggested to the mind of the administrator; no legislative Act can, without express language, be taken to contemplate an unlimited arbitrary power exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute. Fraud and corruption in the Commission may not be mentioned in such statutes but they are always implied as exceptions. "Discretion" necessarily implies good faith in discharging public duty; there is always a perspective within which a statute is intended to operate; and any clear departure from its lines or objects is just as objectionable as fraud or corruption. Could an applicant be refused a permit because he had been born in another province, or because of the colour of his hair? [T]he legislature cannot be so distorted.

It follows that the Minister's discretion does not include the authority to decide a transfer application on the basis of factors or considerations that fall outside the purview of the legislation. The Minister's decision must be sufficiently intelligible and transparent that the public and the party affected can see that the Act has been fairly applied; see *Adu v Canada (MCI)*, 2005 FC 565 at para 14, [2005] FCJ no 693 (QL). An offender is not entitled to a particular outcome even where the case for a transfer appears compelling, but he is entitled to understand what factors led to a failed application and some sense for how the evidence was assessed. That is particularly true where, as here, the information provided to the Minister by his advisors contradicts the Minister's conclusion.

[15] The Act specifically imposes a duty on the Minister to give reasons. Those reasons must be sufficient to allow a reviewing Court to understand why the decision-maker made his decision and to determine whether the conclusion is within the range of reasonable and acceptable outcomes: see *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] SCJ no 62 (QL). In short, one of the purposes for reasons is to allow for meaningful judicial review. It is not enough to say that the statutory factors have been considered. Some assessment of the evidence is necessary for the Court to determine if the ultimate conclusion is reasonable in the sense that it was actually based on the relevant statutory considerations. The acceptance as sufficient of a bare conclusion would immunize every decision from effective judicial review and permit administrative decisions that are arbitrary or capricious.

[16] Counsel for the Minister argues that it is permissible for a reviewing Court to look to the record to supplement the decision-maker's analysis if that is needed to assess the reasonableness of

a decision. That principle, I think, is what Justice Michel Shore had in mind in *Newberry*, above, where he said:

> 28 The question for this Court to answer is whether, on the information contained in the record, one could reasonably conclude that there was a basis for the Minister to come to the conclusion that the objectives of the international transfer of offender's system, being protection of society and rehabilitation of the offender through reintegration into society, could not be as effectively achieved through transfer to Canada.

This point has more recently been emphasized by the Supreme Court of Canada in *Newfoundland and Labrador Nurses' Union*, above.

[17] Of course where it is necessary for a reviewing Court to look to the record to assess the reasonableness of a decision the process may undermine a decision as readily as support it. That was a point I made in *Grant v Canada (MPSEP)*, [2010] FCJ no 386 (QL) at para 4 (TD), where the record before the Minister strongly favoured relief but he refused it without a meaningful explanation. There I said that "the stronger the case in favour of relief the more onerous the responsibility to justify a contrary view".

[18] The same situation arises here. The information given to the Minister almost entirely favoured Mr. Goulet's transfer to Canada. The Minister was seemingly concerned with the circumstances of the crime but even those details were not connected to any of the considerations set out in the Act. The Minister left Mr. Goulet with a recitation of some of the relevant facts and a bare conclusion that ran contrary to the overwhelming weight of the evidence. This is the type of *pro forma* decision under the Act that has been repeatedly found to be inadequate: see *Del Vecchio*,

above; *Tangorra*, above; *Grant*, above; *Villano v Canada (MPSEP)*, 2011 FC 1434, [2011] FCJ no 1734 (QL); *Downey v Canada (MPS)*, 2011 FC 116, [2011] FCJ no 139 (QL), *Randhawa v Canada (MPSEP)*, 2011 FC 625, [2011] FCJ no 791 (QL); *Vatani v Canada (MPSEP)*, 2011 FC 114,[2011] FCJ no 137 (QL); *Yu v Canada (MPSEP)*, 2011 FC 819, [2011] FCJ no 1023 (QL); *Dudas v Canada (MPSEP)*, 2010 FC 942, [2010] FCJ no 1153 (QL); *Getkate v Canada (MPSEP)*, 2008 FC 965, [2008] FCJ no 1200 (QL); *Singh v Canada (MPSEP)*, 2011 FC 115, [2011] FCJ no 138 (QL); and *Wong v Canada (MPSEP)*, 2008 FC 723, [2008] FCJ no 1013 (QL) .

Conclusion

[19] For the foregoing reasons, this application for judicial review is allowed. The Minister shall, within 45 days, reassess Mr. Goulet's application for a transfer on the merits and in accordance with the requirements of the Act.

[20] The Applicant is entitled to costs under Column III.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is allowed. The Respondent shall, within 45 days, reassess the Applicant's application for a transfer on the merits and in accordance with the requirements of the Act.

THIS COURT'S FURTHER JUDGMENT is that the Applicant is entitled to costs under Column III.

"R.L. Barnes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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