Federal Court  Cour fédérale

Date: 20120423

Docket: T-282-11

Citation: 2012 FC 464

Ottawa, Ontario, April 23, 2012

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

SEBASTIAN CERRA

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review by Sebastian Cerra challenging a third-stage grievance decision rendered by the Senior Deputy Commissioner (Deputy Commissioner) of the Correctional Service of Canada (Corrections) on January 20, 2011.

[2] Mr. Cerra is a federal inmate serving a sentence at the Mountain Institution in Agassiz, British Columbia. His complaint against Corrections concerns its practice of waking him from sleep on a recurring basis throughout the night. He asserts that this practice deprives him of sleep and constitutes cruel and unusual punishment.

[3] As initially framed, Mr. Cerra's grievance alleged that correctional officers were deliberately waking him on an hourly basis. It is at least implicit in the grievance that Mr. Cerra's concern was with the behaviour of certain correctional officers and not with the lawfulness of the Corrections policy on inmate counts and security patrols. In his arguments to the Court, Mr. Cerra seemed to be challenging both the policy and its method of execution.

[4] Because this is an application for judicial review, the Court is limited to the assessment of the reasonableness of the impugned decision. It is not appropriate to conduct such a review by having regard to evidence or arguments that were not before the Deputy Commissioner. I would add to this that the Corrections policy that is at the root of Mr. Cerra's complaint has previously been upheld by this Court in *Wild v Canada (Correctional Services)*, 2004 FC 942, 256 FTR 240 [*Wild*]. In that case, Justice Edmond Blanchard found the policy in question to be "justified and desirable in an institutional setting to ensure public safety and the safety of the inmates": *Wild* at para 44. At the same time, Justice Blanchard observed that the security policy was required to be executed with minimal disruption to the inmates or, in the language of Article 8 of the policy, "in the least intrusive manner possible".

[5] The security policy mandates frequent security checks of all inmates throughout the night. It requires correctional officers to verify that each inmate is alive. It seems to me, as it did to Justice Blanchard in *Wild,* above, that it is inevitable that inmates will be awoken from time to time during security rounds. It is not a requirement, however, that inmates be roused from sleep on an hourly basis to ensure that they are breathing. And it goes without saying that the

deliberate harassment of an inmate by correctional officers would be unlawful and a violation of the statutory obligation to treat inmates humanely.

[6] There is, however, nothing in the record before me to establish that the Deputy Commissioner erred in dismissing Mr. Cerra's grievance. The decision is well supported by the evidence cited and it is, therefore, a decision that is within "a range of possible, acceptable outcomes which are defensible in respect of the facts and the law": see *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59, [2009] 1 SCR 339, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190.

[7] The record discloses that Mr. Cerra's grievance was treated seriously by Corrections. Noise levels were monitored for a period of time to ensure that correctional staff was adhering to good practices and following policy and no violations were identified. The Deputy Commissioner noted that, at the initial stages of his grievance, Mr. Cerra had failed to identify any specific incidents to support his complaint. Mr. Cerra also offered no evidence from other inmates to corroborate his evidence of deliberate harassment and Corrections' own enquiries turned up no such evidence.

[8] In argument to the Court, Mr. Cerra was unable to identify a reviewable error in the Deputy Commissioner's decision. Indeed, it was apparent from his submissions that he misunderstood the limitations that are inherent in the Court's judicial review jurisdiction. The Court does not have the unfettered authority to set aside such a decision, but instead must pay considerable deference to the findings and conclusions of the initial decision-maker. There is no

legal basis for the Court to determine that the Deputy Commissioner's decision was unlawful or unreasonable. Mr. Cerra's application is dismissed with costs payable to the Respondent in the amount of $250 inclusive of disbursements.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed with costs payable to the Respondent in the amount of $250 inclusive of disbursements.

"R.L. Barnes"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-282-11
STYLE OF CAUSE:	CERRA v AGC
PLACE OF HEARING:	Vancouver, BC
DATE OF HEARING:	April 4, 2012
REASONS FOR JUDGMENT AND JUDGMENT:	BARNES J.
DATED:	April 23, 2012

APPEARANCES:

Sebastian Cerra	APPLICANT (ON HIS OWN BEHALF)
François Paradis	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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