Federal Court  Cour fédérale

Date: 20120712

Docket: T-1034-11

Citation: 2012 FC 879

Ottawa, Ontario, July 12, 2012

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

ANDREW SCOTT REID

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This application for judicial review concerns a May 12, 2011 decision of the National Parole Board – Appeal Division (Appeal Division) affirming the National Parole Board's revocation of full parole granted to Andrew Scott Reid (the Applicant).

[2] For the reasons set out below, the application is dismissed.

I. Background

[3] The Applicant is serving a life sentence for non-capital murder. He was released on full parole on March 25, 2010 subject to four special conditions:

> (i) Must avoid certain persons – Not to have direct or indirect contact with persons under the age of 18 without prior written permission from your parole officer;
>
> (ii) Abstain from use of alcohol – Abstain from purchase, possession or consumption of alcohol;
>
> (iii) Follow psychological counsel – To be arranged by your supervisor to address self-management, sexually inappropriate behaviour, attitudes towards supervision, past history of victimization, stress and re-integration issues; and
>
> (iv) Other – Must immediately and fully report to your parole office any type of relationship with women as soon as they are initiated, as well as any change within those relationships, as soon as they occur.

[4] As part of his release plan, the Applicant was to be residing with his partner, Ms. Bates. His parole officer subsequently became aware of an internet advertisement the Applicant posted looking for a furnished apartment. After the Applicant was questioned about the advertisement, his full parole was suspended for breach of the fourth condition to report any change within his relationships with women.

[5] A Suspension Review Hearing was initially held on September 16, 2010, but resulted in a split decision and a new hearing was scheduled for October 5, 2010. Ultimately revoking full parole because his risk of re-offending had become unmanageable, the National Parole Board (or the Board) concluded:

> It is evident that, in spite of your attempt to feign ignorance and your statement that "I can not do any better than I was doing", you knowingly violated your special condition and that the reason for suspension was entirely within your control. It is apparent that you chose not to disclose difficulties that manifested as significant stressors in your relationship despite ample opportunities to do so with the professional supports available to you.

[6] The Appeal Division upheld this decision. The Board's conduct was seen as consistent with its duty to act fairly. It was noted:

> In our view, you have not presented any information to support your claim that the panel of members displayed actual bias in your case. Neither their conduct at the hearing nor the mere fact that your partner was not allowed to attend the hearing as an observer supports your submission.

[7] Considering the reasonableness of the Board's decision, the Appeal Division further concluded:

> As properly considered by the Board, you did not disclose to your parole officer (PO) the fact that you had been looking for your own place to stay. Contrary to your claim, we find that your domestic situation constituted a significant change in your relationship, which you were required to report, especially given that you were confronted by your PO at the time. Given the nature and severity of your index offence, which involved the strangling of someone with whom you were intimate, we agree that it was not unreasonable for the Board members to deem that [*sic*] the circumstances leading to your suspension were within your control and for them to be extremely cautious regarding your risk to the public.

[8] The Applicant now seeks judicial review of the Appeal Division's determination.

II. Issues

[9] The issues before the Court are as follows:

(a) Did the Appeal Division err by concluding that the Board acted in a manner consistent with its duty of fairness and there was no reasonable apprehension of bias?

(b) Did the Appeal Division err in finding the Board's decision reasonable?

III. Standard of Review

[10] Issues of procedural fairness demand the correctness standard of review (*Canada (Minister of Citizenship and Immigration v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 43).

[11] Given its expertise, the Appeal Division is, however, entitled to deference and review based on the reasonableness standard for questions of fact, mixed fact and law and statutory interpretation (see *Latimer v Canada (Attorney General)*, 2010 FC 806, [2010] FCJ no 970 at para 18; *Sychuk v Canada (Attorney General)*, 2009 FC 105, [2009] FCJ no 136; *Canada (Attorney General) v Coscia*, 2005 FCA 132, [2005] FCJ no 607 at para 46).

[12] Reasonableness is concerned with the existence of justification, transparency and intelligibility as well as whether the decision falls within a range of possible, acceptable outcomes defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

IV. Analysis

A. *Fairness and Reasonable Apprehension of Bias*

[13] The Applicant contends that the Board breached its duty to act fairly or was biased when his partner, Ms. Bates, was denied entry to the hearing and he was not able to request a postponement.

[14] I agree with the Respondent, however, that the Board acted fairly in the circumstances as the Appeal Division concluded in its reasons. Despite the Applicant's claims, the Board was justified in excluding Ms. Bates as an observer at the hearing due to her repeated failure of the ION test of the drug detection device for elevated levels of marijuana on entering the institution on the day of the hearing and on past visits. He was not prejudiced by her absence and the Board's focus on their relationship as the Applicant suggests because there was a letter from her before the Board. More generally, the Applicant was given a full opportunity to make submissions.

[15] At no time did the Applicant formally request a postponement, although he was free to do so. There was no positive duty on the Board to make him aware of this option. His lawyer was present as an assistant during the hearing.

[16] The Applicant further submits that the Board's questioning during the hearing gives rise to a reasonable apprehension of bias. Assumptions were made regarding his understanding of the special conditions by referring to the Applicant's several decades in the system. He also takes issue with the Board's characterization of the psychological assessment completed by Dr. Altrows.

[17] While I acknowledge that Dr. Altrows did not specifically use the words "treachery" and "deceit" as referenced in questioning and the final decision, it is clear from his report that he supported the suspension of the Applicant's parole believing the difficulties in the relationship should have been disclosed to him. The overall conclusion reached by the Board and supported by the Appeal Division reflects Dr. Altrows' assessment.

[18] I cannot accept the Applicant's suggestion that the Board somehow pre-determined its conclusion before considering the evidence and that an ordinary person viewing the matter realistically and practically and having thought the matter through would conclude there is a likelihood of bias in this instance (*Committee for Justice and Liberty v Canada (National Energy Board)*, [1978] 1 SCR 369).

B. *Reasonableness of Board's Decision*

[19] The Applicant considers it unreasonable for the Board to hold him accountable for breach of a condition that is ambiguous as to what constitutes "change" in a relationship. He also insists that the Board should not have considered past conduct specifically related to his former employment in making its determination. According to the Applicant, this information was erroneous.

[20] In my view, there is nothing unreasonable about the Board's interpretation of the fourth condition governing the Applicant's parole and holding him accountable for its breach. It is not ambiguous to suggest that he report any change in his relationship, such as difficulties associated with living arrangements or tension more generally. If the Applicant was unsure as to the nature of the condition, he should have asked for further clarification (see for example *Canada (Attorney General) v Franchi*, 2011 FCA 136, [2011] FCJ no 962 at para 30).

[21] In addition, although it cannot be the sole basis for a suspension, the Board is not in error in taking into account an offender's behaviour prior to release in a minor way to inform the background of the decision (as suggested in *Strachan v Canada (Attorney General)*, 2006 FC 155, [2006] FCJ no 216 at para 45). The Board's consideration of his employment prior to release on full parole was merely part of the background of the decision. Concerns regarding his conduct also arose following the grant of full parole to justify the overall conclusions reached regarding the Applicant's credibility.

[22] I reiterate the caution previously urged by this Court in *Coscia*, above, in reviewing the "Board's exercise of its broad discretion, lest it jeopardize the Board's ability to discharge its statutory mandate." The Board's reasons cannot be looked at with too much scrutiny since "[b]ecause of its expertise, its assessment of the risk that an applicant for parole will re-offend if released warrants the utmost deference."

[23] With this guiding principle in mind, I am prepared to accept that the Board's decision was justified, transparent and intelligible in the circumstances (*Dunsmuir*, above at para 47). There is nothing unreasonable about the Board's imposition of the condition as drafted and referencing some of the Applicant's other conduct.

V. Conclusion

[24] Since there was no breach of procedural fairness or apprehension of bias and I consider the Board's decision as upheld by the Appeal Division reasonable, this application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

" D. G. Near "
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	**T-1034-11**
STYLE OF CAUSE:	**ANDREW SCOTT REID v AGC**
PLACE OF HEARING:	**OTTAWA**
DATE OF HEARING:	**JUNE 19, 2012**
REASONS FOR JUDGMENT AND JUDGMENT BY:	**NEAR J.**
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APPEARANCES:

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Craig Collins-Williams	FOR THE RESPONDENT

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