Federal Court Cour fédérale

Date: 20150106

Docket: T-534-14

Citation: 2015 FC 2

Ottawa, Ontario, January 6, 2015

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

DEREK ANTHONY WOOD

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr Derek Anthony Wood is serving a life sentence at the Atlantic Institution in New Brunswick. He challenges a decision of the Correctional Service of Canada (CSC) denying his request to amend his Correctional Plan Update (CPU). Mr Wood alleges that the CPU contains significant errors that render it biased and unreasonable. He asks me to quash the CSC's decision and order that the CPU be corrected.

[2] I cannot conclude that the CSC committed any reviewable errors. The CPU was prepared in accordance with a fair process in which Mr Wood was consulted and interviewed. I see no evidence of bias. Further, the CSC's decision was not unreasonable as it was based on the evidence before it. Therefore, I must dismiss this application for judicial review.

[3] There are three issues:

1. Has Mr Wood's case already been decided by the Queen's Bench of New Brunswick?
2. Did the CSC treat Mr Wood unfairly?
3. Was the CSC's decision unreasonable?

II. The CSC's Decision

[4] The CSC's decision was prepared by the Acting Senior Deputy Commissioner in response to Mr Wood's third-level grievance. The CSC noted Mr Wood's dispute about the accuracy of his CPU and cited the procedures that should normally be followed when an inmate disputes information in his or her file (*Corrections and Conditional Release Act*, SC 1992, c 20, s 24 [CCRA]. See Annex for enactments cited). Under the CCRA, an offender can request a correction, and if the CSC refuses to make it, the CSC must make a note to file recording the objection.

[5] However, Mr Wood insisted he was not simply asking for a chance to add a note to his file recording his objections – he actually wanted his file to be amended. However, the CSC decided it was bound by the process set out in the CCRA, and dismissed this ground of Mr Wood's grievance.

[6] Regarding the process by which the CPU was prepared, the CSC noted Mr Wood's concern that he had been inadequately consulted. In particular, his parole officer allegedly cut him off and never completed the interview. However, the officer maintained that the interview was complete and no follow-up was required. Accordingly, the CSC also dismissed this ground of complaint.

[7] Finally, the CSC addressed Mr Wood's submission that he should be considered to be a low risk for recidivism. The decision reviewed the various factors that are taken into account in arriving at a risk assessment and found that a sufficient rationale had been provided for the conclusion that Mr Wood presented more than a low risk. This conclusion was based on a number of criteria, including his potential for reintegration, his motivation to change, his willingness to be accountable for his conduct, and his behaviour while incarcerated. Again, the CSC noted the procedure for seeking a correction if Mr Wood wished to amend the information in his file. The CSC also dismissed this ground of Mr Wood's grievance.

III. Issue One – Has Mr Wood's case already been decided by the Queen's Bench of New Brunswick?

[8] The Attorney General of Canada argues that Mr Wood's case was already decided by the Queen's Bench of New Brunswick (*Wood v Canada (Atlantic Institution)*, 2014 NBQB 135) and, therefore, should not be decided again in this Court.

[9] I disagree.

[10] In the Queen's Bench, Mr Wood challenged his maximum security classification on an application for *habeas corpus*. Justice John Walsh concluded that a decision confirming Mr Wood's maximum security classification was not reviewable by way of *habeas corpus* because that decision would not amount to limitation on his residual liberty. In arriving at that conclusion, Justice Walsh considered the basis on which, and the process according to which, Mr Wood had been assigned to a maximum security institution.

[11] That is not the case before me. Here, Mr Wood is challenging a decision relating to the contents of his CPU, not his security classification. While some of the evidence is relevant to both issues, that does not mean that the issues are the same. The issue before me was not decided by Justice Walsh.

IV. Issue Two – Did the CSC treat Mr Wood unfairly?

[12] Mr Wood argues that he should have been given a chance to review the CPU before it was finalized in order to point out errors in it. His lack of input, he says, resulted in a biased report.

[13] I disagree.

[14] Fairness required that Mr Wood be given a chance to provide input during the process leading to the preparation of the CPU. The CCRA so stipulates (s 15.1(2)). The evidence shows that Mr Wood was consulted, although he says that he should have been granted a follow-up interview. He does not say what more he would have said.

[15] Fairness did not require that Mr Wood be given an opportunity to review a draft of the CPU before it was finalized. Mr Wood had a chance to make submissions and did so. There is no evidence that the resulting report was biased or prepared in bad faith. He was not treated unfairly.

V. Issue Three – Was the CSC's decision unreasonable?

[16] Mr Wood argues that the opinions contained in the CPU were unreasonable because relevant evidence was not considered. In turn, with respect to his third-level grievance, he says that the CSC overlooked the same information, which made its decision unreasonable, too. Mr. Wood points out that the CSC has a duty to maintain accurate, complete, and current records relating to inmates, which the CSC failed to do here (s 24). In particular, the CSC failed to take account of reports in which Mr Wood had been found to have accepted responsibility for his conduct.

[17] I see no basis for concluding that the CSC's decision was unreasonable.

[18] While it appears to me that the CSC considered the relevant evidence relating to Mr Wood's risk assessment, the appropriate course of action for Mr Wood to take, if he disagreed, was to request a file correction under s 24 of the CCRA. Mr Wood rightly points out that the contents of a correctional plan can be the subject of a grievance, but the CCRA contains a specific mechanism for dealing with concerns about accuracy (as opposed to fairness, for example). Therefore, I cannot conclude that the CSC's decision on that point was unreasonable.

[19] The reports in which Mr Wood allegedly took responsibility for his crimes note that he was "open to talk about his offence a few times", took "responsibility for his actions but is still at the early sages of understanding his criminal behaviour and self-questioning", and was able to describe his offences but "had a much more difficult time attaching thoughts and feelings to the events and attempting to determine how his past experiences, circumstances at the time, and personality characteristics contributed to the poor choices he made that morning, which ultimately culminated in his offending behaviour".

[20] The CPU noted that over two years Mr Wood had been "very reluctant to talk about his past". Mr Wood argues that the statement is unsupportable in light of the evidence in the preceding paragraph. In my view, however, looking at the reports as a whole, I cannot conclude that the CSC's conclusion that Mr Wood had failed over the years to take accountability for his offence was unreasonable.

[21] Similarly, the CSC's finding that Mr Wood should have requested a corrective note to file was not unreasonable. Mr Wood identified numerous areas where he disagrees with the opinions contained in his CPU. For example, he says his attitude should be scored "low" for need of improvement, not "high" as the CPU suggests. He makes similar submissions regarding other factors considered - Associates; Personal/Emotional; Accountability; etc. But these consist of assessments made by professional corrections personnel. Again, I believe the appropriate course would be for Mr Wood to bring forward his own opinions about those factors and ask for his file to be amended accordingly. If the CSC disagreed, at least his opinions would be included in his

file. On the evidence, I cannot find that the CSC's conclusion that a sufficient rationale had been provided in the CPU in each of the areas of analysis was unreasonable.

[22] Accordingly, based on the record before it, I cannot conclude that the CSC's decision was unreasonable.

VI. Conclusion and Disposition

[23] Mr Wood's case was not decided previously by the Queen's Bench of New Brunswick. However, I am not satisfied that the CSC treated him unfairly. Further, based on the evidence and the law, the CSC's decision not to amend Mr Wood's CPU represented a defensible outcome. It was not unreasonable. I must, therefore, dismiss this application for judicial review.

JUDGMENT

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

"James W. O'Reilly"
Judge

Annex

Corrections and Conditional Release Act, SC 1992, c 20, s 24	*Loi sur le système correctionnel et la mise en liberté sous condition*, LC 1992, c 20
Maintenance of plan	Suivi
15.1(2) The plan is to be maintained in consultation with the offender in order to ensure that they receive the most effective programs at the appropriate time in their sentence to rehabilitate them and prepare them for reintegration into the community, on release, as a law-abiding citizen.	**15.1**(2) Un suivi de ce plan est fait avec le délinquant afin de lui assurer les meilleurs programmes aux moments opportuns pendant l'exécution de sa peine dans le but de favoriser sa réhabilitation et de le préparer à sa réinsertion sociale à titre de citoyen respectueux des lois.
Accuracy, etc., of information	Exactitude des renseignements
24.(1) The Service shall take all reasonable steps to ensure that any information about an offender that it uses is as accurate, up to date and complete as possible.	**24.(**1) Le Service est tenu de veiller, dans la mesure du possible, à ce que les renseignements qu'il utilise concernant les délinquants soient à jour, exacts et complets.
(2) Where an offender who has been given access to information by the Service pursuant to subsection 23(2) believes that there is an error or omission therein,	(2) Le délinquant qui croit que les renseignements auxquels il a eu accès en vertu du paragraphe 23(2) sont erronés ou incomplets peut demander que le Service en effectue la correction; lorsque la demande est refusée, le Service doit faire mention des corrections qui ont été demandées mais non effectuées.
(*a*) the offender may request the Service to correct that information; and	
(*b*) where the request is refused, the Service shall attach to the information a notation indicating that the offender has requested a correction and setting out the correction requested	

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-534-14
STYLE OF CAUSE:	DEREK ANTHONY WOOD v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	FREDERICTON, NEW BRUNSWICK
DATE OF HEARING:	SEPTEMBER 8, 2014
JUDGMENT AND REASONS:	O'REILLY J.
DATED:	JANUARY 6, 2015

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