Federal Court  Cour fédérale

Date: 20180228

Docket: T-896-17

Citation: 2018 FC 231

[ENGLISH TRANSLATION REVISED BY AUTHOR]

Montréal, Quebec, February 28, 2018

PRESENT: The Honourable Mr. Justice Grammond

BETWEEN:

DANIEL LESIEWICZ

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The applicant, Daniel Lesiewicz, seeks judicial review of a decision made by the Parole Board of Canada [the Board] confirming the imposition of a residency requirement for a period of 365 days. I am dismissing this application for the following reasons.

[2] Since March 2011, Mr. Lesiewicz has been serving a sentence of five years, eleven months and nineteen days for more than 90 charges of child and adult pornography. Among

other things, he extorted money from adolescent girls and young women who sent him videos of themselves disrobing. He was declared a long-term offender and subject to a long-term supervision order for a period of ten years. As part of the sentence, the judge prohibited Mr. Lesiewicz from using a computer or the Internet. In March 2015, Mr. Lesiewicz obtained a statutory release with residency at his parents' home. The residency requirement was then lifted in December 2015 and Mr. Lesiewicz subsequently moved in with his parents.

[3] In March 2017, a complaint was filed with the Sûreté du Québec against Mr. Lesiewicz. A woman he met on the Internet using a false identity said that he committed fraud against her and hacked her computer. Informed of the situation, Correctional Service Canada (CSC) agents referred Mr. Lesiewicz's case to the Board. On March 15, 2017, the Board imposed a residency condition at a correctional or community-based residential facility for a period of 365 days. As the condition was not a CSC recommendation, Mr. Lesiewicz had the right to request a review of this decision. After reviewing Mr. Lesiewicz's written submissions, the Board confirmed its original decision on May 8, 2017. Mr. Lesiewicz now seeks judicial review of this decision.

[4] In making its decision, the Board had to apply section 134.1(2) of the *Corrections and Conditional Release Act*, SC 1992, c. 20 (the Act), which provides that it can "establish conditions for the long-term supervision of the offender that it considers reasonable and necessary in order to protect society and to facilitate the successful reintegration into society of the offender." The Federal Court of Appeal stated that section 134.1 confers a "broad and flexible discretionary power" on the Board (*Normandin v Canada* (*Attorney General*), 2005 FCA 345, [2006] 2 FCR 112 at para 44 (*Normandin*) and that the "intention [of the legislator is] to

rely on the expertise and experience of the Board in order, to the degree possible, to protect society while facilitating the successful reinsertion and integration into society of the offender." (*Normandin*, above, at para 46).

[5] On an application for judicial review, a discretionary power such as that which flows from section 134.1 of the Act is reviewed according to a standard of reasonableness (*Dunsmuir v Nouveau-Brunswick*, 2008 SCC 9, [2008] 1 SCR 190; *Lalo v Canada (Attorney General)*, 2013 FC 1113 at para 16; *Latimer v Canada (Attorney General)*, 2014 FC 886 at para 18; *Joly v Canada (Attorney General)*, 2014 FC 1253 at paras 21–23). My role is not to re-weigh the relevant factors nor to exercise the Board's discretionary power anew, but simply to satisfy myself that the decision under review is based on a permissible reading of the applicable legal principles and on a reasonable evaluation of the evidence.

[6] In its May 8, 2017 decision, the Board stated what led to its imposition of a one-year residency requirement:

> [TRANSLATION]
>
> The special condition of residency was imposed taking into account the serious offences you have committed, the large number of minor victims (25), the serious harm caused, the manipulation, extortion and harassment you have engaged in as well as the elevated risk assessments placed in your file regarding similar offences.
>
> The Board considered your ability to maintain stable employment, but your file indicates that you are still irresponsible and self-centred and that you give little weight to some of the terms of your supervision. You have arrived late at a significant number of supervision meetings and you do not hesitate to go back on your word when it suits you. Disciplinary meetings have not had the expected deterrent effect.

> Furthermore, the events leading up to your suspension have led your supervisors to doubt your sincerity and your openness with them. The Board noted that, not only have you failed to respect one of the conditions of your release, you have returned to your offence cycle using the same modus operandi.
>
> Thus, the Board stated that your release plan did not provide an adequate safety net given the high risk you represent.
>
> The Board found that imposing the residency condition is well warranted and that the condition is reasonable and necessary to protect society and to facilitate your reintegration.

[7] In my view, this decision is eminently reasonable. The Board notes that stricter measures are necessary to prevent further offences. It also states that Mr. Lesiewicz has made insufficient progress regarding his reintegration. These statements are directly related to the factors mentioned in section 134.1 of the Act.

[8] Mr. Lesiewicz argues that there is no direct link between the imposed condition and the risk of recidivism. I am unable to accept this argument. One must not lose sight of the fact that Mr. Lesiewicz was prohibited from using a computer or the Internet when he took the actions that led to the suspension of his parole. Thus, it was clear that residing at his parents' home did not guarantee that he would respect this condition. Moreover, the evidence shows that his behaviour was more appropriate while he was in a supervised facility between March and December 2015. Thus, the Board was reasonably able to find that Mr. Lesiewicz's recidivism made closer supervision necessary. This was what the Board had in mind when it emphasized the lack of a "safety net" around Mr. Lesiewicz. In any case, section 134.1 of the Act states that conditions may be imposed not only to prevent recidivism, but also to ensure reintegration. In

this regard, section 134.1(2) is distinct from section 133(4.1), cited by Mr. Lesiewicz, which focuses only on preventing recidivism.

[9] Mr. Lesiewicz also argues that the imposition of a residency requirement was of a punitive nature incompatible with the objectives of section 134.1 of the Act, namely reintegration and the protection of society. On the contrary, it seems clear to me that the Board considered these two factors. The references to late arrivals and failures to attend supervision meetings do not mean that the Board adopted a punitive approach. They simply form part of a more general statement about an inadequate reintegration.

[10] I find that the Board’s decision was reasonable.

JUDGMENT in T-896-17

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed with costs.

"Sébastien Grammond"

Judge

FEDERAL COURT

SOLICITORS OF RECORD:

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