Federal Court  Cour fédérale

Date: 20201201

Docket: T-1185-20

Citation: 2020 FC 1107

Ottawa, Ontario, December 1, 2020

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

OLIVIER ST-CYR

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Olivier St-Cyr, seeks judicial review of a decision by the Appeal Division of the Parole Board of Canada [Appeal Division] dated September 30, 2020, rejecting his appeal of a decision by the Parole Board of Canada [Parole Board] dated April 23, 2020, on the ground that it was filed too late.

[2] Mr. St-Cyr is currently serving a sentence for possession for the purpose of trafficking and possession of proceeds of crime. His sentence will end on April 15, 2021.

[3] In July 2019, the Parole Board released Mr. St-Cyr on day parole for a term of three (3) months, to be followed by full parole. He was to reside at a community correctional centre for the duration of his day parole and then move to his parents' house, which had been pre-approved as his residence for full parole. He commenced full parole in October 2019.

[4] In January 2020, Mr. St-Cyr was arrested for impaired driving and refusal to comply with demands. As a result, his full parole was suspended and he was incarcerated pending a post-suspension hearing before the Parole Board.

[5] Mr. St-Cyr's post-suspension hearing was held on April 23, 2020. At the conclusion of the hearing, the Parole Board decided to cancel Mr. St-Cyr's suspension and to release him back on full parole with special conditions, including a residency condition to reside at a community correctional centre. The special conditions were to remain in effect until the expiry of the warrant issued against Mr. St-Cyr.

[6] On September 14, 2020, Mr. St-Cyr's counsel sent a demand letter to Correctional Service Canada [CSC] requesting that Mr. St-Cyr be released from the community correctional centre before September 16, 2020. In her letter, counsel asserted that as Mr. St-Cyr was no longer on full parole but on statutory release since July 16, 2020, the residency condition was no longer valid as he did not meet the criteria set out in subsection 133(4.1) of the *Corrections and Conditional Release Act*, SC 1992, c 20 [CCRA].

[7] CSC responded the same day to the demand letter. In its response, it indicated that the Parole Board had cancelled the suspension of Mr. St-Cyr's full parole in April 2020 and issued a parole certificate in his name that would remain in effect until the expiry of the warrant on April 15, 2021. For that reason, Mr. St-Cyr was not on statutory release, but on full parole and would have to adhere to the conditions of parole provided in the certificate.

[8] On September 20, 2020, Mr. St-Cyr's counsel wrote to the Appeal Division of the Parole Board, indicating that she had been informed by CSC that the Parole Board had imposed full parole on Mr. St-Cyr until the warrant's expiry. She argued that the Parole Board did not have the jurisdiction to impose full parole until the expiry of the warrant and that her client should be released from the community correctional centre and allowed to reside at his parents' residence since he was now on statutory release. She asked that the matter be resolved urgently and advised that in the event Mr. St-Cyr was not released from the obligation of residing at the community correctional centre and allowed to reside with his parents, she would take the necessary measures to commence urgent proceedings without further notice or delay.

[9] On September 30, 2020, the Appeal Division issued its decision rejecting Mr. St-Cyr's appeal. It noted that section 168 of the *Corrections and Conditional Release Regulations*, SOR-96-620 [CCRR], provides a time limit of two (2) months from the Parole Board's decision (temporarily modified to three (3) months) to appeal the decision to the Appeal Division. Since the Appeal Division only received Mr. St-Cyr's request on September 21, 2020, the appeal was time-barred under the provisions of the CCRR.

[10] The Appeal Division also pointed out that Mr. St-Cyr could submit an application to the Parole Board to have his conditions modified and explained the process to appeal a decision of the Parole Board following that review.

[11] On October 6, 2020, Mr. St-Cyr brought this application for judicial review as well as an urgent motion to obtain an interlocutory injunction ordering that he be released from the community correctional centre where he still currently resides. On October 9, 2020, Justice Martine St-Louis dismissed the motion on the basis that Mr. St-Cyr did not meet the irreparable harm and balance of convenience prongs of the tripartite test set out in *RJR-Macdonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311.

[12] In *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the Supreme Court of Canada established a presumption that the applicable standard of review is that of reasonableness (*Vavilov* at paras 10, 16-17). None of the exceptions described in *Vavilov* apply here.

[13] Where the standard of reasonableness applies, the Court shall examine "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83). It must ask itself "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). The burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100).

[14] In his application for judicial review, Mr. St-Cyr submits that it was unreasonable for the Appeal Division to dismiss the appeal on the sole basis that it was time-barred. He contends that the primary function of the Appeal Division is to ensure that the Parole Board's decision is lawful and in his case, the Parole Board did not have the legal authority to order that he remain on full parole until the expiry of the warrant. The Parole Board also exceeded its jurisdiction by imposing upon him a residency condition while on statutory release as he did not meet the criteria set out in subsection 133(4.1) of the CCRA.

[15] Upon review of the record, I must dismiss Mr. St-Cyr's application for judicial review as he has failed to persuade me that the decision of the Appeal Division was unreasonable.

[16] Section 168 of the CCRR gives an appellant two (2) months to submit their appeal of a Parole Board's decision to the Appeal Division. This period was temporarily extended to three (3) months during the Covid-19 pandemic.

[17] The Parole Board issued its decision on April 23, 2020 and explicitly informed Mr. St-Cyr that if he wanted to appeal the decision, he had to bring his appeal to the Appeal Division within three (3) months of the date of the decision. Mr. St-Cyr did not approach the Appeal Division until September 20, 2020, almost two (2) months after the deadline. He did not seek an extension of time.

[18] It is Mr. St-Cyr's position that he was only advised in writing for the first time that the Parole Board had imposed his full parole to continue until the expiry of the warrant when CSC responded to his counsel's letter on September 14, 2020.

[19] I am not persuaded by this argument. The decision of the Parole Board explicitly states the special conditions imposed on Mr. St-Cyr would remain in effect until the expiry of the warrant. The special conditions included the requirement that he reside in the community correctional centre, the issue of contention in this application.

[20] Even if I were to accept Mr. St-Cyr's argument that he did not understand the meaning of the Parole Board's decision until September 14, 2020, the fact remains that the decision extending his residency requirement is dated April 23, 2020 and the time to appeal the decision had expired when he wrote to the Appeal Division. The letter from CSC is not a decision.

[21] Mr. St-Cyr further argues that his letter to the Appeal Division contained an implicit request for an extension of time.

[22] Again, I must disagree with Mr. St-Cyr.

[23] The decision to grant an extension of time is a discretionary one. The party seeking an extension of time must demonstrate: (1) a continued intention to pursue the proceeding; (2) the proceeding has merits; (3) the extension will not prejudice the other party; and (4) a reasonable explanation for the delay. Not all four (4) questions need to be resolved in the moving party's

favour and the overriding consideration is that the interests of justice be served (*Canada (Attorney General) v Hennelly* (1999), 167 FTR 158 (FCA); see also *Alberta v Canada*, 2018 FCA 83 at paras 44-45; *Canada (Attorney General) v Larkman*, 2012 FCA 204 at paras 61-62).

[24] Upon review of Mr. St-Cyr's letter to the Appeal Division, I fail to see how it addresses the criteria for the granting of an extension of time. Even if I were to accept that the letter addresses the criteria of the appeal's merit, there is no explanation for the delay nor does it demonstrate a continued intention to pursue an appeal or the absence of prejudice to the other party. In fact, the letter reads more like a demand letter than a request for an extension of time given the wording used. Mr. St-Cyr, through his counsel, puts the Appeal Division on notice that if he is not released from the community correctional centre before September 23, 2020 (within three (3) days of the letter's date), he will take the necessary measures to commence urgent proceedings without further notice or delay.

[25] I agree with the Attorney General of Canada that accepting Mr. St-Cyr's argument would effectively permit an appellant to file an appeal outside the prescribed time without having to articulate and address the criteria for the granting of an extension of time. It would render section 168 of the CCRR meaningless and would be contrary to Parliament's intent.

[26] In the absence of a request for an extension of time, it was reasonably open to the Appeal Division to reject the appeal on the basis that it was time-barred.

[27] Mr. St-Cyr argued that this Court could review the Parole Board's decision to determine whether it was lawful, in accordance with *Cartier v Canada (Attorney General)*, 2002 FCA 384 at paragraph 10 and *Demaria v Canada (Attorney General)*, 2017 FC 45 at paragraph 20. I am of the view that these decisions do not apply in the case at hand since the Appeal Division did not affirm the Parole Board's decision. It rejected the appeal because it was filed too late without hearing the appeal on the merits.

[28] Mr. St-Cyr also objected to certain portions of the affidavit filed by the Attorney General of Canada on the basis that the affiant was providing a legal opinion on the interpretation of the legislation at issue. Given my reasons for disposing of the application for judicial review, it is not necessary for me to decide the issue. I have not relied on the affidavit for the purpose of these reasons.

[29] For the reasons mentioned above, the application for judicial review is dismissed. The Attorney General of Canada did not seek costs and none will be ordered.

JUDGMENT in T-1185-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. Each party shall bear its own costs.

"Sylvie E. Roussel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1185-20
STYLE OF CAUSE:	OLIVIER ST-CYR v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE BETWEEN MONTRÉAL, QUEBEC AND OTTAWA, ONTARIO
DATE OF HEARING:	NOVEMBER 26, 2020
JUDGMENT AND REASONS:	ROUSSEL J.
DATED:	DECEMBER 1, 2020

APPEARANCES:

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