

Federal Court



Cour fédérale

Date: 20210618

**Docket: T-1644-16
T-1643-16**

Citation: 2021 FC 631

[ENGLISH TRANSLATION]

Montréal, Quebec, June 18, 2021

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**ALAIN DUCAP
DWAYNE LEWIS**

Applicants

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review for a declaratory judgment regarding the right of the Correctional Service of Canada (CSC) to request that inmates receive a drug treatment to control deviant sexual impulses.

[2] Each applicant is serving a sentence for sexual-related crime and recidivism. At different times, they were incarcerated in the Special Handling Unit (SHU), a maximum-security facility managed by CSC, where they received various treatments for sexual offenders.

[3] In 2015, a psychiatrist specializing in sex offenders recommended that the applicants receive hormone therapy. Each applicant was considered capable of giving consent to the recommendation, and to this day they have refused to receive the proposed treatment.

[4] This judicial review deals with the legality or constitutionality of requesting that inmates receive a drug treatment. The applicants submit that CSC cannot request the treatment in question, which misleadingly amounts to a condition on their penitentiary placement.

[5] *A priori*, the Court is seized with the issue of whether the request or recommendation to receive the drug treatment is reviewable. This issue was addressed previously in a preliminary motion to dismiss the application; however, this is not binding on the Court (see *Fournier v Canada (Attorney General)*, 2019 FCA 265 at para 29).

[6] To begin with, it is clear that the treatment is non-binding. It is a recommendation to reduce the risk of reoffending, and it requires the informed consent of the offenders (*Corrections and Conditional Release Act*, SC 1992, c 20, ss 3, 5, 85–86, 88). Refusing a recommendation for treatment does not trigger a negative decision on penitentiary placement, as this decision is governed by the criteria in section 28 of the Act.

[7] Notwithstanding the above, as stated by the Federal Court of Appeal in *Deacon v Canada (Attorney General)*, 2006 FCA 265 at para 74, leave to appeal to the SCC refused, [2007] 1 SCR viii (distinction on facts), the possible consequences of refusing treatment do not amount to forced treatment.

[8] The recommendation to receive treatment in this case is intended to reduce the applicants' risk of reoffending. The applicants refused treatment and, according to the evidence, refused to participate in subsequent assessments to determine the measures needed to be transferred out of the SHU.

[9] Since their refusal to follow the recommendation for the proposed drug treatment, both applicants have been placed outside the SHU. It was clearly explained to one of the co-applicants before this application for judicial review was filed, as documented in the notes of a parole officer, that the recommendation for placement outside the SHU was independent of the recommendation to receive treatment.

[10] Similarly, in the case of one of the affiants in support of the application for judicial review, a gradual integration plan was developed for placement in another institution since he refused to follow the hormone therapy recommendation. Aside from this individual, none of the offenders who were affiants were offered the proposed treatment.

[11] Recommendations are not reviewable by the Court but may be reviewed if they affect the legal rights or interests of a party (*Canada (Attorney General) v Beyak*, 2011 FC 629 at paras 60–62).

[12] In light of the foregoing, this Court is of the opinion that the recommendation to receive the treatment in question is not reviewable. It is not inexorably linked to a penitentiary placement decision and does not infringe on the legal rights and interests of the applicants as shown by the record and the statutory and jurisprudential framework.

[13] For these reasons, the application for judicial review is dismissed. Without costs.

JUDGMENT in T-1644-16 and T-1643-16

THIS COURT'S ORDER is that the application for judicial review is dismissed,
without costs.

“Michel M. J. Shore”

Judge

Certified true translation
this 9th day of July 2021.

Elizabeth Tan, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1644-16 & T-1643-16

STYLE OF CAUSE: ALAIN DUCAP, DWAYNE LEWIS v THE
ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: MATTER HEARD BY VIDEOCONFERENCE

DATE OF HEARING: JUNE 17, 2021

JUDGMENT AND REASONS: SHORE J.

DATED: JUNE 18, 2021

APPEARANCES:

Marie-Claude Lacroix FOR THE APPLICANTS

Véronique Forest FOR THE RESPONDENT

SOLICITORS OF RECORD:

Simao Lacroix, LLP FOR THE APPLICANTS
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec