Date: 20040119

Docket: T-646-02

Citation: 2004 CF 83

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, January 19, 2004

Present: THE HONOURABLE MADAM JUSTICE JOHANNE GAUTHIER

BETWEEN:

DANIEL ROBITAILLE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] Mr. Robitaille is an inmate. He was incarcerated at La Macaza Institution in 2000. His application for judicial review is in reference to a decision made by the Commissioner of the Correctional Service of Canada dated November 5, 2001, in which five of his grievances were rejected.

[2] As was the case in his factum, the applicant did not clearly identify the matters in dispute for each one of his grievances. The Court consequently asked him to clarify his position so that the parties could make their submissions on the standard of review applicable to these issues. In addition, given the nature of some of the rejected grievances (such as a request for voluntary transfer to Alberta or request for a new security guard at La Macaza) as well as Mr. Robitaille's transfer to Drummond Institution in July 2001, the respondent argued verbally that a decision by this Court on these grievances would be theoretical at this point. During the hearing, Mr. Robitaille was represented by new counsel and under these circumstances, the Court found it fair to allow the parties to produce supplementary written submissions on the standard of review once the applicant had defined the actual matters in dispute in his supplementary factum.

[3] In that factum, the applicant indicated that following the hearing, the only matter in dispute was related to grievance V30000A12367.

[4] Before filing this grievance, Mr. Robitaille had complained that he had been asked to sign a behavioural contract because an investigation into his participation in internal drug trafficking was underway. He refused to sign this contract and subsequently lost his general labour job and was reassigned to unit cleaning. His complaint was rejected by his unit manager, who indicated that a behavioural contract was justified and, in relation to his job loss, that a grievance [translation] "should have been sent to the working group, which has sole jurisdiction in these matters."

[5] Mr. Robitaille lodged no complaints with the working group; however, on March 14, 2001, he filed a grievance with his Warden (first level) demanding he be provided with physical and visual evidence related to the "accusations" for which he was asked to sign a behavioural contract.

[6] When he rejected this grievance on April 14, 2001, the Warden indicated that Mr. Robitaille had met with the Preventive Security Officer who had provided him with a Notice of Interception of Communications and informed him of the information collected during the time when his communications were intercepted. Mr. Robitaille then filed a second-level grievance with regional management/the Regional Deputy Commissioner Quebec Region, who concluded, in relation to sharing the information requested by Mr. Robitaille, that [translation] "the non-disclosure of information pending an investigation is consistent with Standing Order 700-01, paragraphs 21 to 29." The applicant then filed a third-level grievance, which the Commissioner rejected, indicating that, [translation] "we find that the decisions rendered at the previous level on June 8, 2001 are justified and that the explanations provided are adequate."

ISSUES

[7] In his supplementary factum, the applicant recognized that the Commissioner did not breach the principle of procedural fairness in that he had had the opportunity to submit his comments on this grievance. He, however, submits that the Commissioner erred in refusing to provide him with further information on his alleged participation in drug trafficking when the

corresponding investigation had been closed since February 27, 2001—over a month before the second-level decision maker rendered a decision.

[8] In addition to denying that the Commissioner erred, the respondent argues that the matter in dispute as defined by the applicant is now purely theoretical given that after Mr. Robitaille filed his grievance, he had to leave La Macaza and received all available information (except confidential information, such as the name of the sources involved and information related to other inmates). The respondent also notes that the redacted version of the Security Intelligence Report on drug trafficking involving Mr. Robitaille was included in the record on the application for judicial review on or around September 20, 2002 (Exhibit P-2 to Sylvain Bertrand's affidavit dated July 8, 2002).

[9] The respondent states that with this information, the applicant can now request that the report be corrected under section 24 of the *Corrections and Conditional Release* Act S.C. 1992, c. 20 (the "Act") if he considers it to be erroneous or incomplete. The respondent also notes that the explanations the applicant provided in December 2000 have in fact been noted on the record.

[10] Section 24 of the Act reads as follows:

> 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.
>
> (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,

(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.

[11] In Mr. Robitaille's opinion, a Court decision on this grievance is not theoretical because he never had the opportunity to effectively challenge the merits of the suspicions noted in his file and because these suspicions continue to have concrete effects on his situation.

[12] Mr. Robitaille described the impact of these suspicions in his affidavit as follows:

[translation]

[...]

13. Drug trafficking is a very serious accusation, especially since that is the reason I was incarcerated, and with a long sentence to serve, it is important that these unfounded allegations be erased from my file, otherwise they will follow me forever and will cause of other conflicts with Correctional Services;

14. It is also remarkable that since the institution of these proceedings, when I was transferred back to Drummond Institution, I was placed in segregation once again based on suspicions of institutional drug trafficking;[1]

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1 The Court understands that this is in relation to new suspicions related to a different incident than the one described in P-2.

15. This strengthens my conviction that so long as I am unable to disprove the allegations tarnishing my file, I will continue to suffer the repercussions of the initial information included in my file by La Macaza staff;

[...]

19. That is why it is important that this honourable Court intervene to reinstate my rights, that a full investigation into this matter be conducted, and that I be able to present my arguments based on the principles of fairness and natural justice and be able to have anything removed from my file that should not be there.

[13] In his application for judicial review, Mr. Robitaille asked the Court to allow him to be informed of the evidence supporting the drug trafficking allegations. In his supplementary factum, he is now requesting that the Court instead order that all allegations tying him to institutional drug trafficking be redacted from his file.

[14] The first issue to be decided on is therefore whether the matter in dispute is now theoretical and if so, whether the Court should still exercise its discretion to rule on this issue. *Borowski v. Canada (Attorney General)*, [1989] 1 SCR 342

ANALYSIS

[15] In their factum dated September 20, 2002, the respondent indicated that the redacted version of the Security Intelligence Report provided contains all the information that Correctional Service Canada collected on the applicant's activities tying him to institutional drug trafficking in mid-December 2000. This was not challenged by the applicant. Under these circumstances, it is no longer useful to determine whether the Commissioner erred in deciding that Mr. Robitaille had access to the key information available in December 2000, nor is it useful to issue an order requiring that this information be provided to him.

[16] Furthermore, the Court understands that the applicant does not disagree with this conclusion. Rather, he is arguing that an order to redact the information (or Exhibit P-2) from his file would not be theoretical because having that erroneous information about him included in his file continues to be damaging for him.

[17] The Court notes that following the investigation, Mr. Robitaille did not face any disciplinary action. No criminal charges were filed, he was not placed in segregation, his security rating was not increased, and he did not undergo any involuntary transfer as a result of this incident.

[18] The applicant's main argument is that he never had the opportunity to make his case because he did not have all the information that would allow him to do so. Even though Mr. Robitaille now has a copy of Exhibit P-2, he has not yet had the opportunity to comment on that report, to the Court's knowledge. This therefore means that Correctional Service Canada has not yet dismissed his explanations or refused to correct or complete his file in relation to this matter. Similarly, no opposing argument and no evidence has been filed[2] before the Court in relation to this matter because Mr. Robitaille's original request was simply to provide him with additional information, which he was requesting to be able to contest the drug trafficking allegations in his file (presumably at a later date).

[19] It is not disputed that Mr. Robitaille may now request that his file be corrected under subsection 24(1) of the Act.

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[2] This distinguishes this case from *Zarzour v. Canada (Attorney General)*, [2000] FCJ No. 103 (QL), wherein the parties submitted contradictory evidence on the validity of the accusations. The respondent even admitted that Mr. Zarzour had not been a party to a conspiracy to attack another inmate (one of the accusations requested to be redacted from the file).

Mr. Robitaille is only arguing that he believes that the authorities will adopt the same negative attitude towards him.

[20] It is not appropriate for the Court to consider the request to redact information (i.e. Exhibit P-2) because it is premature and Mr. Robitaille has an alternative remedy (*Anderson v. Canada (Armed Forces)*, [1997] 1 FCR 273).

[21] Upon considering all the circumstances, the Court concludes that it would be theoretical to rule on this application and there is no reason to exercise its discretion to still issue an order in this case.

[22] In light of this conclusion, the Court does not have to consider the additional arguments presented by the respondent in relation to the impact of the *Privacy Act* (R.S.C., 1985, c. P-21) and the *National Archives of Canada Act* (R.S.C., 1985, c. 1).

ORDER

1. The application for judicial review is dismissed without costs.

"Johanne Gauthier"
Judge

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FEDERAL COURT OF CANADA
TRIAL DIVISION

SOLICITORS OF RECORD

DOCKET: T-646-02

STYLE OF CAUSE: DANIEL ROBITAILLE v. THE ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: Québec City

DATE OF HEARING: June 5, 2003

REASONS FOR ORDER AND ORDER:
The Honourable Madam Justice Johanne Gauthier

DATED: January 19, 2004

APPEARANCES:

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Me Sébastien Gagné	FOR THE RESPONDENT

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Department of Justice - Canada Ottawa, Ontario	FOR THE RESPONDENT

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