

Federal Court



Cour fédérale

Date: 20110614

Docket: T-1441-10

Citation: 2011 FC 688

Ottawa, Ontario, June 14, 2011

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

MATTHEW BOWDEN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

A. Introduction

[1] This is an application for judicial review of the July 14, 2010 decision of the Third Level Grievance Adjudicator for Correctional Services Canada (CSC) to deny Matthew Bowden's (the applicant) grievance of his involuntary transfer from the Joyceville to the Millhaven Institution.

B. Facts

[2] The applicant is a 33 year old first time offender serving a life sentence for second degree murder. While housed at the Joyceville Institution, the applicant was implicated in a gambling ring. Subsequent to an investigation, the applicant's Security Reclassification Score (SRS) was increased to 26.5, a medium security score within the "discretion range" that allowed him to be classified as a maximum security prisoner. As a result of his re-classification, on February 5, 2010, the applicant was involuntarily transferred to the Millhaven Institution.

[3] The applicant filed three grievances regarding the investigation into the gambling ring, his re-classification and his transfer. All three grievances were denied at either the second or third stages. The only grievance at issue, in this judicial review, is the third stage decision to deny the applicant's grievance regarding his transfer.

[4] Since the filing of this application for judicial review, the applicant has since been re-classified as a minimum security prisoner and, on November 6, 2010, was consequently transferred once again this time to a medium security institution. As a result, the Respondent argues that the application is moot and that this Court should not exercise its discretion to hear the matter.

For the reasons that follow, the Court decides to exercise its discretion and will not hear the matter because it is moot.

C. Issues and standard of review

[5] There are two issues before the Court:

1. Is this application for judicial review moot?
2. If the application for judicial review is moot, should this Court exercise its discretion to hear the matter in any event?

D. Parties' submissions

[6] The applicant submits that the matter is not moot because there will always be a permanent blemish on his record since his security rating has been increased and subsequently downgraded. This Court should therefore hear the application for judicial review which, according to the applicant's counsel, is more in the nature of a certiorari in the present case. According to counsel for the applicant, there is an issue of public interest at stake since Correctional Services Canada could use a similar procedure in other cases: raise an inmate's security rating, transfer the individual, subsequently reverse their decision and argue that the matter is moot, thereby preventing this Court from reviewing their decisions.

[7] The Respondent submits that because this application for judicial review is limited to the applicant's involuntary transfer to a maximum security prison, and not the adjustment of his SRS score or the investigation of the gambling ring, the matter is moot. Because the applicant has since

been re-transferred to a medium security prison, the decision of this Court could have no practical effect on his rights and would be a purely academic exercise.

[8] The respondent further argues that in the event that the matter is moot, this Court should not exercise its discretion to hear the matter. There is, it argues, no matter of public importance at stake and the applicant will still have an effective means of asserting his rights in the event of a future involuntary transfer decision.

E. Analysis

a) *Is this application for judicial review moot?*

[9] In assessing whether or not a matter is moot, it must be determined whether there is any tangible and concrete dispute at issue or whether the matter is simply being argued in the abstract (*Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 at para 16 [*Borowski*]).

[10] The only question before this Court is whether or not the decision maker erred in ordering an involuntary transfer. The issues surrounding the applicant's SRS score and the nature of the investigation into the gambling ring are not the subject of this application.

[11] Even if the Court was to determine that CSC erred in deciding to transfer the applicant to a maximum security institution, its decision would have no practical effect. The applicant has already

been re-transferred to a medium security institution. Since the underlying basis of the dispute no longer exists, the question before this Court is indeed moot.

b) *Should this Court exercise its discretion to hear the matter in any event?*

[12] The conclusion that there is no live controversy does not end the matter. As discussed in *Borowski*, above, the Court may elect to address a moot issue if the circumstances warrant. As stated by Justice Layden-Stevenson in her decision in *Dorsey v Millhaven Penitentiary*, 2002 FCT 1085 at para 7, this discretion is to be “judicially exercised with due regard for established principles.” She went on to explain that the rationale behind the mootness doctrine is “concerned with the requirement of an adversarial context, the concern for judicial economy and the necessity of judicial awareness of its proper law making function.”

[13] Bearing in mind these grounds, the Court is not persuaded that this issue should be heard despite its mootness. While the adversarial context arguably still exists between the parties, the outcome of this particular matter will have no effect on the applicant’s rights. I agree with counsel for the Respondent when he states that the applicant will still have an effective means of asserting his rights should any other matters arise during his incarceration. In addition, this case raises no question of general importance. It is a matter of well-settled law that does not warrant the expenditure of judicial resources in this situation. Furthermore, there is no evidence that CSC would revert to the practice alleged by applicant.

JUDGMENT

THIS COURT'S JUDGMENT is that for the reasons above, this application for judicial review is dismissed without costs.

"André F.J. Scott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1441-10

STYLE OF CAUSE: MATTHEW BOWDEN v
ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: June 13, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** SCOTT J.

DATED: June 14, 2011

APPEARANCES:

Brian A. Callender

FOR THE APPLICANT

Peter Nostbakken

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Brian A. Callender
Barrister & Solicitor
Kingston, Ontario

FOR THE APPLICANT

Myles J. Kirvan
Deputy Attorney General of Canada
Ottawa, Ontario

FOR THE RESPONDENT