Federal Court  Cour fédérale

Date: 20111207

Docket: T-1833-10

Citation: 2011 FC 1434

Ottawa, Ontario, December 7, 2011

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

TOMASO VILLANO

Applicant

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] The Minister of Public Safety and Emergency Preparedness concluded that Mr. Tomaso Villano, a Canadian citizen, should not be transferred from the United States prison where he is serving his sentence to a Canadian correctional facility. Mr. Villano argues that the Minister's decision was unreasonable.

[2] I agree with Mr. Villano that the Minister's decision was unreasonable and must, therefore, allow this application for judicial review.

II. The Minister's Decision

[3] The Minister denied Mr. Villano's request for a transfer. In his reasons, the Minister cited the purposes underlying the *International Transfer of Offenders Act*, SC 2004, c 21 [Act]. By enabling offenders to serve their sentences in their countries of origin, the Act contributes to the administration of justice, the rehabilitation of offenders, and the reintegration of offenders into the community. In turn, these purposes enhance public safety.

[4] The Minister had before him a considerable record relating to Mr. Villano. The following is a summary of the evidence relating to the relevant purposes and factors in the Act, prepared by the Correctional Service of Canada [CSC] and put before the Minister:

- the transfer would not pose a threat to Canada's security;
- Mr. Villano worked for a property management company in Richmond Hill, Ontario; he entered the United States solely to commit the offence, not to abandon Canada as his place of residence;
- Mr. Villano's wife and family are supportive and will visit him if he is transferred to Canada;
- the prison system in the United States poses no serious threat to Mr. Villano's security or human rights;
- Mr. Villano would not, after the transfer, commit an organized crime offence;
- Mr. Villano had not previously been transferred;

- if not transferred, Mr. Villano would return to Canada in October 2012 and would not be subject to any supervision;
- if transferred, Mr. Villano would be admitted to an Ontario facility, where he would undergo assessment to determine his programming requirements and to arrive at an appropriate correctional plan;
- Mr. Villano's criminal record consisted of a conviction for failure to stop at the scene of an accident;
- there is no evidence that Mr. Villano has any links to organized crime;
- Mr. Villano has considerable support from friends and family, who will assist him in reintegrating into Canadian society; and
- Mr. Villano is unlikely to reoffend.

[5] In his written decision, the Minister summarized Mr. Villano's offence. He was serving a sentence of four years and six months for conspiracy to import MDMA (known as "Ecstasy") into the United States. In 2006, a person named Mr. Lam entered the U.S. at Niagara Falls. He and Mr. Villano then entered a hotel parking lot in Amherst, New York. Mr. Lam packed two garbage bags into the trunk of Mr. Villano's car. The vehicle was later found to contain over 100,000 pills.

[6] The Minister accepted that the Act requires him to consider whether the applicant will commit a criminal organization offence after the transfer. He noted that Mr. Villano's offence related to a large quantity of drugs and that he had an accomplice. He also noted that others were probably involved. Had it been completed, Mr. Villano's offence would have generated a financial benefit for those other persons. It might also have posed a threat to public safety.

[7] The Minister acknowledged that Mr. Villano had the support of his mother, his other relatives, and his friends.

[8] Still, based on the “unique facts and circumstances”, the Minister denied Mr. Villano’s application.

III. Was the Minister’s Decision Unreasonable?

[9] As I noted in *Tangorra v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 1433, the question on judicial review of a Minister’s decision regarding a transfer is whether he applied the proper factors, based his decision on the evidence before him, explained adequately why the transfer should be denied, and gave the applicant an opportunity to respond to the evidence on which he relied.

[10] The Minister appears to have considered factors related to the likelihood that Mr. Villano would commit a criminal organization offence. He also considered Mr. Villano’s social and family ties.

[11] However, the Minister did not actually decide that Mr. Villano would commit a criminal organization offence if he was transferred to a Canadian institution. In fact, there was no evidence before him of any connection to organized crime. Nor did the Minister explain why he disagreed with the CSC report concluding that Mr. Villano was unlikely to re-offend.

[12] The Minister is free to disagree with CSC’s analysis, but he must explain why he disagrees (*Singh v Canada* (*Minister of Public Safety and Emergency Preparedness*), 2011 FC 115, at para

12). This is particularly so where CSC finds that the applicant has no ties to organized crime, yet that is the primary basis for the Minister's refusal (at paras 13-14; *Vatani v Canada* (*Minister of Public Safety and Emergency Preparedness*), 2011 FC 114, at para 9; *Yu v Canada* (*Minister of Public Safety and Emergency Preparedness*), 2011 FC 819, at para 25).

[13] Where the Minister relies on evidence of an alleged link to organized crime in refusing a transfer, his failure actually to decide whether the applicant will commit a criminal organization offence (as required by the Act) renders his decision unreasonable (*Randhawa v Canada (Minister of Public Safety and Emergency Preparedness*), 2011 FC 625, at para 4; *Downey v Canada* (*Minister of Public Safety*), 2011 FC 116, at para 10; *Yu*, above, at para 26).

[14] Counsel for the Minister pointed to references in the CSC file to the possibility that Mr. Villano had a gambling addiction for which he had never been treated. This, he suggests, would have given the Minister a basis for believing that Mr. Villano would commit a criminal organization offence in the future.

[15] However, the Minister never did conclude that Mr. Villano would commit a criminal organization offence, which is defined as "a serious offence committed for the benefit of, at the direction of, or in association with" a group of three or more persons whose main purpose is to commit serious crimes for the benefit of the group (see *Criminal Code*, RSC 1985, c C-46, ss 2, 467.1(1)). Nor did he refer to any gambling problems Mr. Villano had experienced. Further, there was no evidence that Mr. Villano had gambled while he was out on bail for two years. Accordingly, it is entirely speculative to suggest that the Minister was concerned about any gambling problem on

Mr. Villano's part, and it is unclear whether that would have been a reasonable basis for denying the transfer in any case.

IV. Conclusion and Disposition

[16] In my view, based on the cases cited above, the Minister's decision did not disclose why Mr. Villano's application should be denied. Nor did it explain why the Minister disagreed with CSC's conclusion that Mr. Villano was unlikely to re-offend.

[17] Accordingly, I find that the Minister's decision was unreasonable and must, therefore, allow this application for judicial review with costs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed with costs.

"James W. O'Reilly"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	TOMASO VILLANO v MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
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