

Federal Court



Cour fédérale

Date: 20120119

Docket: T-873-10

Citation: 2012 FC 78

Ottawa, Ontario, January 19, 2012

PRESENT: THE HONOURABLE MR. JUSTICE HARRINGTON

BETWEEN:

ROBERT ROY

Applicant

and

**ATTORNEY GENERAL
OF CANADA**

Respondent

REASONS FOR ORDER AND ORDER

[1] When it granted Mr. Roy full parole, the National Parole Board (NPB) placed five special conditions on his release. Dissatisfied, the applicant appealed the decision to the Appeal Division. It dismissed his appeal. This case concerns a judicial review of the Appeal Division decision.

[2] Since 1998, Mr. Roy has faced several charges for contravening the *Quebec Securities Act*, RSQ, c V-1. Judge Jean-Pierre Bonin of the Court of Quebec found him guilty and sentenced him to a fine of \$455,000 plus costs. In 1999, Justice Côté, of the Superior Court of Quebec at the time,

upheld the guilty verdict. In 2002, Mr. Roy pleaded guilty to a charge under the *Act respecting the ministre du Revenu*, RSQ c M-31, for making false or misleading statements in his income tax return. The court sentenced him to a fine of \$500,000.

[3] In 2006, following a class action, he was ordered to pay several million dollars to people who suffered financial losses resulting from their investments in the tax shelters of Mr. Roy and his co-accused.

[4] As he had not paid any of the fines ordered, Justice of the Peace Suzanne Bousquet allowed, in 2007, an application from the Montreal District fine collector to have Mr. Roy imprisoned pursuant to article 347 of the *Code of Penal Procedure*, RSQ, c C-25.1, in default of payment of his fines. He received a sentence of 7 years, 2 months and 22 days, and was sent to a federal penitentiary.

[5] Since then, Mr. Roy has tried unsuccessfully to exhaust every recourse available under Quebec law against that decision. In November 2008, the NPB granted him day parole subject to a special condition, the obligation to submit a statement of income and expenses to his parole officer. However, this day parole was revoked in September 2009 because the special condition could not be adequately applied because of Mr. Roy's attitude. In November 2009, he was granted day parole, but the NPB added two special conditions. In the end, the NPB ordered his full parole in February 2010, and imposed the following five special conditions:

- a. A ban on holding paid or unpaid employment or functions closely or distantly related to the financial world;

- b. An obligation to submit a statement of his personal income and expenses to his parole officer, as well as a complete financial statement of his businesses and/or company including any document / evidence related to these statements, at the frequency required by the officer;
- c. An obligation to provide accountants identified by CSC (Correctional Service Canada), with all of the information and documents deemed necessary to analyze his income sources, assets / liabilities and his financial activities, at the frequency required by his parole officer;
- d. An obligation to sign any power of attorney deemed necessary by his parole officer to financial institutions or official government agencies in order to produce the documents supporting his financial statements or the statements of the companies he is linked to; and
- e. An obligation to hold stated employment or carry out an active job search and to submit proof of the search to his parole officer.

[6] In February 2010, dissatisfied with that decision, Mr. Roy appealed it to the Appeal Division. On May 5, 2010, the Appeal Division affirmed the NPB decision. It is the decision of the Appeal Division that is the subject of this application for judicial review.

ISSUES

[7] Mr. Roy, who represented himself, raised several points in his written submissions, raised others during his pleadings. He argued the following:

- a. that the NPB is without jurisdiction to impose special conditions on him since he had been convicted under provincial legislation rather than federal criminal legislation;
- b. that he is unable to pay the fines because he earns a modest salary and it is impossible for him to participate in the stock market;
- c. that he was treated unfairly as compared to his co-accused, including his uncle, and that he had been harassed.

[8] Mr. Roy argues that the decision of Justice of the Peace Bousquet is of no force or effect. He raises various arguments on this point that try to explain how her decision is unconstitutional and infringes the *Canadian Charter of Rights and Freedoms*. Moreover, he provides all sorts of sophisticated calculations to explain why his sentence should be reduced by a third, and indicates if the total amount of his fines is divided by the number of days of imprisonment he could meet his obligation by paying almost \$62,000.

[9] Although these points are interesting, it is important to remember that the Federal Court has no power of oversight over provincial courts. The Federal Court administers the laws of Canada in accordance with section 101 of the Constitution, whereas the administration of justice in the province of Quebec, including the constitution and organization of its courts of justice, falls under the exclusive power of the provinces under section 92 of that act. In any case, Mr. Roy has exhausted all possible recourses available under Quebec provincial legislation.

[10] In the case at bar, the Court is hearing a judicial review of the decision by the Appeal Division of the NPB, nothing more, nothing less. The issues currently before the Court are the following:

- a. Does the NPB have jurisdiction to impose special conditions on the applicant?
- b. Are the conditions imposed by the NPB reasonable?
- c. Did the NPB and the Appeal Division respect the applicable principles of procedural fairness?

[11] I believe that the NPB has the jurisdiction to impose special conditions on the applicant. I can do no better than to summarize the written submissions of the respondent who very effectively describes this example of cooperative federalism. First, section 99 of the *Corrections and Conditional Release Act*, SC 1992, c 20, defines the term “offender” as a person who is under a sentence of imprisonment imposed pursuant to a federal or provincial act. This same section indicates that “full parole” means the authority granted to an offender by the Board to be at large during the offender’s sentence. Further on, subsection 107(2) of the Act states that the jurisdiction of the NPB extends to offenders sentenced to a sentence imposed under a provincial act that is to be served in a penitentiary. It is clear that Mr. Roy falls within the scope of this Act: he was found guilty under the *Quebec Securities Act* and the *Act respecting the ministre du Revenu*, and Justice of the Peace Bousquet sentenced him to imprisonment under section 347 of the *Code of Penal Procedure*, for default of payment of his fines. Given the Mr. Roy is an offender within the meaning of the Act, subsection 133(3) allows the NPB to impose any conditions that it considers reasonable and necessary in order to protect society and to facilitate the successful reintegration into society of the offender.

[12] I am also of the opinion that the conditions imposed by the NPB are reasonable. Even though Mr. Roy was not convicted under a federal act, the NPB, in carrying out its risk assessment function, may take into account all available and relevant information, provided it has not been obtained improperly (*Fernandez v Canada (Attorney General)*, 2011 FC 275, [2011] FCJ No 320 (QL)). All the conditions that were imposed were related to the offences of which he was convicted. According to Mr. Roy's correctional plan, it was very difficult for CSC to obtain official, clear and specific information from him, especially regarding his financial transactions. Furthermore, several times he asked his parole officer to approve jobs that he was banned from taking, including jobs involving transactions by letter of credit or for which he is the principal shareholder. The Assessment for Decision also adds to the portrait of Mr. Roy: CSC states that he does not accept responsibility for his actions, nor acknowledge the existence of any victims other than himself, and has been resistant to dealing with his problems. In order to effectively manage the risk in the community, it is also necessary that a certified accountant be available to the officers responsible for Mr. Roy's file and an application for a special warrant for access to information in financial institutions be filed.

[13] For the reasons set out in the respondent's memorandum of fact and law, I agree that the applicable principles of procedural fairness were respected. The reasons for the NPB decision are clear, intelligible and supported by the evidence.

ORDER

FOR THE AFOREMENTIONED REASONS;

THIS COURT ORDERS that the judicial review be dismissed, with costs.

“Sean Harrington”

Judge

Certified true translation
Monica F. Chamberlain

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-873-10

STYLE OF CAUSE: ROY v AGC

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: January 10, 2012

**REASONS FOR ORDER
AND ORDER:** Harrington, J.

DATED: January 19, 2012

APPEARANCES:

Robert Roy

FOR THE APPLICANT
(REPRESENTING HIMSELF)

Marjolaine Breton

FOR THE RESPONDENT

SOLICITORS OF RECORD:

N/A

FOR THE APPLICANT
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FOR THE RESPONDENT