Federal Court  Cour fédérale

Date: 20120119

Docket: T-1992-10

Citation: 2012 FC 81

Ottawa, Ontario, January 19, 2012

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

CHRISTOPHER STONE

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] Mr. Stone was sentenced to a term of imprisonment, followed by a ten-year long-term supervision order for possessing child pornography, for accessing child pornography and for sexual interference. As part of the long-term supervision, various special conditions were imposed upon him by the National Parole Board. Among other things, he was ordered to reside for six months in a half-way house in Sherbrooke, Quebec; not to possess a computer or other device which could give him access to the internet; not to have in his possession a cellular phone or pornographic material; not to be in the presence of a minor except under supervision; to inform his supervisor of any new

relationship, stable or not, with a woman; and not to consume alcohol and drugs. Mr. Stone has taken issue with some of those conditions, which has led to this judicial review.

[2] He raises four issues of law or procedural fairness. He alleges:

a. that the Board failed to provide him with the required information within the delays imposed by law;
b. that it erred in law by denying him the opportunity to file written representations;
c. that it failed to impose a time limit on the special conditions; and
d. that it failed to give adequate reasons with respect to the time limit for which the special conditions were imposed, being by default the full ten-year period of the long-term supervision.

[3] It is a basic principle of law that an order of a competent authority is to be obeyed until it is set aside. Mr. Stone was obliged to respect the special conditions which were imposed upon him. He did not. He fled to Vancouver, British Columbia, without notice. When found, among other things, he had in his possession a computer which contained child pornography. He has now been charged with failing to respect the special conditions imposed upon him, thereby committing an indictable offence under section 753.3 of the *Criminal Code*.

[4] At the commencement of the judicial review, I inquired whether I should give Mr. Stone an audience at all. He does not come to the Court with clean hands and it certainly appears that the special conditions imposed upon him are now moot. Counsel conceded that a good part of the application is now moot, but submitted that two points in issue were still alive:

a. the alleged failure of the Board to impose a specific time limit with respect to the special conditions; and
b. the failure of the Board to give adequate reasons with respect thereto.

[5] Counsel for the respondent was also quite prepared to proceed on those two points. The hearing did proceed, without prejudice to my suggestion that Mr. Stone was not entitled to a hearing.

[6] I have decided to dismiss the application for judicial review on the grounds that Mr. Stone is not entitled to a hearing because he is a scofflaw who does not come to this Court with clean hands. The points in issue, although interesting, are moot as regards him, and have been pursued in other cases before this Court, which are now actually before the Federal Court of Appeal: see *Kozarov v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FCA 185, 384 NR 160, [2008] FCJ No 797 (QL).

[7] However, should I be wrong in so holding, I am prepared to deal with the issues argued. Even if I were to find in Mr. Stone's favour, which I do not, I would have simply made a declaration, without sending the matter back for re-consideration (*MiningWatch Canada v Canada (Fisheries and Oceans)*, 2010 SCC 2, [2010] 1 SCR 6, [2010] SCJ No. 2 (QL)).

LONG TERM SUPERVISION CONDITIONS

[8] The conditions relating to long-term supervision are set out at sections 134.1 and following of the *Corrections and Conditional Release Act*. Subsection (3) of section 134.1 provides that a condition is valid for the period that the Board specifies. It should be noted that Mr. Stone does not contest the conditions, but rather the length of time for which they have been imposed, the entire length of the ten-year supervision. The decision under review was prepared on a National Parole Board printed form, which in the boiler plate provides that the special conditions imposed apply until the end of the long-term supervision unless another period has been fixed.

[9] It is submitted that no analysis was made and no reasons whatsoever were given for why such a lengthy period was imposed. One cannot simply rely on the boiler plate.

[10] However, there are three recent decisions of this Court to the contrary; two by Mr. Justice Scott: *Hurdle v Canada (Attorney General)*, 2011 FC 599, [2011] FCJ No 779 (QL) and *Ross v Canada (Attorney General)*, 2011 FC 829, [2011] FCJ No 1031 (QL); and one by Madame Justice Bédard in *Gaudreau v Canada (Attorney General)*, 2011 FC 953, [2011] FCJ No 1182 (QL). The *Hurdle* and *Gaudreau* decisions are currently under appeal.

[11] In *Gaudreau*, Madam Justice Bédard stated at paragraph 28:

> I am of the opinion that the applicant's arguments must fail. First, I am of the opinion that the Board did specify the period of the condition expressly: the special condition applies until the end of the supervision period. The title of the section of the form for setting out conditions clearly states that conditions apply until the end of the release unless a fixed period of time is specified. In my opinion, the

> fact that this text is included in the decision template changes absolutely nothing. The fact that this section of the form remains part of a decision that does not impose conditions, such as the decision of June 21, 2010, also changes nothing, and does not strip the text of its meaning. If no conditions are imposed, the section reserved for setting out conditions remains empty and of no import. If one or more conditions are imposed, the text is not ambiguous: the condition applies until the end of the release—in this case, the supervision period—unless some other period is specified.

[12] I am not bound by the *Gaudreau* decision, in the sense that the principle of *stare decisis* only requires a judge in first instance to follow decisions of the Court of Appeal and the Supreme Court. However, since the very purpose of rendering decisions public is to provide for certainty and predictability in the law, it is preferable that a judge follow what has been previously decided by another judge of the same Court, unless unable to agree with the reasoning. I consider the words of Lord Goddard C.J. in *Police Authority for Huddersfield v Watson*, [1947] 1 KB 842, [1947] 2 All ER 193, at page 847, to be most helpful:

> […] I think the modern practice is that a judge of first instance, although, as a matter of judicial comity, he would usually follow the decision of another judge of first instance unless he was convinced that that judgment was wrong, certainly is not bound to follow the decision of a judge of equal jurisdiction. A judge of first instance is only bound to follow the decisions for the Court of Appeal and the House of Lords and, it may be also, of the Divisional Court.

In any event, I agree with Madam Justice Bédard's reasoning. Furthermore, Mr. Stone would have been entitled to periodical reviews and if circumstances warranted it, the term limit of some of the special conditions could have been changed.

[13] In terms of adequacy of reasons, they are perfectly clear and transparent. The imposition of the special conditions and the time imposed simply leap out of the record which is before the Court.

The reasons more than satisfy *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, and *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] SCJ No 62 (QL).

[14] Counsel for Mr. Stone submits that there should be no order for costs because the decisions relied upon by the respondent, such as *Gaudreau*, above, were only issued after the judicial review was launched. In my view, however, to waive costs would be to condone Mr. Stone's utter disregard for the law. I see no reasons why costs should not follow the event. Whether or not Mr. Stone is able to pay them is irrelevant.

[15] Written and oral pleadings were in French at the convenience of counsel. However, most of the record is in English, Mr. Stone's preferred language. Therefore, these reasons are first issued in that language.

ORDER

FOR REASONS GIVEN;

THIS COURT ORDERS that the application for judicial review is dismissed with costs.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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