Federal Court  Cour fédérale

Date: 20120214

Docket: T-101-11

Citation: 2012 FC 212

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, February 14, 2012

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

RICHARD FORGET

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] Since 1978, Richard Forget has been serving a life sentence for second degree murder, theft with threats of violence, breaking and entering, fraud, personation with intent, and harbouring. In November 2010, while he was incarcerated at Saint-Anne-des-Plaines Institution (SAPI), a minimum-security federal penitentiary in Quebec, he was placed in administrative

segregation to avoid disruption of the investigation being conducted into tobacco trafficking at SAPI.

[2] Following this investigation, Mr. Forget was identified as being the head of this major tobacco trafficking ring at the institution. In view of that and for the penitentiary's internal security, the Correctional Service of Canada (CSC) decided to raise Mr. Forget's security classification from minimum to medium and to transfer him from SAPI to the Leclerc Institution, a medium-security penitentiary.

[3] The decision was made by the Warden of SAPI. Mr. Forget was dissatisfied with that decision and could have lodged a grievance directly with the Regional Deputy Commissioner, as provided by the grievance procedure established under section 90 of the *Corrections and Conditional Release Act*. Instead, he chose to file an application for judicial review under section 81 of the *Corrections and Conditional Release Regulations*.

[4] Section 81 provides as follows:

(1) Where an offender decides to pursue a legal remedy for the offender's complaint or grievance in addition to the complaint and grievance procedure referred to in these Regulations, the review of the complaint or grievance pursuant to these Regulations shall be deferred until a decision on the alternate remedy is rendered or the offender decides to abandon the alternate remedy.	(1) Lorsque le délinquant décide de prendre un recours judiciaire concernant sa plainte ou son grief, en plus de présenter une plainte ou un grief selon la procédure prévue dans le présent règlement, l'examen de la plainte ou du grief conformément au présent règlement est suspendu jusqu'à ce qu'une décision ait été rendue dans le recours judiciaire ou que le détenu s'en désiste.

(2) Where the review of a complaint or grievance is deferred pursuant to subsection (1), the person who is reviewing the complaint or grievance shall give the offender written notice of the decision to defer the review.	(2) Lorsque l’examen de la plainte ou au grief est suspendu conformément au paragraphe (1), la personne chargée de cet examen doit en informer le délinquant par écrit.

[5] Essentially, Mr. Forget contends that he was not sufficiently informed of the allegations made against him and not given a fair opportunity to respond to them. If that is so, it is indeed a denial of the principles of natural justice, and this Court is duty-bound to intervene. Mr. Forget also contends that the CSC failed to provide reasons establishing that its decision of involuntary transfer is the least restrictive measure in the circumstances, in accordance with the principles that guide the Service which are set out at section 4 of the Act.

[6] For his part, the Minister points out that, considering the very specific prison context, the information with which Mr. Forget was provided was sufficient. He submits that Mr. Forget received all of the documents prepared for his transfer and that this was done within the time limits set out in the Act and the Regulations. Furthermore, the Minister is of the opinion that the Warden’s decision is adequately reasoned and that it takes into account the assessments and recommendations regarding Mr. Forget’s situation. Last, he submits that the decision is reasonable and that the relevant factors were properly weighed, including institutional adjustment, escape risk and public safety.

[7] On January 10, 2012, that is, one day before the hearing date for the application for judicial review, the Minister filed further submissions contending that the Court should not hear the application because Mr. Forget has failed to exhaust all of the possible remedies provided by the administrative process. He relied on the recent decisions in *Rose v Canada (Attorney General)*, 2011 FC 1495, [2011] FCJ No 1821 (QL), and *Marleau v Canada (Attorney General)*, 2011 FC 1149, [2011] FCJ No 1417 (QL).

[8] Therefore, at the beginning of the hearing, I asked Mr. Forget whether he was ready to proceed. His counsel objected to the Minister's additional submissions given that they were filed so close to the hearing date. Consequently, I postponed the hearing until January 31, 2012, and gave the parties leave to file supplementary memoranda on the point raised by the Minister.

[9] Each of the two parties filed a supplementary memorandum. Furthermore, two recent decisions were brought to the Court's attention: *Reda v Canada (Attorney General)*, 2012 FC 79, [2012] FCJ No 82 (QL), and *Paul v Canada (Attorney General)*, 2012 FC 64, [2012] FCJ No 73 (QL).

[10] At the hearing, on January 31, 2012, the parties added little to their supplementary memoranda. Mr. Forget submits that I must hear the application for judicial review on its merits. As well, if I exercise my discretion not to hear the application, as did Madam Justice Bédard in *Reda*, above, I must still rule on the merits in the event that I am wrong on this issue.

[11] I heard the application on the merits, while reserving my discretion to refuse to rule on it.

[12] In fact, it is the seriousness of both parties' submissions that leads me not only to refuse to rule on the application, but also to abstain from expressing my opinion on its value. As a result, the next step for Mr. Forget is to lodge a grievance with the Regional Deputy Commissioner. The decisions of administrative tribunals are subject to review by this Court. The idea that my *obiter dicta* may be reviewed by a lower court does not appeal to me in the slightest.

[13] It is clear that the Court may exercise its discretion not to hear an application for judicial review filed with it directly if other adequate alternative remedies have not been exhausted. In *Reda*, Madam Justice Bédard conducted a brief overview of the case law to that effect, so there is no need for me to examine the issue in greater detail. In my opinion, it is sufficient to state that, at this stage in the case, there are no exceptional circumstances that would warrant this Court's hearing the application for judicial review of the Warden's decision.

[14] Having decided that she should not decide the application for judicial review, Madam Justice Bédard nonetheless went on, in *obiter*, to address the merits of the application, for two reasons. First, it is the Court itself, rather than the applicant, that had raised the issue regarding its exercise of jurisdiction. Second, in the event that the Federal Court of Appeal set aside this aspect of her decision, she would have at least stated the reasons for her opinion that the application should be dismissed.

[15] In this case, this issue was raised by the Minister, if belatedly. I am much more concerned with how the Regional Deputy Commissioner will deal with the Warden's decision than with

how the Federal Court of Appeal will deal with my own. In this regard, I refer to the Supreme Court's decision in *Nova Scotia (Workers' Compensation Board) v Martin*, 2003 SCC 54, [2003] 2 SCR 504. Although the facts are different from those in this case, the Supreme Court's remarks apply with equal relevance here. As explained at paragraph 56 of the judgment, courts may benefit from a complete record and from the opinion of the appellate administrative tribunals.

[16] Although in *Paul*, above, Mr. Justice Scott ruled on the merits of an application for judicial review similar to this one, nothing in his reasons suggests that this particular issue was disputed by the parties. Therefore, it cannot be said that this decision supports the proposition that this Court automatically review decisions on involuntary transfers.

[17] In any event, I would not have been inclined to grant the relief sought, that is, to set aside the decision. Instead, I would have referred the matter back to another decision-maker for reconsideration.

ORDER

FOR THE REASONS GIVEN ABOVE,

THE COURT ORDERS that

1. The application for judicial review of the decision made by the Warden of SAPI on December 23, 2010, be dismissed.

2. There will be no order as to costs in this case.

"Sean Harrington"
Judge

Certified true translation
Sarah Burns

FEDERAL COURT

FEDERAL COURT SOLICITORS OF RECORD

DOCKET:	T-101-11
STYLE OF CAUSE:	FORGET v AGC
PLACE OF HEARING:	Montréal, Quebec
DATES OF HEARING:	January 11 and 19, 2012
REASONS FOR ORDER AND ORDER:	HARRINGTON J.
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