

Federal Court



Cour fédérale

Date: 20121019

Docket: T-484-12

Citation: 2012 FC 1226

Ottawa, Ontario, October 19, 2012

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

CLAIR DANIEL WILSON

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Wilson is an inmate at Springhill Penitentiary in Nova Scotia. His driver's license from the Province of New Brunswick expired on April 29, 2011. Prior to its expiration, he learned that he would have to personally attend at the motor licensing bureau in New Brunswick to renew his license. He sought an escorted temporary absence (ETA) from the institution in order to attend and renew his license.

[2] His first request for an ETA was made in early 2010 but he was asked to withdraw it and re-apply in a year's time. He agreed and later submitted the ETA request on January 19, 2011. On

March 4, 2011, the Warden denied the request for an ETA. The Warden's written reason reads:

“Administrative ETA NOT APPROVED as licence cannot be automatically renewed”

[capitalization in original].

[3] Mr. Wilson grieved this decision and asked that it be dealt with on an urgent basis because the need for an ETA would become moot after the expiry of his license on April 29, 2011. A response denying the grievance was received on August 19, 2011. Mr. Wilson advanced his grievance to the next level and received a response on January 20, 2012, from the Senior Deputy Commissioner who upheld the grievance.

[4] The Senior Deputy Commissioner determined that the only rationale provided by the Warden in denying the ETA request was that Mr. Wilson's licence could not automatically be renewed; however, it was noted that the Warden failed to consider the criteria in the *Corrections and Conditional Release Act*, SC 1992, c 20, s 17(1), which reads as follows:

17. (1) Where, in the opinion of the institutional head,

(a) an inmate will not, by reoffending, present an undue risk to society during an absence authorized under this

17. (1) Sous réserve de l'article 746.1 du Code criminel, du paragraphe 140.3(2) de la Loi sur la défense nationale et du paragraphe 15(2) de la Loi sur les crimes contre l'humanité et les crimes de guerre, le directeur du pénitencier peut autoriser un délinquant à sortir si celui-ci est escorté d'une personne — agent ou autre — habilitée à cet effet par lui lorsque, à son avis :

a) une récidive du délinquant pendant la sortie ne présentera pas un risque inacceptable pour la société;

section,

(b) it is desirable for the inmate to be absent from penitentiary, escorted by a staff member or other person authorized by the institutional head, for medical, administrative, community service, family contact, personal development for rehabilitative purposes, or compassionate reasons, including parental responsibilities,

(c) the inmate's behaviour while under sentence does not preclude authorizing the absence, and

(d) a structured plan for the absence has been prepared,

the absence may, subject to section 746.1 of the Criminal Code, subsection 140.3 of the *National Defence Act* and subsection 15(2) of the *Crimes Against Humanity and War Crimes Act*, be authorized by the institutional head

(e) for an unlimited period for medical reasons, or

(f) for reasons other than medical,

(i) for a period not exceeding five days, or

(ii) with the Commissioner's approval, for a period exceeding five days but not exceeding fifteen days.

b) il l'estime souhaitable pour des raisons médicales, administratives, de compassion ou en vue d'un service à la collectivité, ou du perfectionnement personnel lié à la réadaptation du délinquant, ou pour lui permettre d'établir ou d'entretenir des rapports familiaux notamment en ce qui touche ses responsabilités parentales;

c) la conduite du détenu pendant la détention ne justifie pas un refus;

d) un projet structuré de sortie a été établi.

La permission est accordée soit pour une période maximale de cinq jours ou, avec l'autorisation du commissaire, de quinze jours, soit pour une période indéterminée s'il s'agit de raisons médicales.

[5] The Senior Deputy Commissioner further held that in failing to properly consider the criteria in subsection 17(1) of the *Corrections and Conditional Release Act*, the Warden had failed to provide sufficient reasons for the decision, contrary to the Duty to Act Fairly in the Commissioner's Directive 700, at paragraph 77, which, at that time, provided that Correctional Services Canada was obliged to "ensure that offenders receive complete information, particularly concerning decisions and the supporting reasons, before or after the decision."

[6] The Senior Deputy Commissioner required, as the appropriate corrective action, that the Warden review his earlier decision "and provide a rationale in consideration of subsection 17(1) of the *CCRA*."

[7] In his memorandum of argument, Mr. Wilson raised whether his application to review the decision of the Senior Deputy Commissioner was moot as the time within which he could renew his license had passed. I informed the parties at the commencement of the hearing that I intended to hear this application on its merits. My reasons for so doing were three-fold. First, depending on the outcome of this application, it is not at all certain that this matter is moot. Second, the respondent made no submissions as to whether the application is moot. Third, if the Court were to refuse to hear the application due to the passage of time then, in some perverse manner, the respondent would have benefited from its significant delay in responding to the applicant's request for an ETA and in responding to his grievance.

[8] The sole issue on the merits is whether the remedy required by the Senior Deputy Commissioner in her grievance response is reasonable. Mr. Wilson submits that it is not reasonable because the Warden cannot provide additional reasons for his decision because it is no longer a live

issue. The respondent submits that although the record could support the Warden's decision not to provide an ETA to renew Mr. Wilson's driver's licence, it was found that the reasons given were insufficient and breached the stated requirements of procedural fairness. The remedy ordered, it is submitted, reasonably responded to these concerns.

[9] Mr. Wilson raised concerns regarding the time it has taken to deal with his request and grievance; however, those are not issues before me. He also raised what he sees as the "punitive" nature of the Warden's refusal to grant him an ETA; that is not an issue before me. The only issue before the Court in this application is whether the remedy that was provided by the decision-maker is reasonable. Mr. Wilson says that "[the Warden] cannot make a new decision he has to reside with the original one with all [its] warts and the acknowledgement that he failed in his duty to act fairly."

[10] I am unable to agree with Mr. Wilson. When it has been found that a decision-maker failed to consider relevant criteria or failed to provide procedural fairness, then the typical remedy is to refer the question back to that decision-maker with instructions to make the decision properly. That is what was done in this case.

[11] As was pointed out by the Senior Deputy Commissioner in her response, there was no guarantee that the same result, a denial of an ETA, would result. In fact, the result was the same, but for reasons different than those first given. In my view, the decision on remedy was justified on the basis of the governing legislation and policy which required the Warden to provide complete reasons dealing with the factors set out in the legislation. I fail to see how any other remedy would have been appropriate or within the jurisdiction of the Senior Deputy Commissioner.

[12] Given the time it took for the CSC to move the process forward and address the grievances at all the stages of review, I understand and appreciate Mr. Wilson's frustration in dealing with the delays to obtain responses to the ETA request and to his grievance. He eloquently expressed the significance to him of having a driver's license when he is released from prison. I suspect that it was not seen by the prison officials to be as important as he saw it. Nonetheless, I cannot end without observing, as this Court has on many occasions, that the delays in responding to what appears to be relatively small issue is very troubling.

[13] No costs are ordered.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed, without costs.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-484-12

STYLE OF CAUSE: CLAIR DANIEL WILSON v
ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: Halifax, Nova Scotia

DATE OF HEARING: October 11, 2012

REASONS FOR JUDGMENT: ZINN J.

DATED: October 19, 2012

APPEARANCES:

Clair Daniel Wilson	FOR THE APPLICANT (ON HIS OWN BEHALF)
Sarah Drodge	FOR THE RESPONDENT

SOLICITORS OF RECORD:

NIL	FOR THE APPLICANT
MYLES J. KIRVAN Deputy Attorney General of Canada Halifax, Nova Scotia	FOR THE RESPONDENT