Federal Court  Cour fédérale

Date: 20080926

Docket: T-1895-07

Citation: 2008 FC 1072

Ottawa, Ontario, the 26th day of September 2008

Present: The Honourable Mr. Justice Harrington

BETWEEN:

DANIEL NORMANDIN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] Mr. Normandin likes to smoke marihuana. He says that it relieves his chronic pain. This pain was caused by a serious accident in 1976 when he was hit by a train at the age of nine. One of his arms was severed and a leg was almost completely ripped off, which led to a series of operations over the fifteen years that followed.

[2] Mr. Normandin is also an acknowledged criminal. Following a guilty plea to charges of confinement and indecency in June 2002, he was sentenced to two years in jail together with a long-term supervision order for a period of five years. Under section 753.1 of the *Criminal Code*, a court may make such an order if among other things, there is a substantial risk that the offender will reoffend and there is a reasonable possibility that the risk will be controlled in the community. This period of long-term supervision began when he finished serving his sentence in June 2004. Under the *Corrections and Conditional Release Act*, several conditions were imposed, one of which was to abstain from using intoxicants. The fact that marihuana falls into this category is not contested.

[3] Mr. Normandin did not respect this condition. He was caught red-handed on eight occasions by the Correctional Service of Canada (the CSC). Under subsection 135.1(1) of the Act, in case of a breach of a condition in the long-term supervision order, the designated person may suspend the long-term supervision order and authorize the detention of the offender in a community-based residential facility or even have him incarcerated.

[4] The final decision, which is the subject of this application, was issued on October 1, 2007 and reads as follows:

> [TRANSLATION]
>
> Under the authority vested in me as a designated person by the Commissioner of the Correctional Service of Canada pursuant to subsection 135.1(1) of the *Corrections and Conditional Release Act*, I have issued a warrant suspending THE LONG-TERM SUPERVISION ORDER on October 1, 2007.
>
> . . .

SUMMARY

You have admitted having used cannabis more than once since your return to the community and have stated that you intend to continue using it, thereby breaching one of your special conditions. You still refuse to consider alternatives for the relief of your health problems. This breach of condition and your obstinacy increase the danger you represent for society.

[5] According to the respondent, this decision is not subject to judicial review. I agree and for this reason, the application will be dismissed. Considering that criminal charges for breach of the conditions of long-term supervision were brought (the trial is scheduled for next month), it will be necessary to proceed with caution.

[6] Under subsection 135.1(5) of the Act, a person who signs a warrant, or any other person designated, must review the offender's case within the following thirty days and must either cancel the suspension or refer the case to the National Parole Board (Board) together with an assessment of the case.

[7] The case was referred to the Board with an assessment dated October 30, 2007. The present application for judicial review was brought on the following day. On December 3, 2007, the Board rendered its decision to the effect that [TRANSLATION] "no supervision program can adequately protect society from the risk of repeat offending that you represent and it appears that the conditions of supervision were not respected." Subsequently, charges of breach of condition of the supervision order were brought against Mr. Normandin and as mentioned above, the trial will be held shortly.

[8] It is trite law that interlocutory decisions of courts are not normally subject to judicial review. As I have mentioned in *Plante v. Canada (Attorney General)*, 2007 FC 52, 2007 F.C.J. No. 73, at paragraph 43:

> As a result, what remedy did Mr. Plante have? Following *Bradford*, *supra*, rather than proceed by way of judicial review, the appropriate remedy was to make his arguments directly before the Board. It should be noted that the various decisions taken to date in this case all form part of the same decision-making process (*Condo v. Canada (Attorney General)*, 2004 FC 991). The Board is a specialized tribunal and, as such, was in a better position to assess Mr. Plante's defence. As the Supreme Court held in *Nova Scotia (Workers' Compensation Board) v. Martin et al.*, [2003] 2 S.C.R. 504 at paragraph 56, it is desirable for courts to benefit from a full record established by a specialized tribunal.

[9] Counsel for Mr. Normandin was aware of this. However, he mentioned that on seven other occasions after the CSC had suspended long-term supervision, the Board had re-established it. He submitted that the CSC did not abide by the Board's directives.

[10] I have no doubt that the CSC could not avoid judicial review by constantly revoking long-term supervision and by imposing it once again within the period of thirty days prescribed by law. However, this is not the issue to be decided and the Board is of the same opinion.

[11] Several comments were made about the fact that Mr. Normandin had held an "Authorization to Possess Marijuana for Medical Purposes" from Health Canada from March 2006 to March 2007, that the Board changed his conditions to grant him special permission controlled and managed by the CSC to use marihuana and that the CSC refused to cooperate. Be that as it may, this is not the issue before me. However, it is important to note that the "Regulatory Impact Analysis Statement"

of the *Marihuana Medical Access Regulations* shows that the decision to allow a patient in a hospital, or a detainee in a penitentiary, a prison or other correctional institution, to possess marihuana, is a decision for that institution.

[12] The record before the Court has many references to the fact that Mr. Normandin apparently gave incomplete information to the doctors who recommended his use of marihuana, as well as to Health Canada. What would have happened if they had had a complete picture of the situation was also discussed. Obviously, this is only theorizing.

[13] Mr. Normandin raised serious questions of law concerning his right to medical treatment, his psychological assessment report in 2006, which concluded that [TRANSLATION] " . . .the use of cannabis does not seem to have a direct connection with the commission of offences by Mr. Normandin", the less than objective analysis made by a doctor by the CSC , as well as the Charter. Nevertheless, it remains that this application for judicial review is not the appropriate avenue by which to submit these issues to the Court.

ORDER

FOR THE REASONS MENTIONED ABOVE;

THE COURT ORDERS that the application for judicial review be dismissed with costs, subject to Mr. Normandin's right to apply for an extension of the time limit to bring an application for judicial review of the decision of the National Parole Board dated December 3, 2007.

"Sean Harrington"
Judge

Certified true translation
François Brunet, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1895-07
STYLE OF CAUSE:	DANIEL NORMANDIN v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	September 22, 2008
REASONS FOR ORDER AND ORDER BY:	THE HONOURABLE MR. JUSTICE HARRINGTON
DATED:	September 26, 2008

APPEARANCES:

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