

Federal Court



Cour fédérale

Date: 20091022

Docket: T-1749-08

Citation: 2009 FC 1082

Vancouver, British Columbia, October 22, 2009

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

JOSEPHAKIS CHARALAMBOUS

and

**THE ATTORNEY GENERAL
OF CANADA**

Applicant

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section 18.1 of the *Federal Courts Act* of a third level offender grievance decision by the Commissioner of the Correctional Service (Commissioner). The Applicant, a federal inmate, seeks an order quashing that decision and an order for *mandamus* to prevent the Correctional Service of Canada (CSC) from including high intensity sex offender programming in his Correctional Treatment Plan (CTP).

[2] Completion of a CTP is important to the Applicant because non-completion limits the likelihood that he will be granted day parole or be classified at a lower level of security risk which would make him eligible for transfer to a lower level security institution.

[3] For the reasons that follow, the application is dismissed.

BACKGROUND

[4] Josephakis Charalambous is an inmate at a medium security correctional institution operated by the CSC.

[5] Mr. Charalambous was a medical physician. He was convicted of first-degree murder and conspiracy to commit murder for ordering the contract killing of a female patient who, together with her sister, had filed a sexual misconduct complaint against him with the College of Physicians and Surgeons of British Columbia. Mr. Charalambous was sentenced to life in prison and began his sentence in 1994.

[6] Mr. Charalambous maintains his innocence. He unsuccessfully appealed his conviction: *R. v. Charalambous* (1997), 92 B.C.A.C. 1, leave to appeal to S.C.C. refused [1997] S.C.C.A. No. 365.

[7] In 2005 Mr. Charalambous' CTP was changed. The relevant material change for the purposes of this application is that he was referred to the High Intensity Sex Offender Program

(Odyssey Program). He initially agreed to attend this program but says he did so only in order to complete his CTP to progress through the system with the hope of release.

[8] Section 90 of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 establishes an offender grievance procedure to resolve all matters within the jurisdiction of the Commissioner. This procedure is found in the *Corrections and Conditional Release Regulations*, SOR/92-620. The grievance procedure has three levels of complaint.

[9] On September 9, 2008, Mr. Charalambous filed a third level grievance after having his grievance denied at the previous two steps. The most germane passage from his listing of issues is the following: “My most disturbing concern is that the most recent high intensity programs listed on my file are not germane to my index offence.” As previously noted, only the Odyssey Program is at issue.

[10] He included with the grievance a descriptive narrative of his objections relating to the Odyssey Program in which he makes the following statements:

My index offence is for first-degree murder and conspiracy to commit murder. I have no convictions for sexual assault. Having said that, I acknowledge that there were allegations of sexual misconduct and assault. ... All charges brought forth were subsequently either dropped or stayed with no further proceedings. There are no convictions in my criminal record or file for sexual assault.... Therefore, I do not meet the criteria for the ‘Odyssey’ high intensity sex offender program or any other sex offender program. These programs have as one of their admission criteria that there must be convictions for sexual assault.

[11] The relevant portion of the decision under review reads as follows:

Review of the information reveals that in 2005 your CTP was changed to adjust to new programming names and to adjust to your needs. At that time you were referred to the Moderate Intensity Family Violence Program and the High Intensity Sex Offender Program. In an Assessment for Decision (A4D) regarding your Offender Security Level (OSL) dated 2008-01-18, it is noted that you were willing to attend these programs when they are offered. In addition, a Correctional Plan Progress Report (CPPR) dated 2005-12-13, indicates that after a thorough file review, consultation with professionals, discussion with both the Unit Board and Programs Board at Mission Institution, it was determined that your CTP needed to be changed to a referral to the High Intensity Sex Offender Program followed by completion of the Moderate Intensity Family Violence Program.

...

Based on the above information, it is believed that you would benefit from participation in the Moderate Intensity Family Violence Program and the High Intensity Sex Offender Program as both programs would assist in addressing your risk to re-offend and assist with your eventual reintegration and release to the community. As such, this portion of your grievance is denied.

ISSUE

[12] Only one issue is raised by the Applicant in his Amended Application and Memorandum of Fact and Law: “Did the Third Level decision-maker violate the rules of procedural fairness by failing to provide adequate reasons for why the Odyssey Program should be included on the Applicant’s correctional plan?”

ANALYSIS

[13] It is agreed that the standard of review of a question relating to the adequacy of reasons is correctness as it is an issue of procedural fairness: *Canada (Attorney General) v. Sketchley*, 2005 FCA 404.

[14] Both parties relied on the decision in *Via Rail Canada Inc. v. National Transportation Agency*, [2001] 2 F.C. 25 (C.A.) as setting out the principles when considering the adequacy of reasons.

[15] The Applicant focused on paragraphs 21 and 22 of *Via Rail*:

21 The duty to give reasons is only fulfilled if the reasons provided are adequate. What constitutes adequate reasons is a matter to be determined in light of the particular circumstances of each case. However, as a general rule, adequate reasons are those that serve the functions for which the duty to provide them was imposed. In the words of my learned colleague Evans J.A., "[a]ny attempt to formulate a standard of adequacy that must be met before a tribunal can be said to have discharged its duty to give reasons must ultimately reflect the purposes served by a duty to give reasons."

22 The obligation to provide adequate reasons is not satisfied by merely reciting the submissions and evidence of the parties and stating a conclusion. Rather, the decision maker must set out its findings of fact and the principal evidence upon which those findings were based. The reasons must address the major points in issue. The reasoning process followed by the decision maker must be set out and must reflect consideration of the main relevant factors.

[Footnotes omitted]

[16] The Applicant submits that the reasons at issue failed to address one of the major points in issue; namely that the Applicant was assigned to take the Odyssey Program despite failing to meet one of its admission criteria – he was not an offender “currently or formerly convicted of one or more sexual offences.”

[17] The Respondent prefers to focus on paragraph 19 of *Via Rail* where the Court states:

19 [R]easons allow the parties to effectuate any right of appeal or judicial review that they might have. They provide a basis for an assessment of possible grounds for appeal or review. They allow the appellate or reviewing body to determine whether the decision maker erred and thereby render him or her accountable to that body. This is particularly important when the decision is subject to a deferential standard of review.

[18] The Respondent submits that the reasons of the decision under review meet that test.

[19] The Commissioner did more than merely recite evidence and submissions.

The Commissioner explained why the evidence led to the denial of the grievance.

The Commissioner explained why the Odyssey Program was included in the Applicant’s CTP.

However, the Applicant is correct in noting that the Commissioner failed to discuss the criteria for inclusion in the Odyssey Program – criteria that the Applicant raised as an issue in his grievance.

While this failure was an error, I do not find that it renders the Commissioner’s reasons inadequate.

[20] The reasons are adequate enough to allow a reviewing court to understand the evidence that was considered, to ascertain whether each of the complaints was touched upon, and to analyze the

decision-maker's reasoning. In the context of the offender grievance procedure, this is all that the duty of fairness required. The reasons are sufficient to allow the Applicant to attack the decision on its merits. The failure of the Commissioner to address whether the Applicant meets the criteria for the Odyssey Program, even if he has been recommended to receive it, goes to the issue of the reasonableness of the Commissioner's decision, but that is not an issue before this Court in this application.

[21] Accordingly, the application is dismissed. The Respondent asked for costs, which the Applicant resists. In the circumstances, I exercise my discretion not to award costs against Mr. Charalambous.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed, without costs.

“Russel W. Zinn”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1749-08

STYLE OF CAUSE: JOSEPHAKIS CHARALAMBOUS v. AGC

PLACE OF HEARING: Vancouver, BC

DATE OF HEARING: October 21, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** ZINN J.

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