

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150129

Docket: A-418-13

Citation: 2015 FCA 28

**CORAM: NOËL C.J.
DAWSON J.A.
TRUDEL J.A.**

BETWEEN:

CHUCK SUN LAU

Appellant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

Heard at Vancouver, British Columbia, on January 29, 2015.
Judgment delivered from the Bench at Vancouver, British Columbia, on January 29, 2015.

REASONS FOR JUDGMENT OF THE COURT BY:

DAWSON J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on January 29, 2015).

DAWSON J.A.

[1] Mr. Lau, a Canadian citizen, was convicted in Australia of possession of a commercial quantity of heroin and of being knowingly concerned in the importation of a commercial quantity of heroin. In consequence, he was sentenced to two concurrent sentences of 25 years imprisonment.

[2] On December 14, 2012, the Minister of Public Safety and Emergency Preparedness refused to consent to Mr. Lau's request pursuant to the *International Transfer of Offenders Act*, S.C. 2004, c. 21 that Mr. Lau be permitted to serve the remainder of his prison sentence in Canada.

[3] In carefully written and thorough reasons, a judge of the Federal Court dismissed an application for judicial review of the Minister's decision (2013 FC 1142).

[4] This is an appeal from that decision.

[5] On this appeal the appellant argues that the Minister's decision was unreasonable because the Minister failed to give intelligible reasons for disagreeing with the recommendation of the Correctional Service of Canada, failed to conduct a forward-looking analysis, gave primacy to one of the factors the Minister was obliged to consider, failed to consider the terms under which the appellant would be supervised if returned to Canada, failed to give sufficient weight to Mr. Lau's co-operation with Australian authorities and family circumstances, and failed provide an intelligible explanation of how the Minister weighed the factors enumerated in section 10 of the *International Transfer of Offenders Act*.

[6] We disagree. The Judge found the Minister's decision to be "carefully worded to address the criteria of the [*International Transfer of Offenders Act*], to show some assessment of the competing factors, to explain why the Minister departed from the advice of [the Correctional Service of Canada] and to link the past offence with subsequent conduct to inform the Minister's

belief that Mr. Lau will commit a criminal organization offence after the transfer” (reasons, at paragraph 48). We agree, substantially for the reasons given by the Judge.

[7] Particularly, in our view, the Minister was entitled to rely upon the fact that the appellant escaped from custody as evidence that Mr. Lau continued to be involved with other criminal associates. This distinguishes the decision in *Le Bon v. Canada (Attorney General)*, 2012 FCA 132, 433 N.R. 310.

[8] The appellant also argues that the Federal Court erred by failing to address his argument that the Minister’s refusal to disclose the Australian Probation and Parole Service’s International Transfer Report in advance of rendering his decision violated procedural fairness and the appellant’s rights under section 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11.

[9] Assuming, without deciding, that the appellant’s section 7 rights were engaged by the decision, the appellant has not shown how the failure to produce the International Transfer Report before the decision was made breached any principle of fundamental justice. The International Transfer Report was favourable to the appellant and was considered by the Minister. The appellant has fallen far short of demonstrating that the failure to produce the report impaired in any way his ability to meaningfully participate in the decision-making process.

[10] For these reasons, the appeal will be dismissed with costs.

[11] Having come to this conclusion, counsel have agreed it is not necessary to consider the motion to adduce new evidence.

“Eleanor R. Dawson”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-418-13

STYLE OF CAUSE: CHUCK SUN LAU v. THE
MINISTER OF PUBLIC SAFETY
AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: VANCOUVER, BRITISH
COLUMBIA

DATE OF HEARING: JANUARY 29, 2015

REASONS FOR JUDGMENT OF THE COURT BY: NOËL C.J.
DAWSON J.A.
TRUDEL J.A.

DELIVERED FROM THE BENCH BY: DAWSON J.A.

APPEARANCES:

1) John W. Conroy, Q.C. FOR THE APPELLANT
2) Rod Holloway, Q.C. and Maria Sokolova
Cheryl D. Mitchell FOR THE RESPONDENT
Paul Singh

SOLICITORS OF RECORD:

1) Conroy & Company, Abbotsford, British Columbia FOR THE APPELLANT
2) Legal Services Society, Vancouver, British Columbia
William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada