

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150921

Docket: A-487-14

Citation: 2015 FCA 203

**CORAM: NADON J.A.
PELLETIER J.A.
GAUTHIER J.A.**

BETWEEN:

JEFFERY ALLAN SPARKS

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Montréal, Quebec, on September 15, 2015.

Judgment delivered at Ottawa, Ontario, on September 21, 2015.

REASONS FOR JUDGMENT BY:

GAUTHIER J.A.

CONCURRED IN BY:

**NADON J.A.
PELLETIER J.A.**

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REASONS FOR JUDGMENT

GAUTHIER J.A.

[1] Jeffery Allan Sparks appeals the decision of Justice Marie-Josée Bédard (the judge) of the Federal Court (2014 FC 945), dismissing his application for judicial review of a third level grievance decision dated July 19, 2013 (the “Grievance Decision”).

[2] Mr. Sparks is an inmate at the Donnacona Institution and he is not represented by counsel.

[3] The Grievance Decision deals with Mr. Sparks' complaint that he has yet to receive, despite his efforts in the last eleven months, a clear answer to his request as to whether or not the six-year sentence imposed on him on November 7, 2011 in respect of charges described as charges 5 to 10 was concurrent or consecutive. Mr. Sparks claimed that this was still unclear after receiving the response to his second level grievance because of discrepancies between his sentence as described in the Superior Court's sentencing judgment (the "Sentencing Judgment") and the warrant of committal issued by the same Court (the "Warrant").

[4] The facts are not really in dispute (see paragraphs 2 to 8 of the judge's reasons). However, Mr. Sparks disagrees with the way both the judge and the administrative decision maker describe the discrepancies in the Warrant as administrative errors. In his view, they are the result of unlawful deliberate acts by the Crown or the Court's staff to cause him havoc.

[5] On May 30, 2006, Mr. Sparks was sentenced to a term of imprisonment of 5 years and 6 months. His warrant expiry date in respect of this earlier sentence was originally November 29, 2011. This warrant expiry date was later postponed to June 19, 2012.

[6] Mr. Sparks was arrested on March 15, 2010 in respect of the new offences for which he was sentenced in the Sentencing Judgment. At the time of his arrest, Mr. Sparks was under a suspended warrant from the province of Ontario. (Sentencing Judgement, para. 15) On November 7, 2011, he was still in jail.

[7] Mr. Sparks submits that the judge erred in concluding that the Correctional Service of Canada (CSC) had met its obligation to properly calculate his sentence in accordance with the Sentencing Judgment and to obtain an amended warrant that would properly reflect his sentence as set out in the Sentencing Judgment. Mr. Sparks disagrees that the discrepancies in the Warrant have no impact on the total length of his incarceration.

[8] At the hearing before us and for the first time, Mr. Sparks explained that, in his view, according to the Sentencing Judgment, the six-year sentence imposed in respect of charges 5 to 10 would run concurrently with his previous term of imprisonment and should thus be calculated as of May 30, 2006. He said that as of November 7, 2011, the only sentence remaining would be the consecutive four years imposed in respect of charges 1 to 4.

[9] Mr. Sparks recognizes that this Court has no authority to amend the Warrant and that the CSC does not have an obligation of result in that respect. What he is really seeking is to use an eventual decision of this Court to establish that: i) the Grievance Decision contains errors, and ii) the discrepancies in the Warrant do have an impact on the global length of his sentence as calculated by the CSC, so that he can seek proper amendments on the Warrant and obtain redress for the infringement of his rights by the CSC.

[10] I cannot agree with the interpretation of the Sentencing Judgment proposed by Mr. Sparks. In my view, it is clear that the word “concurrent” used to qualify the six-year sentence imposed in respect of charges 5 to 10 cannot mean that the sentence imposed on

November 7, 2011 runs retroactively and concurrently with his earlier sentence, that is, as of May 30, 2006.

[11] Paragraph 719(1) of the *Criminal Code*, R.S.C., 1985, c. C-46, is clear. A sentence commences when it is imposed, except where a relevant enactment otherwise provides. There is no such other enactment here.

[12] That said, the sentencing judge could, in accordance with paragraph 719(3) of the *Criminal Code*, take into account any time spent in custody as a result of the offence in respect of which the Court was sentencing him. However, this discretion is limited to a credit of one day for each day spent in custody.

[13] That is what the sentencing judge effectively did when she states at paragraph 35 of the Sentencing Judgment:

“Condemns Jefferey Sparks to a global sentence of ten years from March 15, 2010.”

[14] Considering the Sentencing Judgment, Section 719 of the *Criminal Code* referred to above, and Section 139 of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20, I cannot conclude that the calculations of the CSC are wrong because they do not properly reflect the sentence as set out in the Sentencing Judgment.

[15] I have also not been persuaded that the calculations of the CSC cause a prejudice to Mr. Sparks, as they indeed appear to reflect the most generous interpretation of the Warrant read

in the context of the transcript of the sentencing hearing and the Sentencing Judgment.

Mr. Sparks did not argue that contrary to the respondent's statement, the CSC's calculations would have a negative impact on his eligibility for conditional release.

[16] As to Mr. Sparks' request for a "simple answer" to his query as to whether the six year sentence is concurrent or consecutive, there is no simple answer. Indeed, the words "consecutive" and "concurrent" can only be understood when read in their context. If the order in which the charges are described is different, as it is in the Sentencing Judgment and the Warrant, then different words may have to be used to express the same idea.

[17] In the calculations of the CSC (Appeal Book, p. 90), the six-year sentence runs concurrently for each of the five charges to which it applies (as between themselves) and concurrently with whatever term was left to be served, as of the date of sentencing, in respect of his previous offenses. When charges 5 to 10 are dealt with in the Warrant after charges 1 to 4, the six-year sentence still runs concurrently for each of the charges to which it applies (5 to 10), but consecutively – that is, not concurrently – with the sentences of three years and 1 year set out in the Warrant in respect of charges 1 and 2 to 4, respectively.

[18] That said, there are indeed a few inaccuracies and typos in the Grievance Decision under review (see for example those set out in paragraph 44 of the judge's reasons). However, I agree with the judge that they are not sufficiently material to justify returning the matter for reconsideration.

[19] Finally, in the Grievance Decision, the CSC clearly advised Mr. Sparks that because the Warrant did not mirror the individual elements of the Sentencing Judgment, the CSC had contacted the Superior Court of Quebec to request that the Warrant be amended. However, such remedy is a discretionary one and the CSC was unable to obtain such amendments. The CSC also advised Mr. Sparks that if he wished to follow-up with the Superior Court, who has sole jurisdiction to make those amendments, he should speak to his counsel. Earlier in the process, the CSC had notified the Crown prosecutor of the issue. (Appeal Book, p. 81).

[20] By doing so, the CSC in my view fulfilled its obligations as set out in the CSC Sentence Management Manual. (Appeal Book, p. 73) Pursuant to this Manual, the CSC was required to identify the discrepancies; determine the nature of the problem (and its impact); determine the appropriate corrective action required; and apprise the Court, the Crown or the offender of their views.

[21] In light of the foregoing, I propose that the appeal be dismissed.

"Johanne Gauthier"

J.A.

"I agree

M. Nadon J.A."

"I agree

J.D. Denis Pelletier J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-487-14

(APPEAL FROM A JUDGMENT AND REASONS DATED OCTOBER 6, 2014, RENDERED BY THE NOHOURABLE MADAM JUSTICE BÉDARD OF THE FEDERAL COURT, DISMISSING THE APPELLANT'S APPLICATION FOR JUDICIAL REVIEW IN FILE T-403-14).

STYLE OF CAUSE:

JEFFERY ALLAN SPARKS v.
ATTORNEY GENERAL OF
CANADA
MONTRÉAL, QUEBEC

PLACE OF HEARING:

DATE OF HEARING:

SEPTEMBER 15, 2015

REASONS FOR JUDGMENT BY:

GAUTHIER J.A.

CONCURRED IN BY:

NADON J.A.
PELLETIER J.A.

DATED:

SEPTEMBER 21, 2015

APPEARANCES:

Jeffery Allan Sparks

ON HIS OWN BEHALF

Dominique Guimond

FOR THE RESPONDENT
ATTORNEY GENERAL OF
CANADA

SOLICITORS OF RECORD:

William F. Pentney
Deputy Attorney General of Canada

FOR THE RESPONDENT
ATTORNEY GENERAL OF
CANADA