Federal Court of Appeal | Cour d'appel fédérale

Date: 20170112

Docket: A-162-16

Citation: 2017 FCA 7

[ENGLISH TRANSLATION]

CORAM: **SCOTT J.A.**
BOIVIN J.A.
DE MONTIGNY J.A.

BETWEEN:

RENÉ BARKLEY

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Hearing held by video conference
Between Port-Cartier, Quebec, and Montréal, Quebec, on January 11, 2017.
Judgment delivered at Montréal, Quebec, on January 12, 2017.

REASONS FOR JUDGMENT BY: SCOTT J.A.

CONCURRED IN BY: BOIVIN J.A.
DE MONTIGNY J.A.

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REASONS FOR JUDGMENT

SCOTT J.A.

[1] René Barkley (the appellant) is appealing from an order of the Federal Court (T-1625-15) dated February 17, 2016, rendered by Madam Justice St-Louis (the Judge) who dismissed in part his motion to have the Court order the Port-Cartier Institution (the Institution) administered by the Correctional Service of Canada (CSC) grant him some accommodations to facilitate the preparation of his simplified action.

[2] The Judge granted a 60-day extension for each stage of the simplified action filed by the appellant on September 25, 2015, against Her Majesty the Queen. She refused, however, to order that the CSC grant him: (i) access to a personal computer and a printer in his cell; (ii) access to the complete case law of Federal Courts applicable to all legal proceedings in which he is involved; and (iii) the transfer of computer data contained on approximately thirty of his diskettes to CD-ROM.

[3] Moreover, the Judge determined that legitimate concerns regarding the security of the Institution justified the refusal to provide the appellant with a personal computer in his cell (*Galup v. Canada (Attorney General)*, 2008 FC 862, at paragraph 20, 331 F.T.R. 46). She also concluded that the CSC had no legal obligation to transfer the appellant's data from the diskettes to CD-ROM, especially since the appellant has special authority to possess approximately thirty diskettes and that he can also use an external service to make such a transfer.

[4] As for the appellant's access to the case law of the Federal Courts, the Judge noted that said access may be subject to reasonable limits.

[5] This appeal raises only one issue: did the Federal Court Judge err in dismissing in part the appellant's accommodation requests?

[6] The case law is clear: an appeal involving a question of mixed fact and law in the context of a discretionary order cannot give rise to the intervention of this Court in the absence of a palpable and overriding error (*Hospira Healthcare Corporation v. Kennedy Institute of*

Rheumatology, 2016 FCA 215, [2016] F.C.J. No. 943 (QL); *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235).

[7] At the hearing, the appellant argued that the Judge erred in refusing to order the accommodations sought, that is, to be able to access a personal computer and printer in his cell. He also asked this Court to grant him access to all the case law of the Federal Courts, indicating that access to such resources in the Institution is not without obstacles and is subject to certain restrictions that inhibit the preparation of his simplified action. The appellant also alleges that other inmates have been able, previously, to obtain a personal computer in their cell and that he is entitled to the same accommodation in order to ensure full preparation of all his Court proceedings.

[8] Although his notice of appeal did not challenge the formal part of the Judge's order with respect to the CD-ROMs, he noted that some inmates had obtained authorization to use CD-ROMs for educational or work purposes. He therefore submitted that he should also be allowed to transfer his computer data to CD-ROMs to facilitate the preparation of his files and the disclosure of certain documents to various parties.

[9] I am of the view that this appeal must be dismissed, as the Judge did not make a palpable and overriding error that could warrant the intervention of this Court. She considered the limitations imposed by the prison environment and took this into account as she granted extensions accordingly. Moreover, if the appellant wants to raise, as he sought to do at the hearing before this Court, that the application by the Institution of paragraph 96(w) of the

Corrections and Conditional Release Act, S.C. 1992, c. 20, and paragraph 97(3)(*a*) of the *Corrections and Conditional Release Regulations*, S.O.R./92-620, is unreasonable and not in accordance with the *Official Languages Act*, R.S.C. 1985, c. 31 (4th Supp.), it remains open to him to present his case through appropriate legal avenues.

[10] For these reasons, I would dismiss this appeal with costs fixed in the amount of $700, inclusive of taxes and disbursements.

"A.F. Scott"

J.A.

"I agree.
Richard Boivin, J.A."

"I agree.
Yves de Montigny, J.A."

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET:	A-162-16
STYLE OF CAUSE:	RENÉ BARKLEY v. HER MAJESTY THE QUEEN

MOTION BY VIDEOCONFERENCE WITH APPEARANCE OF PARTIES

PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	JANUARY 11, 2017
REASONS FOR JUDGMENT BY:	SCOTT J.A.
CONCURRED IN BY:	BOIVIN J.A. DE MONTIGNY J.A.
DATED:	JANUARY 12, 2017

APPEARANCES:

René Barkley Representing himself	FOR THE APPELLANT
Virginie Harvey	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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