

Date: 20080617

Docket: A-348-07

Citation: 2008 FCA 217

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

BETWEEN:

JOHN CHAIF

Appellant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on June 17, 2008.

Judgment delivered from the Bench at Toronto, Ontario, on June 17, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

PELLETIER J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on June 17, 2008)

PELLETIER J.A.

[1] We are all of the opinion that the appeal must be dismissed.

[2] The appellant was serving a life sentence for murder when he escaped from custody and fled to the United States. While in that country, he was convicted of armed robbery and sentenced to a term of imprisonment.

[3] The appellant then applied to serve his American sentence in Canada under the terms of the *Transfer of Offenders Act* R.S.C. 1985 c. T-15.

[4] The appellant's transfer was ultimately approved by both governments but there was a 57 day delay between the Canadian approval of the transfer and the appellant's actual physical transfer. The appellant argues that he was not unlawfully at large during that period because he had manifested the intention to return to Canada and his return had been approved. He thus lacked the *mens rea* to be unlawfully at large.

[5] The difficulty with this argument is that it treats the appellant's desire to serve his American sentence in Canada as equivalent to an intention to return to Canada to serve the balance of his Canadian sentence. There is no basis for such an assumption. The transfer of offenders legislation deals with the service in Canada of a sentence of imprisonment imposed by a foreign court.

[6] The permission granted to the appellant to serve his American sentence in Canada does not excuse his absence from imprisonment in Canada. As a result, *Leschenko v. Attorney General of Canada*, [1983] 1 F.C. 625 (F.C.A.), applies and the appeal must be dismissed with costs.

“J. D. Denis Pelletier”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-348-07

(APPELLANT APPEALS TO THE FEDERAL COURT OF APPEAL FROM THE ORDER OF THE HONOURABLE MR. JUSTICE KELEN DATED JULY 4, 2007, DOCKET: T-1570-06)

STYLE OF CAUSE: *JOHN CHAIF v. THE ATTORNEY GENERAL OF CANADA*

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 17, 2008

REASONS FOR JUDGMENT OF THE COURT BY: (NADON, PELLETIER & RYER J.J.A.)

DELIVERED FROM THE BENCH BY: PELLETIER J.A.

APPEARANCES:

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Charmaine De Los Reyes

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