

CANADA / JUDGMENT

Ahmadzadegan v. National Parole Board

2004 FC 547

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Ahmadzadegan v. National Parole Board Court (s) Database Federal Court Decisions Date
2004-04-08 Neutral citation 2004 FC 547 File numbers T-1295-01 Decision Content Date: 20040408
Docket: T-1295-01 Citation: 2004 FC 547 OTTAWA, ONTARIO, THE 8th DAY OF APRIL 2004 Present
THE HONOURABLE MR. JUSTICE MARTINEAU BETWEEN: SHAHROKH AHMADZADEGAN
Applicant

- and - THE NATIONAL PAROLE BOARD
- and - ATTORNEY GENERAL OF CANADA Respondents REASONS FOR ORDER AND ORDER

- [1] In 1989, the applicant, an Iranian citizen, was convicted, in Canada, of several drug-related charges. Sentenced to 25 years in prison, he is now serving his sentence in a maximum security penitentiary. In April 1998, he was again convicted of drug trafficking. This time, the offence was committed inside the institution; as a result, he was sentenced to a five-year consecutive sentence.
- [2] On March 8, 2001, the National Parole Board denied the applicant day parole or full parole (the decision of first instance). In accordance with section 147 of the Corrections and Conditional Release Act, S.C. (1992), c. 20 (the Act), the applicant appealed this negative decision. On June 15, 2001, the Board's Appeal Division dismissed the applicant's appeal, hence this application for judicial review.
- [3] Essentially, the role of the Appeal Division is to ensure that the Board has complied with the Act and with its policies, that it has observed the rules of natural justice and that its decisions are based on relevant and trustworthy information. The intervention of this Court is only warranted to the extent that the findings of the Appeal Division are patently unreasonable (*Costiuc v. Canada (Attorney General)*, [1999] F.C.J. No. 241 (F.C.T.D.) (QL) at para. 6; *Migneault v. Canada (Attorney General)*, [2003] F.C.J. No. 372 (F.C.T.D.) (QL) at para. 14; *Petanic v. Canada (Attorney General)*, [2003] F.C.J. No. 1281 (F.C.) (QL); and *D.T. v. Canada (Attorney General)*, [2003] F.C.J. No. 1452 (F.C.) (QL) at para. 9).

- [4] The Supreme Court of Canada, in *Mooring v. Canada (National Parole Board)*, [1996] 1 S.C.R. 75 (S.C.C.), has already defined the Board's duty to act fairly. Accordingly, it states at paragraph 36 : What is the content of the Board's "duty to act fairly"? The content of the duty of fairness varies according to the structure and the function of the board or tribunal in question. In the parole context, the Parole Board must ensure that the information upon which it acts is reliable and persuasive. To take an extreme example, information extracted by torture could not be considered reliable by the Board. It would be manifestly unfair for the Board to act on this kind of information. As a result, the Board would be under a duty to exclude such information, whether or not the information was relevant to the decision. Wherever information or "evidence" is presented to the Board, the Board must make a determination concerning the source of that information, and decide whether or not it would be fair to allow the information to affect the Board's decision. [emphasis added]
- [5] In my opinion, the Appeal Division fully exercised its jurisdiction. In this case, the Appeal Division found that the decision below was fair and reasonable, that it was based on relevant, credible and persuasive information, that it complied with the Act and with the Board's policies and, finally, that the applicant was treated fairly by the Board. In so doing, the Appeal Division did not err in law. I am satisfied in this case that the Appeal Division ultimately determined that the Board had indeed observed its duty to ensure that the information was reliable and persuasive. In addition, the Appeal Division's decision appears to me in all respects to be reasonable in the circumstances and the applicant has not proved to me that this decision is reviewable for any of the reasons provided in subsection 18.1(4) of the Federal Courts Act, R.S.C. 1985, c. F-7.
- [6] On this point, it appears to me that the primary criticism made by the applicant is that the Appeal Division did not apply the test set out in *Mooring*,^{supra}, or that it applied it incorrectly. The applicant specifically criticized the Board as well as the Appeal Division for having disregarded the fact that it had been decided earlier that the police reports alleging that the applicant was an Iranian mafia boss did not constitute trustworthy and persuasive information.
- [7] The applicant's allegations are unfounded. First of all, it seems to me that the previous decision of the Appeal Division, dated May 28, 1998, was cited out of context by the applicant. The relevant passage reads as follows: [TRANSLATION] [...] the police reports to this effect [Iranian mafia boss] do not prove any detail that could help us determine the merits of this information. We therefore find that the information provided by the RCMP is not trustworthy and persuasive information which could allow us to establish a basis upon which we could conclude that you are likely to commit a violent offence. [emphasis added]
- [8] That said, it is clear that the Board's negative decision, now at issue, was not based on the fact that the applicant was alleged to be an Iranian mafia boss. Whatever the case may be, the Appeal Division clearly states that the Board, in making its decision, was fully aware of the denials and/or explanations made by the applicant.

- [9] The parties do not contest the fact that all of the information on which the Board relied in making its decision appears in the applicant's file. I observe, on this point, that the Board's decision is based on a number of factors, such as the applicant's attitude and actions since his incarceration. For example, the Board emphasized, *inter alia*, that the applicant is of special interest for preventive security, primarily because of the fact that he was identified as a drug trafficker inside the institution. On the other hand, according to the record, on July 7, 2000, the applicant was placed in administrative segregation because he had acted aggressively toward an officer of the Correctional Service of Canada. On October 20, 2000, the applicant was once again placed in administrative segregation because he had hit an inmate in the face and had attacked him verbally. Further, the applicant's file indicates that he had not assimilated the skills he had studied during different courses that he had taken. In January 2001, the applicant's security classification was reassessed and he was classified as maximum security. It is evident that the relevance and the determinative nature of this information, the reliability of which was not seriously challenged by the applicant, were reassessed by the Appeal Division.
- [10] I also observe that the Appeal Division's decision addresses the applicant's primary grounds for appeal. It also appears to me that sufficient reasons were given in this decision. Moreover, there is nothing that would suggest that the decision is based on irrelevant factors. The following elements, in particular, seem determinative to me: Legal: Mooring. You submit that the Board erred in basing its decision on misinformation, such as the police report describing you as the capo of the Iranian mafia, information that an individual had smuggled narcotics in for you, and your aggressive behaviour to an officer and a peer. You maintain that the Board should have gone into greater depth in its investigation in order to satisfy its obligation to ensure that the information it receives is correct and persuasive; you allege that the Board's having failed on this count constitutes an error in law.
- Reasonableness of Decision. . . . To start with, we must remind you that the role of the Board is not to conduct investigations but rather to assess risk on the basis of all of the available information obtained from reports that have been put at its disposal or from information that came out at the hearing. In making its decision the Board was fully aware of the denials and/or explanations you had made concerning the aforementioned information although this information was not a determining factor in the decision you are now appealing. The determining factors that justified denial of any form of release were: your pattern of narcotics-related crime, including your last sentence for crimes committed while you were incarcerated, and for which you were sentenced to five years consecutive, for an aggregate sentence of 30 years of imprisonment; Protected Information Reports connecting you yet again, on several different occasions, to the drug world; information obtained from reliable sources; and your failure to conduct any genuine soul-searching in spite of your participation in numerous programs. The Appeal Division is satisfied that the determining information on the basis of which you were denied any form of release was credible and persuasive. [Emphasis added.]

- [11] In this case, the applicant has not succeeded in convincing me that the Appeal Division's reasoning, set out above, is patently unreasonable or otherwise contrary to the Act. Also, the few errors of fact, if any, cited by the applicant, do not affect the Board's general finding, the validity of which was confirmed by the Appeal Division. I also find that the applicant was treated fairly.
- [12] In his written memorandum, the applicant finally argues that the Board does not have the jurisdiction to interfere in the applicant's refugee file with Immigration Canada, such that it exceeded its jurisdiction in requiring that the applicant file a passport or other valid travel document in support of his release plans. I note that this last argument was not raised at the hearing before this Court and appears to have been abandoned by the applicant. Whatever the case, the Appeal Division decided that the Board's comments about the lack of a release plan were not a determinative element in denying the applicant's full parole. This finding seems reasonable to me and intervention is not warranted in this case.
- [13] In conclusion, the intervention of this Court is not warranted, so this application for judicial review must be dismissed and, all factors considered, with costs against the applicant.
- ORDER THE COURT ORDERS that the application for judicial review of the decision by the National Parole Board, dated June 15, 2001, be dismissed with costs against the applicant.
- "Luc Martineau" Judge Certified True Translation Kelley A. Harvey, BA, BCL, LLB FEDERAL COURT SOLICITORS OF RECORD DOCKET: T-1295-01 STYLE OF CAUSE: SHAHROKH AHMADZADEGAN v. THE NATIONAL PAROLE BOARD ET AL. PLACE OF HEARING: QUÉBEC, QUEBEC DATE OF HEARING: MARCH 9, 2004 REASONS FOR ORDER AND ORDER BY: THE HONOURABLE MR. JUSTICE MARTINEAU DATE OF REASONS: APRIL 8, 2004 APPEARANCES: JULIE GAGNÉ FOR THE APPLICANT SÉBASTIEN GAGNÉ FOR THE RESPONDENTS SOLICITORS OF RECORD: JULIE GAGNÉ FOR THE APPLICANT QUÉBEC, QUEBEC MORRIS ROSENBERG FOR THE RESPONDENTS DEPUTY ATTORNEY GENERAL OF CANADA

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