
CANADA / JUDGMENT

Blaney v. The Correctional Service of Canada

2014 BCSC 57

COURT

Supreme Court of British Columbia

DECIDED

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2014 BCSC 57 Blaney v. The Correctional Service of Canada

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Blaney v. The Correctional Service of Canada,

2014 BCSC 57

Date: 20140115

Docket: 26394

Registry: Vancouver

Between:

Barry Ross Blaney

Applicant

And

The Correctional Service of Canada,

and Attorney General of Canada

Respondents

Before: The Honourable Mr. Justice Williams

Reasons for Judgment

Counsel for Applicant:

E. Purtzki

Counsel for Respondent, Attorney General of Canada:

L. Bantourakis and

S.D. Norris

Place and Date of Hearing:

Vancouver, B.C.

August 16, 2013

Place and Date of Judgment:

Vancouver, B.C.

January 15, 2014

- [1] The applicant Barry Ross Blaney has been designated a long-term offender and is subject to a long-term supervision order (L.T.S.O.). He applies to this Court for habeas corpus.
- [2] On November 24, 2003, Mr. Blaney was sentenced to an eight-year custodial sentence, to be followed by a ten-year L.T.S.O. Mr. Blaney's custodial sentence expired on November 23, 2011. He was then released into the community under the L.T.S.O.
- [3] The Parole Board of Canada (the Board) is the authority which administers and sets the terms of the L.T.S.O. as it applies to Mr. Blaney. The actual supervision of the order, the business of ensuring that Mr. Blaney complies with the terms of the order, is done by the Correctional Service of Canada (C.S.C.). In this application, Mr. Blaney challenges the manner in which the C.S.C. has interpreted certain of those terms. He says the effect is improper and unauthorized and accordingly asks this Court to find that there has been an unlawful deprivation of his liberty.

Factual Background

- [4] When the applicant's custodial sentence expired, he was released into the community. In advance of that, the Board made an order imposing conditions pursuant to s. 134.1 of the Corrections and Conditional Release Act, S.C. 1992, c. 20 (CCRA). That order included a residency condition which was stipulated to be for a period of 180 days. The following is a chronology of the applicant's release history:

- December 7, 2011: The long-term supervision was suspended on the basis of an allegation that the applicant had breached a condition; there was a recommendation that he be charged under s. 753.3 of the Criminal Code, R.S.C., 1985, c. C-46. He remained in custody pending the disposition of that recommendation.
- March 15, 2012: The Crown directed a stay of proceedings with respect to the criminal prosecution; the applicant was released from custody and returned to a community facility.

- April 3, 2012: The long-term supervision was suspended; the applicant was placed into custody.
- June 12, 2012: the Board held a hearing where it cancelled the suspension of the long-term supervision but imposed a modification of some conditions. The record of that hearing contains a reference to a discussion which occurred between the applicant and the Board with respect to the residency condition. He was released to a community facility.
- June 27, 2012: The long-term supervision was suspended and the applicant was taken into custody.
- August 14, 2012: The Board considered the circumstances and recommended prosecution under the Criminal Code.
- September 24, 2012: The suspension expired without charges being initiated; the applicant was released to a community facility.
- September 26, 2012: The C.S.C. referred this matter to the Board, recommending that a second 180 day residency condition be imposed (presumably on the basis of an understanding that the first order was near expiry.)
- October 9, 2012: The long-term supervision was suspended; the applicant was taken into custody.
- December 13, 2012: The suspension was cancelled. The Board made an order prolonging the residency condition for a further 180 days. The applicant was released to a community facility.
- February 13, 2013: The supervision was cancelled; the applicant was taken into custody.
- March 13, 2013. The suspension was cancelled; the applicant was released to a community facility in Vancouver.

[5] At the time of the application, the most recent residential condition was the order of December 13, 2012, for a stated 180 days.

The position of the applicant

- [6] The applicant says this is an appropriate matter for habeas corpus. It arises in the context of the applicant's challenge to a deprivation of liberty. Specifically, he says that the C.S.C.'s direction that requires him to reside at a designated halfway house facility is properly characterizable as a deprivation of liberty. Furthermore, he says it was unlawful because it was not done further to an order or direction of the Board.
- [7] The applicant says that in the circumstances, once he demonstrates that there has been a deprivation of his liberty, the onus lies upon C.S.C. (or the Attorney General of Canada) to satisfy the Court that the deprivation is lawful.

- [8] The applicant makes clear that he does not challenge the authority of the Board to impose the residency conditions which were made. Rather he challenges the manner in which that order is sought to be enforced. He says that the condition imposed by the Board lapsed 180 days after it was made. Accordingly, beyond that, it is of no force and C.S.C. cannot lawfully require him to reside at a halfway house in the absence of such an order.
- [9] In the submission of the applicant, there is no clear and unequivocal statement of the Board either that the terms of the condition run continuously from its effective date, regardless of whether there has been full compliance, or, whether it only runs when the offender is in compliance. That is, if he is out of compliance and under suspension, it does not run.
- [10] In effect, he says there is no basis to properly interpret the Board's order as the C.S.C. has done; at best, it is ambiguous and so its enforcement is without lawful authority.

Discussion

- [11] Certain points arose preliminarily. I do not understand there to be any dispute about them.
- [12] The first is with respect to the appropriate party to be named as respondent. Counsel for the Attorney General of Canada submits that the Correctional Service of Canada is not a proper respondent; the Attorney General of Canada is. Mr. Blaney did not take any issue with or challenge that proposition.
- [13] I will accept that to be correct and proceed on that basis.
- [14] The second matter that arose and upon which the parties are in agreement is that this Court is not to engage in any substantive review of the Board's decision. It is not open to this Court to conclude that the Board acted unlawfully.
- [15] Following from the foregoing, the issue for this Court is whether the C.S.C. acted lawfully in the steps it took to enforce and supervise the residency condition.
- [16] Having reviewed the material and the submissions carefully, I conclude that the answer is in the affirmative. I reach that conclusion for a number of reasons.
- [17] Before embarking on an explanation of the reasons for this conclusion, it would be helpful to set out a description of the statutory underpinnings of the supervision process.
- [18] The Criminal Code provides that an offender who is subject to long-term supervision shall be supervised in the community in accordance with the CCRA.
- [19] Section 134.1 of the CCRA deals with terms for long-term supervision. It provides as follows:
- 134.1 (1) Subject to subsection (4), every offender who is required to be supervised by a long-term supervision order is subject to the conditions prescribed by subsection 161(1) of the Corrections and Conditional Release Regulations, with such modifications as the circumstances require.

- (2) The Board may establish conditions for the long-term supervision of the offender that it considers reasonable and necessary in order to protect society and to facilitate the successful reintegration into society of the offender.
- (3) A condition imposed under subsection (2) is valid for the period that the Board specifies.
- [20] Section 134.2 obligates the offender to comply with any instructions given by the Board or its delegate, including the offender's parole supervisor.
- [21] Section 135.1 provides that where an offender breaches a condition or where it is believed necessary and reasonable to prevent a breach or otherwise in the interest of public safety, a warrant may be issued suspending the long-term supervision, authorizing the apprehension of the offender, and authorizing his commitment to a community-based residential facility, a mental health facility or, in some cases, to custody.
- [22] The CCRA stipulates that the period of commitment is not to exceed 90 days.
- [23] Additionally, s. 135.1(3) provides that:

Where an offender is committed under paragraph 1(c), the period of the commitment is included in the calculation of the period of long-term supervision ordered under a long-term supervision order, but if there is a period between the issuance of the warrant and the commitment to custody, that period is not included in that calculation.

- [24] Where a suspension warrant has been issued, then within no more than 30 days, the person who signed the warrant is obliged to either cancel the suspension or to refer the case to the Board. The Board is required to review the case and either cancel the suspension or recommend that the offender be charged with an offence under s. 753.3 of the Criminal Code.
- [25] With that backdrop, I will now explain the analysis that leads to the decision that there has not been an unlawful deprivation of Mr. Blaney's liberty.
- [26] The first basis for my conclusion arises from an examination of a record of a proceeding that took place in the form of a hearing before the Board on June 12, 2012. That record, a decision sheet which is in evidence in this application, discloses that the applicant was present at the hearing and was apparently assisted by an elder. It is also evident that the applicant made submissions to the Board on that occasion.
- [27] By way of background, it will be recalled that the initial residency order was made on November 23, 2011. There had been a number of difficulties in compliance with the order, such that for a substantial portion of the time between that initial order having been made and the date of the hearing on June 12, 2012, the applicant was not in residence at any community facility. He was incarcerated because his supervision had been suspended.

- [28] When I examine the decision sheet from the June 12, 2012 hearing, it is clear that the applicant raised with the Board "serious concerns" he had with respect to "the merits and legality of the special condition to reside". In its decision sheet, the Board indicated that it was "in receipt of your submissions on this issue, however in light of the length of time remaining on the existing period of residency, this special condition would not be addressed by the Board at this time."
- [29] From this record, certain conclusions emerge quite clearly. The first is that the Board was of the view that, at that time, the first order was still in effect and had more time to run.
- [30] If the applicant's position is correct, there would have been no order extant at the time of the hearing; it would have expired on approximately May 23, 2012, that is 180 days after its imposition.
- [31] By its conduct and statement, and with the issue having been raised, the Board made clear that it took the view that the time did not run on a straight time basis from the date of the original imposition. The only reasonable inference is that it took the view that time ran based upon actual time spent by the applicant in designated residences.
- [32] In the result, to my mind, the record of what transpired at this hearing clearly leads to the conclusion that the Board considered that the time did not run continuously from the date of original imposition but rather ran on the basis of actual residency and thus the periods that the supervision was in suspension did not count toward the cumulative satisfaction of the order. Accordingly, when the C.S.C. interpreted the order as it did, calculating satisfaction of its requirements on the basis of actual time spent in residence, I find it was acting in a manner entirely congruent with the Board's intentions and views.
- [33] The second basis for my conclusion is found in the second order. That was made on December 13, 2012 and is the actual order whose interpretation is in issue in the present proceeding. The decision sheet for that is contained within the material which has been filed on this application.
- [34] In describing the final decision reached there, the decision sheet indicates the Board's order that "residency special condition is prolonged for another 180 days." [my emphasis].
- [35] Further down the sheet, the following appears under the heading "Special Conditions Imposed and Period of Time for which they are valid":
- Reside at a CCC/CRF that is approved of by the Correctional Service of Canada, for a period of 180 days.
- [36] Then, at another point, by the heading STATUS, appears the word "prolonged".
- [37] In my view, the specific reference to "prolonged" implies a continuation of an existing condition, not another fresh, new and independent order.

[38] My view of the matter is supported by the affidavit of Kelsey Hymander, the Acting Regional Manager, Correctional Release Programs, Parole Board of Canada.

[39] I should note that Mr. Blaney objects to that affidavit being received in this proceeding on the basis that the affiant expresses her opinions (or opinions of C.S.C.) as to what the Board meant. With respect, I cannot agree with that objection. I interpret the contents of Ms. Hymander's affidavit to constitute a description of the usual practice of the Board, specifically with respect to terminology that they use. To my mind, by virtue of her employment assignment, she has knowledge of that usual practice and so her evidence is factual and entitled to be received.

[40] The relevant parts of her affidavit are these:

- When the PBC (the Board) attaches a residency condition to an offender's long-term supervision order (LTSO), it will, as a matter of practice, indicate that that condition is "imposed" or that it is "prolonged."
- As a matter of practice, the PBC will employ the term "imposed" when an offender receives a residency condition for the first time, or when there is a lapse in time of one day or more between the two residency conditions.
- Also as a matter of practice, the PBC will employ the term "prolonged" where there is no lapse in time between a previously imposed condition and the residency condition that is being imposed.

[41] Accepting what Ms. Hymander says, the conclusion that arises, quite convincingly, is that the Board intended the second order to continue the effect of the first. The logical implication of that is that there was no gap, but rather a continuation.

[42] The logical conclusion arising from that is that the Board has taken the view that time runs in a manner reflecting compliance with the residency requirement.

[43] A third basis upon which I conclude the applicant's position cannot succeed is on the basis of a plain reading of the words used by the Board.

[44] The first order that was made by the Board dated October 3, 2011, stipulated that, upon his release from custody, "special conditions are imposed on your Long-Term Supervision Order, including residency for 180 days." Later in that same decision sheet, the condition is described thusly:

A special condition to reside at a CCC/CRF is therefore imposed on your L.T.S.O. for a period of 180 days.

[45] Viewed generously, the argument could be made that there is ambiguity and that 180 days is the term of the order, rather than the number of days required to be spent in residency.

[46] However, it is the second order which is at issue here. It states as follows:

Reside at a CCC/CRF that is approved by the Correctional Service of Canada, for a period of 180 days.

[47] Later in the same sheet, the order is articulated in this way:

The special condition requiring you to reside at a specific place is prolonged for a further 180 days.

[48] In my view, there is simply no ambiguity. A plain reading of each of those articulations results in the conclusion that Mr. Blaney was obligated to reside in approved places for a period of 180 days. If there were interruptions because of non-compliance and suspensions of the supervision, logic would dictate that those would not count toward the requirement the Board placed upon him.

[49] The meaning of the statement requiring the residency can also be properly interpreted in the context of the surrounding circumstances.

[50] The most relevant circumstances that would inform a reasonable interpretation of the imposition of the condition is found at pp. 7 and 8 of the decision sheet dated December 13, 2012, where the residency requirement is prolonged. The essence of the commentary of the Board is to the effect that there is a real concern that Mr. Blaney has not made acceptable progress in the community, and that he has not demonstrated a suitable period of stability. That is the expressed justification for the residency condition: Mr. Blaney's risk is not deemed manageable without it.

[51] Viewed from a common sense perspective, it would seem to be an absurdity to believe that Mr. Blaney's persistent non-compliance with this fundamental condition, and the attendant intervals in incarceration, could serve to satisfy the very clear purpose that the residency condition was so obviously intended to accomplish.

[52] Finally, Mr. Blaney advanced a submission to the effect that s. 135.1 of the CCRA stipulates that, even when an offender is in breach of a condition of his long-term supervision order and is suspended, the order continues to run, with certain exceptions. The only two specific circumstances which will "stop the running of the clock" on the supervision order are these:

- a) When the offender is AWOL, and before the suspension warrant can be executed; or
- b) When the offender is serving any other sentence of incarceration imposed by the court.

Otherwise time continues to run.

[53] In Mr. Blaney's submission, the notion that time continues to run, notwithstanding the offender being out of compliance with imposed conditions, is applicable to the requirement to comply with the imposed term of residency: even if he is not residing as directed, the order which is the condition continues to run. By that approach, after 180 days have passed, whether he has complied with the condition or not, the lawful effect of the order is spent.

- [54] For the reasons I have set out here, that is not, in my view, a reasonable interpretation of the matter.
- [55] Furthermore, the principle underlying those particular exceptions is sound and obvious. In effect, it is to ensure that the court's order as to long-term supervision is carried out, but that its finite length is not being extended simply by reason of an offender being a difficult supervisee. The obligation is to be under supervision for the ordered time and, except for these two logical reasons, no longer. However, the details of the supervisory regime are left for the Board to decide and impose, and to extend this notion as Mr. Blaney urges is simply not logical. It flies in the face of the Board's unquestioned authority to impose conditions of supervision on long-term offenders to ensure the protection of society.

Conclusion

- [56] In my view, the application cannot succeed. I am satisfied that the manner in which C.S.C. has interpreted and imposed their supervision with respect to the order of the Board is eminently reasonable and lawful.
- [57] No unlawful deprivation of liberty has been established and accordingly Mr. Blaney's application stands dismissed.

"The Honourable Mr. Justice Williams"

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