

CANADA / JUDGMENT

Listes v. Canada (Attorney General)

2004 FC 860

COURT

Federal Court

DECIDED

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T-1845-03 Citation: 2004 FC 860 BETWEEN: NEDELJKO LISTES Applicant

- and - ATTORNEY GENERAL OF CANADA Respondent REASONS FOR ORDER PINARD J.:

- [1] This is an application for judicial review to set aside the decision by the Appeal Division (the Appeal Division) of the National Parole Board (the NPB), dated September 9, 2003, upholding the decision of the NPB, dated April 4, 2003, denying day parole and full parole to the applicant under the Corrections and Conditional Release Act, S.C. 1992, c. 20 (the Act).
- [2] Nedeljko Listes is more than 70 years old and he is now an inmate at the Federal Training Centre in Laval, a minimum security institution, where since September 12, 1995, he has been serving a first life sentence for the second degree murders of his wife and his son.
- [3] The Appeal Division determined that the NPB's decision was fair, reasonable and supported by many psychological and psychiatric reports.
- [4] The applicant alleges that the Appeal Division rendered a decision that is patently unreasonable and contrary to the principles stated in sections 100 to 102 of the Act, which read as follows:
100. The purpose of conditional release is to contribute to the maintenance of a just, peaceful and safe society by means of decisions on the timing and conditions of release that will best facilitate the rehabilitation of offenders and their reintegration into the community as law-abiding citizens.
100. La mise en liberté sous condition vise à contribuer au maintien d'une société juste, paisible et sûre en favorisant, par la prise de décisions appropriées quant au moment et aux conditions de leur mise en liberté, la réadaptation et la réinsertion sociale des délinquants en tant que citoyens respectueux des lois.
101. The principles that shall guide the Board and the provincial parole boards in achieving the purpose of conditional release are

- (a) that the protection of society be the paramount consideration in the determination of any case;
 - (b) that parole boards take into consideration all available information that is relevant to a case, including the stated reasons and recommendations of the sentencing judge, any other information from the trial or the sentencing hearing, information and assessments provided by correctional authorities, and information obtained from victims and the offender; . . .
 - (d) that parole boards make the least restrictive determination consistent with the protection of society; . . .
101. La Commission et les commissions provinciales sont guidées dans l'exécution de leur mandat par les principes qui suivent :
- a) la protection de la société est le critère déterminant dans tous les cas;
 - b) elles doivent tenir compte de toute l'information pertinente disponible, notamment les motifs et les recommandations du juge qui a infligé la peine, les renseignements disponibles lors du procès ou de la détermination de la peine, ceux qui ont été obtenus des victimes et des délinquants, ainsi que les renseignements et évaluations fournis par les autorités correctionnelles; [. . .]
 - d) le règlement des cas doit, compte tenu de la protection de la société, être le moins restrictif possible; [. . .]
102. The Board or a provincial parole board may grant parole to an offender if, in its opinion,
- (a) the offender will not, by reoffending, present an undue risk to society before the expiration according to law of the sentence the offender is serving; and
 - (b) the release of the offender will contribute to the protection of society by facilitating the reintegration of the offender into society as a law-abiding citizen.
102. La Commission et les commissions provinciales peuvent autoriser la libération conditionnelle si elles sont d'avis qu'une récidive du délinquant avant l'expiration légale de la peine qu'il purge ne présentera pas un risque inacceptable pour la société et que cette libération contribuera à la protection de celle-ci en favorisant sa réinsertion sociale en tant que citoyen respectueux des lois.
- [5] The many psychological reports in the records reveal that there has been a complete lack of rehabilitation by the applicant since his sentence began, that he suffers from a significant psychological frailty and that he exhibits personality disorders as well as paranoid tendencies (see the documents entitled "[TRANSLATION] Assessment for Decision, February 17, 2003", "[TRANSLATION] Progress Monitoring, Report Number 7, February 17, 2003" and "[TRANSLATION] Psychological/psychiatric assessment report - Federal Training Centre, January 23, 2003" at tab numbers 5, 6 and 7, respectively, of the record of December 15, 2003, submitted by the NPB). According to the same reports, the applicant has not done any soul-

searching; he continues to perceive himself as a victim and he hasn't been at all motivated to involve himself in various treatments. Under the circumstances, it is my opinion that, like the NPB, the Appeal Division correctly assessed the applicant's case in accordance with the principles stated in sections 100 to 102 of the Act.

- [6] More specifically, the applicant submits that the NPB did not make the least restrictive determination, as provided by paragraph 101(d) of the Act. He points out that the NPB is of the opinion that an ethno-psychiatric treatment appears to be the only appropriate treatment for him. As this treatment is not available in the detention centre, the applicant criticized the NPB for refusing to grant him day parole so that he could benefit from this on the outside. Like the respondent, it is my opinion that the NPB did not err in its assessment in this respect. A review of the record and the reasons of the decision clearly demonstrates that in the NPB's view, even if the only effective and available treatment for the applicant was ethno-psychiatry, the fact that he is not open in this respect suggests that that treatment is not viable. According to "Progress Monitoring, Report Number 7, February 17, 2003" (Report #7), the applicant is unwilling to resume psychotherapy like the psychotherapy which he had started long ago at the ethno-psychiatric clinic. Furthermore, this report indicates that the applicant wants no part of the proposed reintegration plans and that he is completely closed-minded about his case. In its decision, the NPB considered the fact that the applicant had already unsuccessfully attempted to follow such treatment on the outside and also the fact that he shows no interest in his rehabilitation. In my view, therefore, paragraph 101(d) of the Act was given due consideration in assessing the applicant's case and the Appeal Division did not err in upholding the NPB's decision.
- [7] Finally, the applicant argues that the NPB did not consider all of the available information relevant to the case as provided by paragraph 101(b) of the Act. He notes that according to the psychological report dated January 23, 2003, his risk of recidivism is low to moderate; he further points out that according to the statistical index of the Correctional Service of Canada, he falls into the category of the four of five inmates who will not commit a criminal act after their release. However, a review of the reports in the record show that these allegations are made out of context. First, the Assessment for Decision, dated February 17, 2003, indicates that the applicant's social reintegration must be changed to low. Then, according to this same report, the risk involved in releasing the applicant is too high because he does not have any resources on the outside and because the risk of recidivism before the end of the sentence is unacceptable in the circumstances. Finally, this report explains that the conclusion that the applicant falls into the category of the four of five inmates who will not commit a criminal act after their release is completely unrealistic in light of the comprehensive assessment of the applicant's case. There is also Report #7 which specifies that this rating does not at all reflect the assessment of the applicant's ability to function in society without reoffending since this prediction fails to take into account the fragility of the case and the applicant's ability to live in his own world. According to Report #7, the applicant's potential for social reintegration must be changed to low since he wants nothing to do with the proposed reintegration plans and since he is completely closed-minded about

his case. In my view, therefore, the applicant's complaints regarding the NPB's assessment of the evidence are unfounded. To the contrary, all of the documentation indicates that the NPB's conclusions are reasonable based on the ample information before it and, accordingly, that the Appeal Division was quite justified in not intervening.

- [8] In conclusion, it is my view that the decision of the Appeal Division is supported by a reasonably well-assessed factual basis and that this tribunal correctly applied sections 100, 101 and 102 of the Act.
- [9] Accordingly, the application for judicial review is dismissed, with costs. "Yvon Pinard" Judge OTTAWA, Ontario June 17, 2004 Certified true translation Kelley A. Harvey, BA, BCL, LLB FEDERAL COURT SOLICITORS OF RECORD DOCKET: T-1845-03 STYLE OF CAUSE: NEDELJKO LISTES v. ATTORNEY GENERAL OF CANADA PLACE OF HEARING: Montréal, Quebec DATE OF HEARING: May 12, 2004 REASONS FOR ORDER: Pinard J. DATE OF REASONS: June 17, 2004 APPEARANCES: Pierre Tabah FOR THE APPLICANT Michelle Lavergne FOR THE RESPONDENT SOLICITORS OF RECORD: Labelle, Boudrault, Côté & Associés FOR THE APPLICANT Montréal, Quebec Morris Rosenberg FOR THE RESPONDENT Deputy Attorney General of Canada Ottawa, Ontario

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